

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

Agenda Item No. 6

meeting date: THURSDAY, 1 SEPTEMBER 2016  
 title: PRIVATE SECTOR HOUSING ENFORCEMENT POLICY  
 submitted by: MARSHAL SCOTT – CHIEF EXECUTIVE  
 principal author: HEATHER COAR – HEAD OF ENVIRONMENTAL HEALTH SERVICES

## 1 PURPOSE

1.1 To agree a Private Sector Housing Enforcement Policy which will set out how the Council will regulate and enforce standards in private housing in the Ribble Valley.

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives - }
- Corporate Priorities - }     The Council aims to be a well-managed authority – these proposals support this objective.
- Other Considerations - }

## 2 BACKGROUND

2.1 The Council does not currently have an Enforcement Policy specifically for private sector housing work. However there is an overarching Council Enforcement Policy to which this proposal will belong. There are statutory duties for the Council with no legislation relating to private sector housing.

2.2 It is important for local authorities to have an Enforcement Policy to ensure consistency and approachable Council Offices and for members of the public, tenants and landlords to know what is expected of the service. It aids clarity should the Council need to take legal proceedings or enforcement action and it is appealed against.

2.3 The aim of the Enforcement Policy is to raise housing standards throughout the borough, working with landlords, owners, letting agents and tenants to achieve this as part of the Council's statutory duty to investigate any alerts of poor housing conditions.

2.4 The policy is set out to show how we are fair to all parties and give help and advice to achieve our aim but we must be firm to take enforcement action where appropriate. If the law is broken then enforcement may be necessary to protect the public and the environment.

## 3 ISSUES

3.1 The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector.

3.2 The policy is based around the Enforcement Concordat produced by the Cabinet Office which this Authority has adopted. The general principles of good enforcement which are set out in the concordat are to be adhered to by the Council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.

- 3.3 All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider housing conditions are unacceptable. The options are mostly contained in the Housing Act 1985, the Housing Grants, Construction and Regeneration Act 1996 and the Housing Act 2004. These interventions include:
- enforcement activity (eg serving notices on owners to defer action, repair, demolish or prohibit the use of dwellings);
  - slum clearance;
  - compulsory purchase order (eg for empty homes);
  - renewal areas;
  - works in default;
  - disabled facilities grants; and
  - house renovation grants.
- 3.4 Enforcement of housing standards is an integral part of the Council's Private Sector Housing Strategy. This policy applies to Registered Social Landlords (now known as Registered Providers) as well as private sector landlords.
- 3.5 This policy sets out to ensure the Council undertakes its housing enforcement role in a consistent, practical, open and transparent manner. When an officer is dealing with a house which is below acceptable standards, this housing enforcement policy will be followed. The policy takes into account the Code of Practice for Crown Prosecutors.
- 3.6 The Housing Act 2004, ("the Act"), together with Regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed a Category 2. The Council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.
- 3.6 The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers and regular visitors, the presence of other significant hazards in the property and the risk of social exclusion of vulnerable groups of people from the private rented sector.
- 3.7 Housing Act 2004 and the Housing Act 1985 are the principal Acts covering statutory action.
- 3.8 If a Category 1 hazard is identified the Council has a duty to require the owner to remedy the defect. The Council has discretionary powers to deal with Category 2 hazards, and the most appropriate course of action will be decided on a case-by-case basis. Where an improvement notice is served the Council will require sufficient works to abate the hazard for five years.
- 3.9 It is for the Council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors and also published guidance from the Office of the Deputy Prime Minister, and to the views of owners and tenants before formal action is taken.

- 3.10 There are a number of different notices available to the Council which require a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards:
- an improvement notice;
  - a hazard awareness notice;
  - a prohibition order;
  - a suspended improvement notice or suspended prohibition order;
  - emergency remedial action notices;
  - making an emergency prohibition order; and
  - making a demolition order
- 3.11 Other than in exceptional circumstances the Council expects owner/occupiers, including long leaseholders to take their own action to remedy hazards at their own properties. The Principal Housing Standards Officer will decide whether there are exceptional circumstances in a particular case.
- 3.12 RSLs (now called Registered Providers (RPs)) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant-representatives) and their performance is scrutinised by the Homes and Communities Agency. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.
- 3.13 On this basis the Council will not normally take formal action against an RP unless:
- they are satisfied that the problem in question has been properly reported to the RP; and
  - the RP has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets;
  - the Council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions;
  - the person responsible for undertaking the works has not complied with the enforcement notice to which the works relate; and
  - works in default powers are provided by the specific legislation being used in relation to the case; and
  - the Council will register a charge against the premises for the costs incurred in undertaking the works.
- 3.14 In the majority of cases the Council will seek to recover the costs incurred in undertaking works.
- 3.15 In accordance with the powers available under each specific piece of legislation at our disposal, expenses incurred by the Council by undertaking works in default of a statutory notice will carry a simple interest rate charge of 4% above the Bank of England base rate. The interest rate charge will commence from the date that the demand for payment notice becomes operative and will remain until payment of all sums due.
- 3.16 For the purpose of enforcement, the Head of Environmental Health Services will be authorised for the purposes of exercising any and all of the statutory powers and duties contained in the Housing Act 2004 and any Regulations, Orders, Byelaws and statutory instruments from time to time made thereunder, including the entry of premises, service of Notices and Orders and the granting or refusal of licenses in Section 64 of the above Act.

- 3.17 This authorisation does not extend to the provisions in the Housing Act 1985 related to Demolition Orders and Clearance Areas.
- 3.18 Situations may arise where there is another authority or body with enforcement powers under other legislation regarding the unsatisfactory matter which may be dealt with by housing legislation. In this case full consultation will be made with that authority or body before housing enforcement action is taken.
- 3.19 In accordance with the Regulators' Compliance Code, the Council will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

#### 4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – The number of housing enforcement enquiries we deal with are minimal at this time but existing staff will require to be trained to handle any future complaints.
- Technical, Environmental and Legal – The Enforcement Policy will require support from Legal Services and cases may need to progress with formal notices. If they are appealed the Council may seek to proceed with a fine and/or prosecution.
- Political – To enable the delivery of effective and efficient services.
- Reputation – There will be an improvement in the portrayal of the Council in providing support for families that live within poor housing conditions.
- Equality & Diversity – It is anticipated that those in poorer housing conditions will be helped and protected by this Policy and this will include those with protected characteristics.

#### 5 RECOMMENDED THAT COMMITTEE

5.1 Members are asked to consider the content of the Private Sector Enforcement Policy and recommend it for approval.

HEATHER COAR  
HEAD OF ENVIRONMENTAL HEALTH SERVICES

MARSHALL SCOTT  
CHIEF EXECUTIVE

#### BACKGROUND PAPERS

Appendix  
Policy  
Notices (draft form)  
Housing Act 2006  
HHSRS

For further information please ask for Heather Coar, extension 4466.



Ribble Valley  
Borough Council

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# PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

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# 1. AIM

The aim of this policy is to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.

The policy is explained in general terms, as it is intended to be applied in a wide range of situations, the approach adopted by the Environmental Health's Housing team when carrying out the Council's powers to enforce a wide range of legislation.

The policy is based on the following principles:-

**Consistency:** to ensure that similar issues are dealt with in the same way across all tenures

**Fairness:** to ensure a fair and even handed approach

**Transparency:** to ensure that the enforcement action taken by the Council is easily understood by individuals, organisation and businesses

**Objectivity:** to ensure that decisions are not influenced by the gender, race, disability, culture, religious or political beliefs, age, sexuality, financial status, tenure or any disadvantage of the offender, victim or witness

The policy has been written having regard to the content of the Government's Enforcement Concordat. The Concordat outlines what individuals and businesses can expect from enforcement officers employed by Local Authorities.

1.1 One of the priorities for action for Ribble Valley Borough Council is to ensure good quality, safe and healthy housing for all, targeting those that present the greatest risk to health and safety.

In order to achieve this priority the Council:-

- a) Will seek to ensure properties achieve the appropriate standards in co-operation with the owners / agents and tenants by the provision of clear advice, guidance, encouragement and planning of improvements.
- b) Will utilise all appropriate enforcement action to achieve the appropriate standards in properties found to be jeopardising the health, safety or welfare of individuals and will, where legislation allows, make an appropriate charge for doing so.
- c) Will regularly review its policy, standards, schemes and methods of assessing risk and will in doing so, consider the views of interested parties and individuals. All policies and standards will be made freely available.
- d) Will seek to carry out its responsibilities efficiently and effectively in a way, which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.
- e) Will ensure that provision is made for interpreting information where individuals have difficulty in understanding English.
- f) Will make arrangements to carry out visits outside of normal office hours where appropriate.

- 1.2 It is the Council's policy that enforcement action in relation to Private Sector Housing will be related to risk. The policy will be implemented through visits and inspections; all enforcement decisions will be based on risk to health and safety.
- 1.3 Assessment of risk will be based on current research, legislation and specific guidance.
- 1.4 Action by the Council will be appropriate to risk or hazard identified, having regard to the occupancy or type of property.
- 1.5 In the case of requests for service, the Council would normally expect the tenant of a property to have informed the landlord of any problems and allowed reasonable time for remedial action before contacting the service for assistance.
- 1.6 On completion of the investigation the next course of action shall be determined by reference to Section 2.0 of this Policy document.
- 1.7 The Council's officers will abide by the policy at all times.
- 1.8 The legislation relating to Private Sector Housing is enforced by several enforcement agencies. Where there are shared enforcement roles eg with Lancashire Fire and Rescue Service, Health & Safety Executive, Lancashire Police etc., officers will take advice from the partner organisation, where appropriate, and/or will advise such agencies of any contraventions for which that agency is responsible.

## **2. ENFORCEMENT ACTION**

In order to achieve and maintain consistency in Private Sector Housing enforcement the Council will use the following range of enforcement options as appropriate:

No action  
Informal Action  
Statutory Notices  
Emergency Action  
Simple Caution  
Prosecution  
Default  
Enforced Sale Powers

### **2.1 Informal Action**

Informal action will include verbal advice, advisory letters and notification of works required take action (in respect of Housing Act notices).

Informal action will be considered appropriate in the following circumstances:-

- a) In all instances where the Council have discretion to take action remedy breaches of Housing legislation.
- b) The act or omission is not serious enough to warrant informal action.



- c) From the individual / company's past history it can be reasonably expected that informal action will achieve compliance.
- d) The consequences of non-compliance will not pose a significant risk to the health and safety of the public and that of the occupier or visitor to the property.
- e) In instances where formal action is deemed necessary to remedy breaches in housing legislation notices will be suspended (where legislation allows) to enable owners time to respond to the Council.

Any letters sent to individuals / companies will:

- i) Indicate the legislation contravened (if appropriate) and the measures to be taken to ensure compliance with any legal requirements.
- ii) Contain all the information necessary to understand what work is required and why it is necessary.
- iii) Include an advisory warning that should it be necessary for the Council to take formal action in respect of the said matter, that a charge will be made at a level fixed within the Council's agreed charges, and that the Authority will take steps to recover debt incurred in this way. This warning will also indicate methods by which the debt may be recovered, including the use of rent sequestration.
- iv) Give individuals/companies the opportunity to contact the appropriate officer to discuss the matter further.

Officers giving verbal advice will ensure that they clearly differentiate between those items which are legal requirements, and those which are recommended as good practice. Where necessary, verbal advice will be confirmed in writing.

## **2.2 Statutory Notices/Orders**

The Council will serve statutory notices where they are under a statutory duty to do so, taking into account the following criteria:-

- a) There are significant contraventions of legislation but prosecution is not appropriate.
- b) Where informal action has not achieved the desired effect.
- c) There is a lack of confidence that the individual/company will respond to an informal approach.
- d) There is a history of non-compliance with informal action.
- e) Standards are generally poor with little management awareness of statutory requirements.
- f) The consequences of non-compliance could be potentially serious to the public health and that of the occupier or visitor to the property.

- g) Although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy conditions which pose an immediate risk to health/safety.

The use of statutory notices will be related to risk to health and safety.

Officers serving statutory notices will be prepared to discuss the works specified with individuals/company representatives and will fully consider the availability and suitability of alternative solutions.

Where a formal notice is served, the method of appealing against the notice (eg if it is felt that the notice is excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right, (where appropriate) and what will happen if the notice is not complied with.

Failure to comply with a statutory notice will normally be documented and an assessment made on further action to be taken (see Appendix 1).

### **2.3 Emergency Action**

The Council will take Emergency Action where the Legislation allows it to do so, taking into account the following criteria:-

- a) The risk of injury to any occupier or visitor is significant, and imminent.
- b) In the case of Remedial Action, the works are easily achievable in a short period of time.
- c) In the case of Prohibition, the hazards are so extensive in nature that they are not easily removable.

Such emergency action will only be taken where the Head of Environmental Health Services is satisfied that the use of emergency powers is the best course of action.

Where emergency powers are taken, the owner of the property or other relevant person will be advised of the work carried out and the method of appeal against the action taken within seven days of the action being taken.

### **2.4 Simple Cautions**

A Simple caution is a serious matter. It is recorded on the Central Register of Convictions and may be used to influence any decision whether or not to institute proceedings if the person should offend again. Simple Cautions may also be referred to in subsequent court proceedings.

The Council may offer Simple Cautions as an alternative to prosecution in order to:

- a) deal quickly and simply with less serious offences;
- b) to divert less serious offences away from the Courts; and
- c) to reduce the chances of repeat offences.

The Council will only offer Simple Cautions where:

- a) There is evidence of the offender's guilt sufficient to give a realistic prospect of conviction; or
- b) the offender admits the offence; and
- c) the offender clearly understands the significance of a Simple caution and gives informed consent to being cautioned; and
- d) the use of a Simple Caution is considered to be in the public interest.

Simple cautions must not be used as a substitute for prosecutions, which would be unlikely to result in a guilty verdict.

Simple Cautions may not be appropriate where it would prevent a Compensation Order from being made through the Courts.

The procedure for deciding whether to prosecute offenders or issue a Simple caution (included in Appendix 2) should be followed by officers in making this decision.

The matrix in Appendix 2 should be completed and the recommendation of the officer should be documented. This document should then be passed to the Head of Environmental Health Services for their consideration.

The Head of Environmental Health Services may exercise discretion in reaching a decision to issue a Simple Caution or prosecute, even though the results of the matrix may indicate an alternative decision. The Head of Environmental Health Services must be able to justify a decision, which is contrary to that indicated by the matrix.

If the decision is taken to prosecute, a copy of the matrix must be placed in the prosecution file so that the advocate can indicate to the Court how the decision was arrived at, if necessary.

Simple Cautions will only be administered by those officer listed in Section 3.1 – 'Decision Making – Simple Cautions'. A trained officer will administer the caution.

Simple Cautions will only be administered in the Council's Offices except where the offender is elderly, infirm or otherwise vulnerable.

When considering the issuing of a Simple Caution the Head of Environmental Health Services may consult the Legal Section if necessary.

A central register of cautions issued will be maintained. The Head of Environmental Health Services will record the date of the Simple Caution and the Offence to which the Simple Caution relates. This record will be held and information will be available to other Local Authorities on request from that Local Authority.

Where an individual/company declines the offer of a Simple caution the Council will invariably instigate legal proceedings.

## **2.5 Prosecution**

The Council recognises that the decision to prosecute is significant and could have far reaching consequence upon the alleged offender.

The Council will only instigate legal proceeding where there is 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 and that prosecution for the offence is in the public interest.

The decision to prosecute the following factors will be considered, in line with the guidance in the Code of Practice for Crown Prosecutors:

- a) the seriousness of the offence;
  - the risk to health identifiable victims
  - failure to comply with a statutory notice served for a significant breach of legislation
  - failure to comply with statutory management responsibilities resulting in a significant risk to health
  - operating a licensable House in Multiple Occupation (HMO) without a licence operating a singly occupied house in a Selective Licensing Area without a licence.
  - failure to comply with conditions attached to a licence issued for an HMO or a singly occupied house.
  - disregard for the public health for financial reward
- b) the previous history of the proprietor or company concerned;
  - offences following a previous history of similar offences
  - failure to respond positively to past warnings
  - failure to comply with statutory notices
- c) the ability of witnesses and their willingness to co-operate;
- d) evidence that the individual or company is concerned to prevent a recurrence of the problem;
- e) whether a prosecution would be in the public interest and the importance of the case,
  - the likely penalty on conviction
  - the offender's age and state of health
  - the offender's attitude to the offence
- f) whether other action, such as issuing a Simple caution of the service of a statutory notice would be more effective
- g) any explanation by the individual/company.

In exceptional circumstances the Council will consider prosecution at the same time as the service of a statutory notice.

Any departure from this policy when making a decision with regard to prosecution will require justification and authorisation from the Head of Environmental Health Services.

The decision whether to prosecute or take an alternative course of action should be documented (see Appendices 1 and 2).

All prosecutions will be brought without unnecessary delay.

## **2.6 Default**

The Council will normally only carry out works in default of a statutory notice where:

- a) there is an imminent risk to health/safety, such that the consequences of not taking immediate and decisive action;
- b) statute does not permit prosecution for non-compliance with a statutory notice, e.g. Local Government (Miscellaneous Provisions) Act 1982 section 29, Public Health Act 1936 section 79; or
- c) in the case of Building Act 1984 Section 59, where the Head of Environmental Health Services is satisfied that circumstances are such that default is the best course of action.

The Council will consider default in addition to prosecution.

## **2.7 Charging for Enforcement Action**

The Council may make a charge for the service of legal notices where the legislation allows for this charge to be made. The charge will only be made when the recipient of the notice has not;

- a) contacted the Council within the time scale indicated in the informal letter or any suspension period detailed in the notice; or
- b) progressed the work in line with the agreed timescales if contact was made following the informal letter or during any suspension period.

## **2.8 Enforced Sale Powers**

Where the Council have carried out works in default of a notice and the primary legislation allows the charge to be registered with local land charges section. The property is empty and has been empty for an extended length of time. The owner is either not known or not prepared to discuss the future use of the property.

The Council may using the powers contained in the Law of Property Act 1925 force the sale of the house to recover any outstanding debt owed to the council and bring it back into use.

# **3. DECISION MAKING**

Having consulted with legal services the following options maybe:

## **3.1 Simple Cautions**

The following officers are authorised to administer Simple cautions:

- Environmental Health Officer (Housing).
- Senior Environmental Health Officer.
- Head of Environmental Health Services.

### **3.2 Prosecutions**

The following officers may authorise the instigation of legal proceedings subject to the final approval of Legal Services:

- Head of Legal and Democratic Services.

The following officers will be considered as part of the decision making process:

- Head of Environmental Health Services.
- The Officer dealing with the case.

## **4. HOUSES IN MULTIPLE OCCUPATION (HMOS)**

4.1 Housing legislation requires that certain categories of HMO must be licensed by the Council.

4.2 Properties inspected will be assessed in accordance with the Council's currently approved standards for HMOs. These standards are available the Authority's website.

4.3 The Council will seek to identify all HMOs in the District and will, in the first instance, assess each property under its approved risk assessment process. It will endeavour to re-assess properties at least once every five years and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements.

4.4 The Council will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. However, properties inspected which fail to meet the relevant standards will be subject to appropriate enforcement action to remedy all deficiencies.

4.5 The Council will endeavour to inspect all licensed HMOs at least once during the licence period for that property. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.

4.6 Documentation issued as part of an HMO licence will include details of the appeals process.

## **5. HARASSMENT AND UNLAWFUL EVICTION**

5.1 Requests for service in connection with alleged harassment and unlawful eviction will be dealt with in accordance with the Council's agreed prioritised response policy.

# APPENDIX 1

## Initial Action Assessment Sheet

No risk to health and safety	A
Risk to health possible, but unlikely	B
Potential minor ill effect to health and/or safety, potential for more serious effect in more vulnerable groups	C
Identified or potential serious effect on health and/or safety*	D

### Previous history (relates to any formal / informal action taken in the past)

No previous history with Local Authority	A
Some, but have acted promptly on informal action	B
Some, not acted promptly on informal action, but promptly on formal action	C
Considerable and / or failure to act promptly on formal Action *	D

### Confidence rating (prior experience or indication from recent contact or if no contact condition of property)

High confident remedial works will be completed promptly and to an acceptable standard	A
Doubts exist	B
No or little confidence	B
Owner openly demonstrates unwillingness to undertake any action	D

A's / B's only = Informal action unless justification can be made to the Head of Environmental Health Services.

D \* = Formal action / service of notice should usually be taken based solely on either of these circumstances.

Any other circumstances to be discussed with the officer to justify.

### Summary of Action Taken (tick appropriate box)

Informal	
Formal	
Referred to another agency	

## APPENDIX 2

### Deciding Whether to Prosecute or Offer a Simple Caution

The decision to prosecute or offer a Simple Caution should be made using the two-stage process:

#### STAGE 1

CRITERION	PROSECUTE	OFFER CAUTION
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending?	Yes	No
Is the offender willing to prevent a recurrence of the problem	No	Yes
Would a prosecution be in the public interest?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes

Ring the appropriate response to each criterion and total the number of rings in each column. The decision will be influenced by the total number of rings.

#### STAGE 2

Is the use of a Simple Caution appropriate given the views, circumstances and any action taken by the tenant?	No	Yes
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Recommendation of Investigating Officer

Simple Caution / Prosecution

Signed: ..... Date: .....  
 Agree / Disagree  
 (Head of Environmental Health Services)

Signed: ..... Date: .....