

Private Sector Housing Team

ENFORCEMENT POLICY

Last Updated February 2018

Contents

1. INTRODUCTION.....	3
2. SCOPE.....	3
3. POLICY FRAMEWORK	3
4. HUMAN RIGHTS AND EQUALITY	4
5. INFORMATION SHARING	4
6. PRINCIPLES OF ENFORCEMENT	4
7. TRAINING AND AUTHORISATION	6
8. ENFORCEMENT OPTIONS	6
9. COMPLAINTS.....	11
10. REVIEW	11

1. INTRODUCTION

The main function of local government enforcement is to protect the public and the environment, promote health, safety and welfare and enhance the quality of life of all residents, workers and visitors to the City. In securing compliance with legal regulatory requirements, this policy aims to ensure that all actions will be undertaken in a fair, equitable and consistent manner.

2. SCOPE

This policy covers all enforcement activities of the Private Sector Housing Team, in particular services covering the following:

- Housing Standards
- Licensing activities under Housing Act 2004 Part 2 & 3
- Empty Homes
- Private Water Supplies
- Harassment and Unlawful Eviction
- Environmental Crime and Public Health Nuisances
- Letting Agents Redress Scheme
- Unlawful Encampments
- Licensing of Caravan and Camping Sites

Whenever we interact with clients or other stakeholders in relation to any of the above, or other relevant functions, we will do so clearly and with suitable provision of all 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, 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 our website.

The Private Sector Housing Team do not deal with disrepair issues in council owned housing unless requested for a specialist opinion by the council housing management team.

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 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.

This enforcement policy supports Stoke City Council's corporate priorities. Also, a full list of legislation enforced by the Council can be found in the City Council Constitution. These are published online at www.stoke.gov.uk

3. 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 city 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. A stage one 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 citizens living in poor privately rented properties. This will be achieved by ensuring that minimum standards are achieved in these properties, hopefully by co-operation with landlords, but ultimately through enforcement should this prove necessary.

4. INFORMATION SHARING

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 and other city council departments. Any such action will be undertaken in compliance with current data protection regulations. Other requests for information will be considered having regard to the Freedom of Information Act and current data protection regulations. All data held will be subject to our 'Retention and Disposal Policy'.

5. PRINCIPLES OF ENFORCEMENT

Openness

We will offer advice and assist landlords and householders as much as possible to comply with the law. We will provide information about the work we do and the rules we apply in various formats which may include plain language in booklets, leaflets and verbally by attendance at public meetings. We will discuss general issues or problems with anyone experiencing difficulties, or requiring general advice.

Helpfulness

Where the solution to your problem lies outside the remit of the Private Sector Housing Team, we will try to indicate which other department or organisation can help.

Our staff 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 via a letter shortly afterwards.

Partnership

We believe a closer partnership between other housing organisations and the city council will result in a healthier housing stock. We will co-ordinate guidance and act as the regulatory link with other enforcement authorities both locally and throughout the country.

Whenever it is possible and appropriate to do so, we will consult the users of our service and consider their opinions when setting our standards and developing programmes of work. We will publish these standards, monitor our performance against them and report on the findings.

Proportionality

We will ensure that any enforcement action we take is proportionate to the risks to health safety and welfare. We will carry out our duties in a fair and consistent manner and will try to ensure that enforcement is consistent throughout the city council and with other local authorities.

Consistency

In assessing levels of risk, we will promote consistency by following guidelines published by the Central Government, the local Fire Authority and other relevant bodies. We will also liaise with other local authorities and share our ideas for good practice with them.

Clients' Responsibilities

Having specified the standards we will uphold in our contact with service users, we also require those we are in contact with to treat officers of the city council with due respect. Service users must also provide officers, landlords and landlords 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 of or actual violence is likely to lead to be reported to the Police, with the person's details being entered into a database for the health and safety of council officers.

Housing Tenure

Much of the enforcement action undertaken by this team relates to privately rented property. We believe most landlords wish to comply with the law. We will encourage them to do so but we will take firm action against those who disregard the law or act irresponsibly.

Where concerns relate to housing owned by Registered Providers of social housing, it is expected that the Registered Provider is given the opportunity to respond to the concerns, and failings should be addressed through that organisations complaints procedure, including where appropriate involvement by the local government ombudsman. Where this has not been successful, or where that process is not practicable, action will be taken in line with any protocol agreed with the Registered Provider. Ultimately we reserve the right to take action under the Housing Act 2004 if necessary.

When considering enforcement action under the Housing Act the authority will take into account the extent of control 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.

Long term empty properties within the city, often cause blight and are frequently a focus for anti-social behaviour. We will therefore take action to bring these properties back into use. Attempts will be made to work in co-operation with owners where possible, but in the absence of this legal powers such as Compulsory Purchase, and Enforced Sale will be used where appropriate.

6. TRAINING AND AUTHORISATION

Only duly authorised officers may undertake enforcement duties in accordance with the city council's scheme of delegation. 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.

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

7. ENFORCEMENT OPTIONS

Enforcement decisions shall be consistent, balanced, fair, 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
- Statutory Notices/Orders
- Simple Caution
- Financial Penalties
- Prosecution
- Proceeds of Crime applications
- Civil injunctions

- Fixed Penalty Notices
- Rent Repayment Orders

No action

The only circumstance 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, issuing warnings and requests for action.

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 North Staffordshire Landlord Accreditation Scheme, 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.

Where a Statutory Notice is served which has a right of appeal to the recipient, 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.

Some notices or orders allow remedial works to be carried out to a 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. The Council is also likely to place a local land charge on the property until full payment is received.

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

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 offender admits the offence, is willing to accept a caution and there is a realistic chance of a successful prosecution if a caution is refused. A caution is a written acceptance by an offender that that they have committed an offence and can only be used where a prosecution could have been properly brought. Cautions will only be used for first offences. The Council can refer to cautions that have been issued if any subsequent offences are prosecuted.

In accepting a caution the offender will be deemed to have consented to this course of action being publicised in the Council's website and any other form of publicity the Council considers appropriate.

Financial Penalties

The Housing Act 2004 allows the Council to impose a financial penalty for certain offences. Links to the relevant legislation and guidance are in Appendix 1. Our matrix of charges was

developed in conjunction with a wider West Midlands Local Authority group to ensure consistency and fairness.

Financial penalties are imposed instead of prosecution and will require the same standard of proof of offence as 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

Prosecution

The decision to prosecute is not taken lightly. The 'Code for Crown Prosecutors' is special guidance to help an inspector decide whether prosecution is appropriate. We will always refer to this to ensure our 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 statutory defence or excuse provided by the alleged perpetrator.
- Whether prosecution is in the public interest.

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. Their purpose 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.

Injunctions

Where an individual or organisation fails, or appears unlikely, to comply with an obligation under the 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. 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 14 days (unless otherwise specified) and any non-payment of FPNs may result in offenders being prosecuted.

Rent Repayment Orders

The Council may apply to a tribunal for a rent repayment order against a landlord who has committed certain relevant offences. These include failure to licence a relevant property, illegal eviction, breach of banning order, and failure to comply with an Improvement Notice or Prohibition Order. (*Link to further guidance available in Appendix1*)

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.

Other Sanctions

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.

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.

8. COMPLAINTS

We will aim to provide effective, timely complaints procedures in accordance with the City Council's 'Compliments, Comments and Complaints Policy'. This details how a complaint will be investigated and what the Council will do if you are not happy with the result of the investigation.

If you are unhappy with any aspect of your dealings with the Private Sector Housing Team you should:

Contact the Team Manager on 01782 232201 or write to
Private Sector Housing Team
Floor 2
Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Alternatively, or if you are not satisfied with the previous course of action, you 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 you are still not satisfied with the response you may complain to the Local Government Ombudsman if you feel you have been unfairly treated. A leaflet about this is available on request.

9. REVIEW

We are committed to improving the service we provide and welcome feedback, both good and bad, from customers. If you have any comments on the policy or would like to discuss any matters relating to your housing or local environment for which the Private Sector Housing Team has enforcement responsibility please ring 01782 232087, email privatesectorhousing@stoke.gov.uk or write to the address given above.

This Policy will be reviewed periodically by the Head of Private Sector Housing in the light of any significant changes in legislation, Codes of Practice, or other guidance.

Enforcement Policy

Appendix

Contents:

Links to some relevant legislation and guidance.

All legislation can be found on the:

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

[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).

[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)

[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.)

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

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](#)

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

[Rent repayment orders under the Housing and Planning Act 2016](#)

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

[Letting agents and property managers redress scheme](#)