



Private Sector Housing Team

ENFORCEMENT POLICY

2021-2024

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1. INTRODUCTION

The aim of the Private Sector Housing Team is to ensure that residents of Stoke-on-Trent live in privately owned properties that provide a safe and healthy environment for any potential occupier and their visitors. This is achieved through effective and consistent education and enforcement interventions that will achieve measurable improvements to housing standards and property management.

Although the work of the Private Sector Housing Team is primarily focused on the private sector there are circumstances where the department would investigate with complaints relating to Registered Social Housing and act in an advisory capacity with Stoke-on-Trent City Council ('the Council') owned housing stock.

The private rented sector plays an important role in the Stoke-on-Trent housing market, helping to create a vibrant and diverse city. In recent years the Stoke-on-Trent has seen an increase in the size of its private rental stock and the Council seeks to work closely, and engage positively, with the people involved in providing housing to a growing population. This includes:

- owners;
- landlords;
- licence holders;
- managers;
- other partners;
- tenants;
- agents.

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. This document provides a guide to what landlords and other partners can expect when dealing with the Council's Private Sector Housing Team and aims to ensure that all action will be undertaken in a consistent and equitable manner.

2. SCOPE

This policy covers the majority of enforcement activities of the Private Sector Housing Team which includes:

- Private sector property conditions
- Licensing activities under Housing Act 2004 Part 2 & 3
- Private Water Supplies
- Public Health & Nuisances
- Environmental Nuisances
- Letting Agents Redress Scheme
- Licensing of Caravan and Camping Sites
- Private Sector Housing Empty Homes
- Tenancy Relations issues including Harassment and Unlawful Eviction

Whenever the Private Sector Housing Team interact with clients or other stakeholders in relation to any of the above, or other relevant functions, it will be done clearly and outline relevant information regarding the specific function, including the reason for any intervention and any proposed future actions.

This policy is intended to provide information for officers, tenants, landlords, owners businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest. Any legislation requiring a specific published policy will be published in a separate document on the Council website. The Private Sector Housing Team currently has a policy for the following areas that should be read in conjunction with this document and they are:

- Houses of Multiple Occupation (HMO) Licensing Policy 2021-2026
- Empty Homes Strategy 2020-2025
- Stoke-on-Trent City Council Policy and Guidance on Determining level of Civil Penalty / Financial Penalty Under the Housing and Planning Act 2016.
- Smoke and carbon Monoxide alarm (England) Regulations 2015 statement of principles

In the event of a national emergency or incident where civil contingency plans are enacted and normal service is suspended, then an additional policy may be approved and published on our website to cover the approach at that time.

The Private Sector Housing Team do not respond to disrepair issues in Council owned housing unless requested for an expert opinion by the Council Housing Management Team or Unitas.

This Enforcement Policy supports the following Corporate Priorities:

1. Work with our communities to make them healthier, safer and more sustainable
2. Support vulnerable people in our communities to live their lives well.

Links to some of the commonly used and more recent pieces of legislation and guidance can be found in Appendix 1.

3. POLICY FRAMEWORK

The Legislative and Regulatory Reform Act 2006 requires regulators including Stoke-on-Trent City Council to have regard to the Regulators' Code, published by the Department for Business Innovation and Skills Better Regulation Delivery Office. At the time of publication, this Code was available online at www.gov.uk. This policy and all associated documents have regard to this Code.

Criminal investigations and proceedings will be carried out in line with Criminal Procedure and Investigations Act 1996 and regard had to the associated Code of Practice.

This Enforcement Policy supports Stoke-on-Trent City Council's corporate priorities as set out in the Council's Strategic Plan 2020 – 2024:

https://www.stoke.gov.uk/download/downloads/id/1473/stronger_together_strategic_plan_2020_to_2024.pdf

Also, a list of legislation enforced by the Council can be found in the Stoke-on-Trent City Council Constitution. These are published online at www.stoke.gov.uk

4. HUMAN RIGHTS AND EQUALITY

The Human Rights Act 1998 places an obligation on enforcement bodies to apply the principles of the European Convention of Human Rights in accordance with the Act. This enforcement policy reflects the provisions of this Act in general terms as officers are required to follow agreed policies and procedures and work within their legal powers.

All enforcement decisions and actions will be made with due regard to the provisions of;

- The Human Rights Act
- Equal rights and anti-discrimination legislation
- Service specific legislation
- All other relevant legislation
- Crown Prosecution Service guidelines

The Council values equality and diversity, and to that end this policy has been considered to ensure that there would be no adverse effect to any particular group. An equality impact assessment indicates that no such adverse effects are considered likely, and that conversely the implementation of this policy is likely to have a positive impact on some of the most vulnerable residents living in poor condition properties. This will be achieved by ensuring that minimum standards are achieved in these properties, hopefully by co-operation with landlords and owners, but ultimately through enforcement should this prove necessary.

5. INFORMATION SHARING & DATA PROTECTION

If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies. This could include situations where there is a shared or complementary enforcement role with other agencies such as the Police, Fire & Rescue, Health & Safety Executive, Her Majesty's Revenue Customs (HMRC), UK Border Agency and other Council departments. Any such action will be undertaken in compliance with current Data Protection Regulations such as for the prevention or detection of crime. In addition, cases may be referred to another agency in accordance with agreed protocol.

Personal data will be collected, used, processed, stored, handled and retained in accordance with the provisions of the General Data Protection Regulations and Data Protection Act 2018.

Other requests for information will be considered having regard to the Freedom of Information Act 2000 and current data protection regulations. All data held will be subject to our 'Retention and Disposal Policy'.

Where the Council is carrying out its compliance and enforcement work and becomes aware of issues relating to the safeguarding of children and vulnerable adults, the Council has a duty to make the appropriate referrals to ensure the welfare of those persons at risk are protected.

The Council is also a member of the One Staffordshire Protocol and will share relevant information with other members of the protocol.

In addition to the arrangements for the sharing of information with all relevant agencies and services already stated, it is important to make clear that where appropriate the

Private Sector Housing Team will work collaboratively with other services such as Police, Fire & Rescue, Health & Safety Executive, Her Majesty's Revenue Customs (HMRC), UK Border Agency and other Council departments such as Anti-social Behaviour Team (ASB), Trading Standards and Housing Options, Voids and Allocations Team.

6. PRINCIPLES OF ENFORCEMENT

Introduction

The Private Sector Housing Team consist of several areas and sub teams, enforcement activities are carried out in varying degrees within the following sub teams.

- Private Sector Housing Enforcement Team
- Private Sector Housing Development Team

Private Sector Housing Enforcement Team

The Private Sector Housing Enforcement Team carries out the majority of the enforcement within private sector housing. This enforcement activity predominantly covers property conditions, management practices, and public health nuisance or issues associated with this sector.

The Private Sector Housing Enforcement Team operates a 5-stage model of enforcement (shown in the table below) which recognises that the majority of issues the Enforcement Team deals with can be resolved through advice and warnings. As the degree and level of enforcement activity increases, the number of cases reduces.

Stage of Enforcement	Level of Enforcement	Examples of Action
1	Ask	Ask for actions. Deliver training and work to develop understanding of responsibilities and duties
2	Warn	Warn about the consequences of failing to comply with responsibilities and duties
3	Initial Enforcement	Serve legal notices / orders, vary / revoke licences
4	Substantive Enforcement	Apply for interim management orders, apply for rent repayment orders, undertake works in default
5	Breach	Prosecute, apply for banning orders, final management orders and rent repayment orders, impose civil penalties, and issue simple cautions

In accordance with the '5 Stage Model', the Enforcement Team will normally try to address offences or hazards by first 'asking' (Stage 1) the landlord to comply with their duties and responsibilities and 'warning' (Stage 2) them about the consequences of failing to comply. This would usually but not always, be done by a formal warning letter identifying legal requirements. This would allow a responsible landlord to work with the Enforcement Team to resolve any issues as quickly and effectively as possible, avoiding the need for further enforcement action.

Where, for example, issues present an immediate risk to health, threats of violence, illegal eviction, harassment, or there is a history of non-compliance, the Enforcement Team reserves the option to move directly to the higher stages of the enforcement model. The examples below are not an exhaustive list, but merely an indication as to the factors that will be considered when determining progression to the higher stages of the enforcement model. If an individual has a significant history of non-compliance, then the Enforcement Team may take the decision to pursue straight to Initial Enforcement (Stage 3), Substantive Enforcement (Stage 4) or Breach (Stage 5).

Straight to Enforcement Stages 3, 4 or 5 Approach

The Enforcement Team may move straight to any of the enforcement stages in certain circumstances. The list below will indicate to the Enforcement Team a significant history of non-compliance and include but are not limited to the following:

- Three investigations/complaints in a twelve-month period which result in an inspection and warning letter
- One investigation/complaint which resulted in Stage 3 or above enforcement action being taken.
- One substantiated complaint to the team of illegal eviction/harassment.
- Three complaints where notice to quit is served on the tenants after our involvement.
- Additionally, in other circumstances that we deem appropriate and individually justified. This for example may be cases relating to strict liability offences under various legislative provisions.
- Previous convictions or stage 5 action taken in relation to relevant offences.

When any one or more of the above criteria is met, and following inspection of the property where works are identified, the Enforcement Team may proceed to the formal stages of enforcement under the appropriate legislation. In doing so, the Enforcement Team will consider all circumstances of the case before a decision is made.

Members of the North Staffordshire Landlord Accreditation Scheme ordinarily will not be subject to the 'Straight to Enforcement' approach, and the Private Sector Housing Enforcement Team will seek to address any issues using stages 1 and 2.

It must be made clear that other functions of the Private Sector Housing Team, such as the Private Sector Housing Development Team do not follow the 5-stage enforcement model. However, the overarching enforcement principles do apply.

Tenancy Relations

The Tenancy Relations Officer aims to prevent homelessness through supporting landlords and tenants around their legal rights and responsibilities. The law provides a process for landlords to lawfully regain possession of their properties and these legal requirements must be followed when a landlord wants a tenant (or licensee) to leave.

If a resident claims that they have been made to leave without the proper legal procedures being followed, this may give reason to suspect that an offence has been committed under the Protection from Eviction Act 1977, at this point, the Tenancy Relations Officer will

- respond promptly to complaints relating to offences under the Protection from Eviction Act 1977;

- with the permission of the tenant, contact the landlord. This contact could be made in person, over the telephone or in writing.
- make information available to landlords to make them aware of the relevant legal provisions for getting an occupier to leave where appropriate;
- Where the tenant and landlord agree, the Tenancy Relations Officer may offer to mediate between landlord and tenant to encourage communication and dialogue between the tenant and the landlord, and make both parties aware of their rights and obligations with the ultimate aim of sustaining a tenancy.

The Tenancy Relations Officer will not become actively involved in assisting with the preparation of legal Notices or other documents on behalf of landlords. However, we will supply help and advice on the correct processes to follow. Landlords are always encouraged to seek independent legal advice. In addition to providing the necessary guidance and support to tenants within the private sector in relation to matters such as rights under The Deregulation Act 2015.

The Tenancy Relations Officer will liaise with the Housing Solutions Team regarding cases where private rented tenants have been asked to leave. This is to make sure we identify any illegal or poor practice in this area.

The Tenancy Relations Officer may refer the case to other Council departments and external agencies for remedy if this is suitable, such as other colleagues within the Private Sector Housing Team, the Department for Work and Pensions for benefits issues, or the Citizens Advice Bureau for debt advice and to solicitors for the pursuit of civil damages or breach of contract.

Private Sector Housing Development Team

Empty Homes

The Private Sector Housing Empty Homes Team covers the enforcement and action relating to empty residential properties within the private sector, with the aim of bringing those properties back into use.

The main aim of the Private Sector Housing Empty Homes Team is to firstly locate and then engage in effective communication with the owners of empty properties. Once effective communication has been established, bespoke solutions are then sought in order to achieve the most reasonably practicable and cost-effective way forward in order to bring the property in use. It is essential that the property will attain and conform to all the relevant and pertinent legal requirements which will be applicable given the property's final use.

The majority of cases will attain compliance through continued dialogue with owners which will bring about their voluntary cooperation. Where an owner cannot be found or where no amicable solution can be achieved the Empty Homes Team are then required to consider its enforcement options in order to effectively manage a solution for the property whilst also protecting residents and visitors to the city.

In such cases the Empty Homes Team may intervene and use a variety of enforcement powers at its disposal in order to achieve a satisfactory outcome. A range of statutory enforcement powers are at our disposal but before their implementation the following

matters are considered and are taken into account prior to decide whether enforcement is appropriate:

- Whether the empty home owner has been offered all means of available help and support.
- If enforcement action is not taken, will the property remain empty?
- Whether the property in its present state is having a detrimental effect on neighbours, or adjoining properties and the environment?
- Whether or not the property is holding a debt owed to the Council
- If there is sufficient evidence to demonstrate that enforcement action is justified.
- Whether there are any risks to the Council in taking enforcement action that outweighs the benefit to the community.

After careful consideration is given with regard to all of those pertinent matters related to each individual case, the most appropriate form of enforcement action is implemented.

Using the correct type of enforcement action is a key factor in ensuring a successful outcome. As each and every case is unique all the different parameters will be considered before a bespoke solution is created. Quite often this blended enforcement approach will result in either an escalation or de-escalation of the enforcement options dependent upon the property owners' responsiveness and compliance.

The Council will provide advice and assistance and has the discretion to provide financial assistance to the owners of empty properties to help bring the home back into use subject to appropriate funding being available. Where all options have been exhausted then consideration is given to utilising any of the enforcement options:

- Interim and Final Empty Dwelling Management Order (EDMO);
- Compulsory Purchase Order (CPO)
- Enforced Sale Procedure.

Area Improvement

Area Improvement Officers identify areas of poor housing and management practice, undertake inspections of these properties to assess them in accordance with the Housing Act 2004 in order to secure a healthy and safe living environment through advice, education and enforcement of statutory provisions.

Through their knowledge and experience of the Housing Act 2004 officers will provide an informal opportunity for landlords to address any disrepair and if the repairs are not addressed, they will refer to the Enforcement Team where appropriate for disrepair issues or to the Tenancy Relations Officer if tenants make officers aware of any threats of eviction or harassment.

Officers will serve notices where they identify property or environmental issues during their property and site visits. These include, but are not limited to:

- Enforcement notices for properties that are rented out and have an energy efficiency rating of below the specified minimum energy efficiency. Where failure to comply with the relevant notice is identified, the officer may serve a financial penalty.

- Smoke & Carbon Monoxide notices can also be served on landlords who fail to provide smoke detectors for their tenants. This is done through the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 with a remedial notice served giving 28 days to install alarms, then following that a work in default if not and issue a financial penalty.
- Community Protection Warnings and Notices will be issued by the officers if there is a requirement to do so. These are served through the Anti-social Behaviour, Crime and Policing Act 2014 firstly with a Warning Letter and then a Notice if not complied with.

General Principles

Openness

The Council when taking enforcement action will clearly define why action has been taken, the consequences of such enforcement action in addition the rights of the person subject to this action. This will include appeal processes and routes of disputing enforcement action taken.

Professionalism

Officers within the Private Sector Housing Team will remain professional at all times and provide a courteous, responsive and efficient service. They will identify themselves by name when answering the telephone, and show means of identification and either leave contact details when visiting people's homes, or supply them shortly afterwards.

Where the solution to the problem lies outside the remit of the Private Sector Housing Team, efforts will be made to provide details of other departments or organisations which may be able to help.

Partnership

The Council believes a close partnership between other housing organisations and the Council will result in a healthier housing stock. The Council will co-ordinate guidance and act as the regulatory link with other enforcement authorities both locally and throughout the country.

In addition to working with other agencies, the Council will seek to work closely with landlords to tackle the rogue and criminal element of the Private Rented Sector.

Proportionality & Consistency

The Council will ensure that any enforcement action taken is proportionate to the risks to health, safety and welfare. The Council will carry out its duties in a fair and consistent manner and will try to ensure that enforcement is consistent. The Council will promote consistency by following guidelines published by Central Government, the local Fire Authority and other relevant bodies, in addition to liaising with other local authorities and sharing ideas for good practice with them. The Council will make every effort to ensure that enforcement is consistent with other local authorities in relation to housing standards and management practices.

Clients' Responsibilities

The Council expects landlords, tenants and any other third party to whom it is providing a service to be polite and professional in their contact to the Council. Tenants must also provide officers, landlords and landlord's tradesmen reasonable access to inspect and carry out repairs having been given suitable advance notice of appointments.

Failure to provide such access may result in the Council withdrawing from a case. While we accept that our service users may not always agree with our requests and requirements, we reserve the right to withdraw our service or take action against anyone who acts in a threatening or abusive way. Any threat is likely to be reported to the Police and any violence towards an officer or member of the public will be reported to the Police. The person's details may also be entered on to a Council database for the health and safety of other Council officers.

Housing Tenure

The majority of enforcement action undertaken by the Private Sector Housing Team relates to privately rented properties however enforcement options will also extend to all tenure types including owner occupiers.

Where concerns relate to properties owned by Registered Providers of social housing, it is expected that the Registered Provider are given the opportunity to respond to the concerns, and failings should be addressed through that organisation's complaints procedure, including where appropriate involvement by the Housing Ombudsman. Where this has not been successful, or where that process is not practicable, enforcement action may be taken in against the Registered Provider. Ultimately, we reserve the right to take action under the appropriate legislation if necessary.

When considering enforcement action under, the Housing Act 2004, the authority will take into account the extent of control owner-occupiers have over their own living conditions and their ability to finance and carry out remedial action. There will therefore be a general presumption towards provision of advice and information to owner-occupiers to tackle hazards, including the service of a Hazard Awareness Notice. Enforcement will only be considered in exceptional circumstances.

7. TRAINING AND AUTHORISATION

Only duly authorised officers may undertake enforcement duties in accordance with the City Council's Sub-Delegation scheme. Officers will only be authorised where their level of qualification, training and experience are considered acceptable. Newly appointed officers will also be assessed for competency and referred for training where necessary. Officers will also undergo any training necessary with regard to newly adopted legislation and in line with the job description.

All officers are responsible for ensuring they have regard to relevant guidance documents and procedures.

A list of legislation enforced by the Council can be found in the Stoke-on-Trent City Council Constitution and the officer roles authorities. These are published online at www.stoke.gov.uk

8. ENFORCEMENT OPTIONS

Enforcement decisions shall be consistent, balanced, proportionate, and relate to common standards. In order to achieve and maintain consistency of enforcement, officers will have regard to official guidance and codes of practice.

Factors to be considered in reaching an enforcement decision include;

- the seriousness of the offence;
- the past history of the offender;
- the confidence in management and the degree of wilfulness involved;
- the consequence of non-compliance;
- mandatory / discretionary duties;
- public interest / benefit.

The following enforcement options may be available to the officer depending on the legislative provision:-

- No Action
- Informal Action/ Written Warning
- Statutory Notices/Orders
- Works in Default
- Simple Caution
- Financial Penalties
- Prosecution
- Proceeds of Crime applications
- Civil injunctions
- Fixed Penalty Notices
- Rent Repayment Orders
- Banning Orders
- Interim or Final Management Orders
- Empty Dwelling Management Orders
- Compulsory Purchase Order
- Enforced Sales
- Entry onto the National Database of Rogue Landlords
- Investigation into portfolio

No action

If it is considered that there is insufficient evidence to proceed with further action, no action will be taken. The only other circumstances where no action can be taken is when compliance with legislation has been achieved, or risk assessments do not indicate there to be a significant health and safety hazard.

Written Warnings and Informal action

Informal action to secure compliance with the legislation includes offering advice, requests for action and issuing warnings.

In the following circumstances it may be appropriate to use informal action. This is not an exhaustive list and each case must be looked at on its merits.

- The act or omission is not serious enough to warrant formal action

- From the individual/organisation's past history it can be reasonably expected that informal action will achieve compliance
- Where the original approach is from a person seeking advice or assistance and it can be reasonably expected that informal action will achieve compliance
- Following inspections carried out as part of the Landlord Accreditation Scheme North Staffordshire, officers will usually take informal action by issuing an informal property repair schedule, except in cases where there is a serious and imminent risk to the health and safety of tenants, where legal notice may be required.

As a guide, written warnings, informal notices and letters, will normally consist of some or all of the following:-

- a clear statement of the nature of the problem
- specific remedies for the problem or a standard to be achieved
- a statement of the actions which may follow if matters do not improve
- a named officer as point of contact
- a clear distinction between a legal requirement and recommendations
- an indication of any likely follow-up action
- an offer to work with the person(s) responsible in finding a solution.
- an indication where specialist advice or additional information is available from, where appropriate.

There are occasions where informal action is either unsuccessful in achieving compliance with the law, or inappropriate to deal with the legal contravention. In these cases, formal enforcement action may be taken following various legal provisions depending on the law to be enforced.

Statutory Notices/Orders

Certain legislation allows or places a duty on authorised officers to serve legal notices or orders on individuals, businesses or other organisations requiring them to meet specific legal requirements.

The Council will serve statutory notices where there is a statutory responsibility to do so, considering the following criteria:

- There is significant contravention of legislation but prosecutions are not appropriate;
- Where informal action has not achieved compliance;
- Where standards are poor and there is a lack of awareness of statutory requirements;
- Where non-compliance with informal action could pose a risk to public health if action is not taken quickly.

Where a Statutory Notice is served which has a right of appeal, the method of appealing against the notice and the time-scale for doing so will be provided in writing at the same time. A Notice will explain what is wrong, require the person on whom the notice is served to put things right, state what the likely consequences are if the notice is not complied with and set out the time period to comply, where required true copies will also be served on other interested parties, and a charge placed on the Local Charges Register.

Some laws allow the Council to recover the financial cost of taking enforcement action such as service of notices or orders. Where it is allowed by the legal provision, the Council will seek to recover the full cost of taking the action including any site visits, investigative work, notice preparation, administration and service costs from the person responsible, to mitigate the burden to the tax payer for the cost of enforcement.

Each type of legal notice will contain provisions regarding non-compliance. The Council views non-compliance with a statutory notice as a serious issue and, without prejudice to any specific legal provisions may take one or more of the following actions where appropriate:

- Undertake works in default
- Issue a Simple Caution
- Impose a Financial Penalty
- Prosecute

Works in Default

Some notices or orders allow the Council to undertake remedial works to a privately-owned property or land. This is referred to as “works in default”. Where remedial works are carried out as the result of any legal provision, the Council will seek to recover the full cost of taking this action from the person responsible including any administrative charges. The Council is also likely to place a local land charge on the property until full payment is received. Work in default may be undertaken in addition to prosecution.

Simple Caution

In accordance with the Home Office guidelines on the cautioning of adult offenders, a simple caution may be used as an alternative to prosecution in certain circumstances, for example:

- Where public interest can be met by a simple caution
- To divert certain offences away from the Courts but at the same time reducing the chance of repeat offences.
- Where the Council feels that a simple caution would be effective given the individual circumstances, attitude and the history of the offender.

Simple cautions can only be used where the following pre-conditions are met:

- The offender admits the offence,
- The offender is willing to accept a caution, having been made aware that the caution may be cited in Court if they are found guilty of other offences in the future: and
- There is sufficient evidence to provide a realistic prospect of conviction.

A caution is a written acceptance by an offender that they have committed an offence and they will only be used for first offences. The Council can refer to cautions that have been issued if any subsequent offences are prosecuted. Where a simple caution is offered and declined, the case will be referred for consideration of prosecution.

Financial Penalties

Certain legislative provisions allow the Council to impose a financial penalty for certain offences. Links to the relevant legislation and guidance are in Appendix 1.

Financial penalties can be imposed instead of prosecution. The evidence is subject to the criminal standard of proof and must satisfy the same evidential and public interest tests as for a prosecution, before being imposed. The decision whether to prosecute or impose a financial penalty will be assessed on a case by case basis having regard to the following:

- The seriousness of the offence
- The culpability of the offender

- The circumstances of the tenant and the harm caused to them
- The impact on the wider community
- Previous relevant offences
- Any official guidance

In determining the appropriate level of penalty, officers will have regard to the statutory guidance in relation to the civil penalties and any relevant policy adopted by the Council.

Prosecution

The decision to prosecute is not taken lightly. The 'Code for Crown Prosecutors' is specific guidance to help an investigator to decide whether prosecution is appropriate. Officers will always refer to this to ensure decisions are fair and consistent.

Before a decision to prosecute is taken the case must satisfy, in general terms, both the Evidential Test and Public Interest Tests as set out in the Code for Crown Prosecutors available from www.cps.gov.uk.

Factors that would lead to consideration of prosecution include:

- Significant failure to comply with any directions, either through statutory notice or informal letter, that the Council has issued
- Deliberate or conscious disregard for the law.
- An offence so serious that other enforcement action is considered inappropriate, such as where the local authority may wish to apply for a 'Banning Order' following a conviction.
- Previous history of similar offences and grounds to suggest the offence is likely to be repeated. However, for certain offences under the Housing Act 2004 a civil penalty may still be considered, as a fine can be up to £30,000, if it is thought that a large fine is the most appropriate and effective sanction in the circumstances.
- The availability of quality of evidence that an offence has been committed and the extent of any defence or excuse provided by the alleged perpetrator.
- Whether prosecution is in the public interest.

In considering prosecution, the Council will check the national Rogue Landlord Database.

The Council will consult with its legal services prior to taking action

Proceeds of Crime Applications

Applications may be made in certain circumstances under the Proceeds of Crime Act for confiscation of assets in serious cases. The purpose of these is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

Civil Injunctions

Several legislative provisions contain injunctions as an enforcement option available. Where an individual or organisation fails, or appears unlikely, to comply with an obligation under the relevant law, an injunction may be sought for the purpose of prohibiting specified acts or behaviour or requiring the individual to take certain steps.

Fixed Penalty Notices

Fixed penalty notices (FPNs) can be issued to deal with a wide range of offences where the legislation provides this as a means to punish an offence. Authorised Officers will only issue an FPN when all of the following apply:

- an offence has been committed
- an FPN is a proportionate response
- there is evidence to support prosecution if the offender fails to pay the fixed penalty
- the authorised officer believes that the name and address offered by the offender are correct

All FPNs are subject to a right of appeal and FPNs will be issued with information about how to appeal, including:

- how, when and where to appeal
- what happens if the appeal is successful (no further action will be taken and the FPN will be cancelled)
- what happens if the appeal is rejected and the offender fails to pay
- how to complain

All FPNs must normally be paid within 28 days (unless otherwise specified) and any non-payment of FPNs will result in the Council acting to recover the penalty through the courts.

Rent Repayment Orders

The Council may apply for a rent repayment order against a landlord who has committed certain relevant offences. The Council will consider applying for a rent repayment order when it becomes aware that a person has been convicted of a relevant offence, and may consider applying for a rent repayment order in absence of a conviction, but where there is clear evidence of an offence having been committed.

The Council will consider helping a tenant to apply for a rent repayment order.

When applying for a rent repayment order, the Council shall have regard to any statutory guidance issued by the Secretary of State.

Banning Order

The Council will, in appropriate circumstances, apply for a 'Banning Order' against a landlord convicted of a banning order offence. If granted, such an order prevents a landlord from carrying out any landlord related activity for a minimum period of 12 months, but could be longer.

Interim or Final Management Orders

The Council will, where appropriate issue a Management Order for a property. This is only for properties subject to licensing under part 2 or 3 of the Housing Act 2004. The Council will in effect take over management of the property and are entitled to retain any relevant expenditure from the rent received.

Empty Dwelling Management Order (EDMO)

Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an Empty Dwelling Management Order (EDMO), the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income, any surplus income will be given back to the owner

There are two types of EDMO an interim and a final. An interim EDMO lasts 12 months but a final EDMO can last up to seven years.

An EDMO allows the Council to take control over an unoccupied building and make sure that empty properties are occupied and managed properly. The property will be brought back into use by the City Council but ownership will remain unchanged.

Compulsory purchase orders (CPOs)

The instigation of a CPO can be made under section 17 of the Housing Act 1985 when it can be shown that there is housing need, rather than proving the property was causing blight or any other problems. In cases such as this the Council will consider this course of action only as an option of last resort after exhausting all other options and where voluntary negotiations have failed and, as a result there is little or no prospect of them bringing it back into use.

Before a CPO is confirmed, the Council will demonstrate that all reasonable steps have been taken in order to encourage the owner to bring the property back into use.

Enforcing Charging Orders

The City Council applies for a Charging Order where the Council Tax debt owed is greater than £1,000. The Council's Charging Order is registered against the property to secure the debt. The Council can then apply to the courts for an Order of Sale once the Charging Order has been granted. This allows the Council to enforce the sale of the property to recoup the debt. This approach is used to target long term empty homes. The property is sold on the open market, the debt is cleared and the remaining balance is paid into court for the owner to make a claim.

Enforced sales procedures

The Law of Property Act 1925 section 103 allows the Council to demand payment of outstanding debt. This is secured by a legal charge on an empty home for debts of £300 or more owed to the Council resulting in non-payment for work carried out in default of legal notices. It allows the Council to sell the property to recover the debt and administrative costs.

Rogue Landlord Database

The Government has introduced a national 'Rogue Landlord' database accessible only by Local and Central Government bodies. It will include anyone issued with a Banning Order, anyone convicted of a Banning Order offence, and anyone required to pay two or more financial penalties. The Council will update this database as necessary.

Further investigation into portfolio

The Council will, when enforcement action has been taken, carry out further checks to identify other properties within the landlord's portfolio and take necessary action that it sees fit to ensure those properties also comply with relevant legislation. This may include contacting tenants of those properties to investigate possible tenancy and management practices such as harassment.

9. COMPLAINTS

The Private Sector Housing Team will aim to provide effective, timely complaint responses in accordance with Stoke-on-Trent City Council's 'Compliments, Comments and Complaints Policy'. This details how a complaint will be investigated and what Stoke-on-Trent City Council will do if the customer is unhappy with the result of the investigation.

All complaints in regard to the Private Sector Housing Team should be directed to:

Contact the Private Sector Housing Team on 01782 233086 or write to
Private Sector Housing Team
Floor 2
Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Or email PrivateSectorHousing@stoke.gov.uk where the complaint will be passed to the relevant team manager to respond.

This will assist the Council in resolving complaints and responding to comments at the earliest possible stage potentially removing the need for escalation.

Alternatively, if a customer is not satisfied with the previous course of action, they may make a formal complaint using the City Council's official complaint form or via email at customerfeedback@stoke.gov.uk. Forms are available at all Council offices or can be sent to you in the post if requested.

If a customer is still not satisfied with the response they may complain to the Local Government Ombudsman if they feel they have been unfairly treated. A leaflet about this is available on request.

10. REVIEW

The Private Sector Housing Team is committed to improving the service it provides and welcomes feedback, both good and bad, from customers. If a customer has any comments on the policy please ring 01782 233086, email privatesectorhousing@stoke.gov.uk or write to the address given above.

This Policy will reviewed periodically by the Private Sector Housing Team to reflect any significant changes in legislation, Codes of Practice, or other guidance.

Enforcement Policy

APPENDIX

Contents:

Links to some relevant legislation.

This list is not exhaustive.

All legislation can be found on the:

www.legislation.gov.uk website by entering the name of the act and the year in the search boxes.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (relevant to landlords' duty to provide an electrical installation condition report at intervals not exceeding 5 years.)

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (relevant to landlords' duty to let an energy efficient property of band E or above on the Energy Performance Certificate)

Enterprise and Regulatory Reform Act 2013 (relevant to Letting Agency and Property Management Redress Scheme.)

Environmental Protection Act 1990 (relevant to statutory nuisances' being caused)

Housing Act 1985 (relevant to demolition orders in respect of properties with category 1 or category 2 hazards)

Housing Act 2004 (relevant to enforcement of housing standards including service of notices and orders, issuing of licences, prosecution and issuing of financial penalties as an alternative to prosecution in addition to Management Orders).

Housing and Planning Act 2016 (relevant to Banning Orders, Rogue Landlord's Database, Rent Repayment Orders, amendments to the Housing Act 2004 regarding civil penalties in Schedule 9)

Prevention of Damage by Pests Act 1949 (relevant to the accumulation of rubbish providing harbourage for pests)

Protection from Eviction Act 1977 (relevant to unlawful eviction and harassment offences)

Public Health Acts 1936 & 1961 (relevant to the issue of statutory notices relating to public health and carrying out works in default of compliance with statutory notices)

Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (relevant to landlords' duty for fit and check smoke alarms, and carbon monoxide alarms in certain circumstances. N.B. Policy regarding fine of up to £5000 for non-compliance is published separately on our website.)

Links to some relevant guidance

These guidance notes can be found on the www.gov.uk website, by typing in the following details in the search box, or searching directly in your web browser.

Civil penalties under the Housing and Planning Act 2016

Guide for landlords: electrical safety standards in the private rented sector

Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended

Housing health and safety rating system (HHSRS): guidance for landlords and property related professionals

Letting agents and property managers redress scheme

Rent repayment orders under the Housing and Planning Act 2016

Smoke and Carbon Monoxide Alarm (England) Regulations 2015: explanatory booklet for landlords.