



## Private Sector Housing Enforcement Policy

The Council has a statutory duty to enforce a wide range of housing, building and public health related legislation, and to secure its efficient compliance, whilst minimising the burden to the Council, individuals, landlords, organisations and businesses.

The Council's Executive Board adopted an [enforcement policy \[pdf\]](#) for its regulatory services on 11<sup>th</sup> November 2014 which reflects the requirements of the Government's Better Regulation Delivery Office (BRDO) Regulator's Code. Regulators whose functions are specified by order under S 24(2) of the Legislative and Regulatory Reform Act 2006, as amended (including Housing) **must** have regard to the code when developing policies and operational procedures that guide their regulatory activities.

Policies for individual regulatory services should be read in conjunction with this overarching policy. The Private Sector Housing Enforcement Policy reflects the duties and powers vested in the Council to deal with substandard housing, statutory nuisances & related public health issues, substandard management of private housing and the enforcement of various legal aspects of the relationship between neighbouring residents or landlords and their tenants.

This policy will be reviewed each year following the annual review of the Council's Enforcement Policy and in response to new legislation or guidance.

### Authorisation

Officers from Private Sector Housing are authorised to enforce a range of housing related legislation, including various Housing Acts, Environmental Protection Act, Public Health Acts, Building Acts, Prevention of Damage by Pests Act, Law of Property Act, Town & Country Planning Act and Orders, Regulations and Byelaws made thereunder. Officers will have the necessary training and competency to enable them to exercise the powers available to them and will produce their authorisation and ID cards when on a visit to a property. This authorisation has been given by the Executive Director for Families and Wellbeing.

### Targeting available resources

The Council has a duty to keep the housing conditions in their area under review. Either as a result of that review, or for some other reason such as a service request from a tenant or a neighbour, the Council can inspect a property if they have reason to believe a health or safety hazard exists there.

The Council's Private Sector Housing service will prioritise inspections resulting from service requests or referrals from sources such as social services child protection teams, the police, the fire and rescue authority, health workers, voluntary sector

support agencies and also from other occupiers, directly or indirectly through local councillors.

Resources will be targeted towards properties which give rise to the most serious risks or where hazards are least well controlled. The frequency and priority of inspections of properties will be in response to requests for a service from residents or programmed and targeted inspections based on a risk rating system, the Council's corporate objectives and national and local initiatives. Any risk rating will be determined in accordance with advice and guidance issued by the Government and advisory bodies.

When deciding what course of action to take when investigating a service request or following a pro-active inspection, officers will consider various factors including:

- the risk to the residential occupiers or others
- the result of consultation with the occupiers affected
- the previous history of the resident or landlord concerned
- the level of knowledge about the risk or offence that the responsible person is known to have
- the consequences of non-compliance with the law
- the effectiveness of the various enforcement options
- the availability of other appropriate remedies e.g. private action for specific performance under the terms of a lease or an action for disrepair
- the effect of the condition of the property, including its gardens, on the surrounding neighbourhood
- use of the most appropriate legislation to deal with the issues raised

### **Informal enforcement action – all housing related matters**

Advice from officers will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary, over what timescale and making sure legal requirements are clearly distinguished from best practice advice.

Whenever possible the Council will work with landlords to support and encourage them to raise standards of management and property condition in the private rented sector through initiatives such as the Landlord Forum and the Cheshire Landlord Accreditation Scheme (CLAS - in conjunction with Cheshire East and Cheshire West & Chester councils).

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference. Sometimes a statutory notice may need to be issued immediately if action has to be taken in the interests of health and safety. When there are rights of appeal against formal action, advice on the appeals mechanism will be clearly set out in writing at the time the action is taken (this advice will be issued with the notice).

## Securing compliance

Professionally qualified Private Sector Housing Officers / Surveyors will carry out as full an inspection of the premises as possible, as it is important for enforcement action to be supported by all the relevant evidence. Assessment of any hazards or defects will be carried out in accordance with Regulations and / or good practice guidance.

Where practical the Council will take account of the circumstances and views of tenants, landlords and owners. Appropriate consultation with respective stakeholders such as social services, tenancy support or social housing providers will be carried out, as necessary.

If on investigation it is found that there is no breach of any relevant housing related legislation or the residents are not especially vulnerable and there is no risk to health and safety, then no further action by the Council may be required.

The **Housing Act 2004** enforcement scheme applies to all types of residential premises, including houses in multiple occupation (HMOs), purpose built blocks of flats and buildings comprising converted flats, whether owner-occupied or rented.

The [Housing Health and Safety Rating System \(HHSRS\)](#) is a risk assessment tool used to assess potential risks to the health and safety of occupants in residential properties. It is based on 29 possible hazards to the most vulnerable group associated with each hazard as follows:

- Physiological requirements e.g. dampness, excess cold / heat, carbon monoxide
- Psychological requirements e.g. lack of space, security, lighting or excess noise
- Protection against infection e.g. pests, sanitation, food safety water supply
- Protection against accidents e.g. falls, shocks, fire, burns, structural collapse.
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The Council has a duty to deal with hazards assessed as Category 1 and a discretionary power to deal with Category 2 hazards.

## Enforcement options

The Council can consider the following options in cases where category 1 and 2 hazards are found:

- Serve an Improvement Notice
- Make a Prohibition Order
- Serve a Hazard Awareness Notice
- Take Emergency Remedial Action (Cat I hazards only)
- Make an Emergency Prohibition Order (Cat 1 hazards only)
- Make a Demolition Order

- Declare a Clearance Area

### **Occupancy and other factors**

Assessment of hazards under HHSRS is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the Enforcement Officer will use their judgement to take account of:

- Present occupancy and vulnerability of current occupants and / or any visitor to the dwelling, and / or the turnover of tenancies where a wide range of occupants might potentially occupy the premises in future
- Occupancy factors associated with the management of HMOs
- Owner-occupier's control over their living conditions and their ability to finance and carryout remedial action
- Views of occupants in the balance of relevant support agencies such as social services, child protection teams and the police.

### **Reasons for decision**

The Council will give a statement of reasons for its decision to take a particular course of action and this will be included with the notice or order served. The notice or order will also include details on the right to appeal against the decision and the period in which an appeal may be made.

### **Emergency measures**

Where there is a category 1 hazard; and in the opinion of the inspecting officer the hazard involves an imminent risk of harm to any of the occupiers of those or other residential premises; (and no management order is in force) the Council may take emergency enforcement action against hazards which present an imminent risk of serious harm to occupiers.

In such circumstances, the Council will take remedial action to remove a hazard and recover reasonable expenses, or will prohibit the use of all or part of a property.

### **Power to charge for enforcement action**

Provisions within the Housing Act 2004 empower the Council to make a reasonable charge to recover certain expenses incurred when serving certain notices including an Improvement Notice, Prohibition Order, Emergency Remedial Action or an Emergency Prohibition Order.

The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken and the service of notices. In addition there may be a charge for each course of action including, where emergency remedial action is taken, for any subsequent notices.

In deciding whether to exercise its powers to make a charge and the level of any charge, the Council will take account of the personal circumstances of the person or persons against whom the enforcement action is being taken.

Where such a recharge is made the recipient of the notice or order will be advised in writing. In any event, the maximum charge per notice determined by statute is £300. The charge per notice currently made by Warrington Borough Council is £155, which is equivalent to the fees charged by the [First-tier tribunal – Property Chamber \(Residential Property\)](#) to consider an appeal against a notice served under the provisions of this legislation. This charge amount will be kept under annual review.

## **Non-compliance with enforcement action – all housing related matters**

### **Action by the Council with owner's agreement**

Where an HHSRS category 1 hazard exists and remedial action is required without undue delay, but the owner is not in a position to carry out the works or arrange for the work to be done, perhaps for financial reasons, the Council may enter into an agreement with the owner to carry out the works. Where the Council takes such action the works are to be taken at the owner's expense. Owners would be required to arrange a payment schedule to repay the debt, otherwise the Council would pursue debt recovery options.

### **Formal enforcement action**

There may be circumstances in which Council would not wish to delay in beginning formal enforcement action, such as when the Enforcement Officer considers that there is a high risk to the health or safety of the occupant, and there are concerns that the owner or landlord will not co-operate. Alternatively, formal action may be taken where owners have disregarded advice and information for the Council and have not addressed relevant issues at the property.

### **Non-compliance with a formal notice**

If notice is complied with no further action will be necessary. However if any notice or order is not complied with the Council will consider the following options:

1. Prosecution
2. Carry out the works in default
3. Carry out the works in default and prosecute
4. Consider whether a formal caution is appropriate

## 5. Other appropriate action

### **Prosecution**

The Council will use discretion in deciding whether to initiate a prosecution. Other approaches may be effective but, where circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may take place.

#### **The Council will consider prosecution when:**

- the need for compliance with the law and the maintenance of standards required by the law, especially where there would be a normal expectation that a prosecution would be taken, or where, through the conviction of offenders, others may be deterred from similar failure to comply with the law,
- Where there is the potential for considerable harm arising from the breach, or
- The gravity of the offence, taken together with the general record and approach of the offender warrants it.

The Council will also identify and prosecute individuals, including company directors and managers, if it considers that the acts or omissions by these individuals, led directly to the commission of the offence. The decision to prosecute will always take into account the criteria and other guidance set down in the Code for Crown Prosecutors.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. The decision to prosecute must also be in the public interest.

**The following criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:**

- Prevalence of the type of offence
- Need for a suitable deterrent
- Risk of danger or injury to the public
- Failure to comply with a statutory notice or respond to advice about legal requirements
- History of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes

When sufficient evidence has been obtained, the Council will endeavour to advise an offender as soon as possible of the potential outcomes of the investigation, including prosecution.

All prosecutions will be brought without any unnecessary delay. Where there is a shared or complementary enforcement role with other agencies, full liaison will take place before the most appropriate course of action is determined.

When there has been a breach of the law resulting in a fatality, the Council will liaise with the police, coroner, Health and Safety Executive and the Crown Prosecution Service (CPS), as appropriate, to determine the most suitable course of action.

### **Carrying out works in default of a formal notice**

When the time limit for compliance with any notice has expired, or reasonable progress is not being made towards compliance with the requirements of the notice, the Council will consider undertaking works in default without agreement. Work in default may be undertaken in addition to prosecution.

The Council will go out to tender for the work to a minimum of 3 contractors (except in cases where the work is very specialised and limited contractors are available) and will appoint the contractor providing the most suitable competitive tender price. The Council will make an administrative charge based on the contract price. This will be 20% of the cost of the work.

The outstanding debt will be registered as a Local Land Charge and will accrue interest until such time as it is repaid in full. Under certain circumstances the Council has powers of enforced sale of a property to recover its debts.

### **Formal caution**

A Formal Caution is an alternative to prosecution and may be used where it is appropriate to the offence and likely to be effective in preventing further non-compliance with the law. It may be appropriate for minor offences or where there is a practical expression of regret by the offender, but will only be given where the offender admits the offence, understands the significance of the caution and gives their informed consent to the caution.

A formal caution will be recorded and kept on file for a period of three years and will be used to inform future decisions on prosecution and may be cited in any subsequent court proceedings.

### **Other courses of action**

The Council may use relevant legislation to deal with dwellings which are in very poor condition and where the most appropriate course of action would be to demolish them by serving a Demolition Order or declaring a Clearance Area if more than one property was involved.

The Council also has powers to deal with empty dwellings which are causing problems in the neighbourhood and targets to bring such properties back into use.

These may include Empty Dwelling Management Orders or use of Enforced Sale Procedures and Compulsory Purchase powers.

When the Council decides to invoke the Enforced Sale Procedure, it will charge for any costs incurred in this process including searches, auction costs and staffing costs.

In all cases the use of these powers would be proportionate and in accordance with the Council's own Enforcement Policy and requirements of the relevant legislation.

A copy of this policy can be obtained by contacting Private Sector Housing by email [privatesector@warrington.gov.uk](mailto:privatesector@warrington.gov.uk) or by telephone 01925 248483 / 248487. It is also available on the [Council's website](#).

### **Complaints**

If you are unhappy about the service you have received, the [Council's Complaints Procedure](#) gives information on how to make a formal complaint.

Further information about this policy can be obtained from:

#### **Private Sector Housing**

***the Gateway***

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