

## Appendix 1



### **LANCASTER CITY COUNCIL**

**Directorate for Communities and the Environment**

**Housing Standards,  
Private Sector Housing Enforcement Policy**

## **Lancaster City Council**

### **Private Sector Housing Enforcement Policy**

#### **1.0 Introduction**

1.1 The Housing Standards Team sets out to maintain and improve the housing conditions in privately owned property in the Lancaster district.

1.2 Where appropriate, this will be done using informal advice, assistance and information, but where this fails, or it is necessary to meet enforcement objectives, the service will take the necessary enforcement action.

1.3 The objectives of the Housing Standards Team include:

- Improving the standard of homes in the private sector
- Assessing local housing conditions
- Reducing the number of properties with serious risks to health and safety
- Reducing the number of vulnerable households living in non-decent homes
- Improving the energy efficiency and warmth of homes and to help reduce fuel poverty
- Improving standards in private rented accommodation
- Improving standards in HMO's (houses in multiple occupation)
- Working closely with private sector landlords towards improving conditions and the standard of management of private rented housing
- Meeting the local authority's statutory obligations

1.4 This policy promotes efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary burdens on businesses. This policy follows the principles of good enforcement in accordance with and the Government's Regulators Code.

<https://www.gov.uk/government/publications/regulators-code>

It should be read in conjunction with the Service wide enforcement policy.

1.5 Partnership working brings benefits from pooled expertise, resources and sharing of responsibilities and will be promoted where appropriate.

Cases will often arise where the Housing Standards Team and another partner organisations both have, or share an enforcement role. Effective liaison with that body will ensure effective co-ordination, avoid inconsistencies and ensure that enforcement action is appropriate to the circumstances of the incident.

Regard will always be had to the requirements of The General Data Protection Regulation (GDPR).

## **2.0 How Improvements will be achieved.**

2.1 Enforcement is particularly relevant to the private rented sector where we aim to ensure compliance with regulatory requirements. However, there may be occasions when enforcement action is taken against owner occupiers.

2.2 Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problem first.

2.3 Where assistance, information and education has failed to ensure compliance with a statutory requirement or failed to ensure compliance with requirements made through use of our discretionary powers enforcement action may be taken.

2.4 Any officer carrying out enforcement work will be authorised to do so by the local authority and will have regard to other legal requirements that might apply to their actions.

2.5 All officers will have regard to the appropriate powers of entry.

## **2.6 Informal Action**

There may be circumstances where no action is considered necessary:

For example:

- when the risk is low;
- where there are extenuating circumstances regarding the person against whom action would be taken
- when taking legal action would be disproportionate or inappropriate taking into account the circumstances of the case.
- where the tenant does not want action to be taken and it is considered appropriate not to take action in the circumstances.

Informal Action (for example verbal advice, warnings, written warnings) may be taken in some circumstances for example

- for minor breaches of the law
- where there is no major risk and
- where the local authority has confidence the contravention will be remedied within a reasonable timescale

Informal action may at any time be escalated to formal action in the appropriate circumstances considered on a case by case basis.

## **2.7 Formal Action**

Formal Action (for example enforcement notices, formal caution, seizure, prosecutions/injunctions, revocation of licences) will be considered in circumstances including where there is

- evidence of intent, negligence, persistent or deliberate breaches,

- significant risks to health, safety or well-being of people or environment
- obstruction of an officer carrying out their duties.

The decision on what is the most appropriate action will depend on the circumstances of the case, the relevant legislation, the risk to health and safety and tests relevant to each option.

### **3.0 Enforcement Options**

#### **3.1 Service of formal notices or orders**

Notices and orders will be served in accordance with the requirements of the relevant legislation. The person on whom the notice or order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any charges (see below) and the consequences of non-compliance.

#### **3.2 Emergency Action**

In emergency situations enforcement action may be taken immediately without notice, for example:

- where there is an imminent risk of serious harm to the health or safety of occupiers or others
- where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of The Local Government (Miscellaneous Provisions) Act 1982).

#### **3.3 Penalty Charges**

Certain legislation enables the local authority to impose penalty charges. Failure to pay a penalty charge may result in the local authority bringing proceedings to recover the charge as a debt through court action.

Separate policy guidance is provided on penalty charges.

#### **3.4 Simple Caution**

A simple caution may be offered as an alternative to prosecution where the local authority is satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the offence/s and that the public interest would be satisfied by offering a simple caution in respect of the breaches rather than prosecute.

Simple Cautions may be appropriate where someone has admitted to an offence, or where it is their first offence of this type or they have assisted officers in remedying the situation that led to the offence.

Before the simple caution is administered officers shall ensure the Landlord has made an admission of guilt, understands the implications of accepting a simple caution and consents to accept it.

Suitability for a simple caution will be assessed on a case by case basis.

### **3.5 Prosecution and Civil Penalties**

Recommending a case for prosecution is a serious step, and as a general rule a prosecution will not be undertaken without the offender being given a reasonable opportunity to comply with the law. The local authority recognises however, that there are circumstances where a contravention is particularly serious or there has been a blatant or reckless disregard for the law and it is right to prosecute.

Prosecution will be considered where the local authority is satisfied that it has sufficient evidence to provide a realistic prospect of conviction and where a prosecution is in the public interest. When deciding whether to prosecute the local authority will have regard to its Enforcement Policies and the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The power to impose civil penalties as an alternative to prosecution, for specific offences under the Housing Act 2004, was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. Prosecution may be the most appropriate option where an offender has committed similar offences in the past. However that does not mean that the local authority will not use civil penalties in cases where serious offences have been committed.

A Civil penalty can be imposed for up to £30,000 per offence and each individual breach of the management regulations for houses in multiple occupation is treated as a separate offence. The exact amount of any civil penalty will be calculated in accordance with the local authority's 'Civil Penalties Enforcement Guidance' document and with the statutory guidance issued to local authorities.

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

The local authority will consider its enforcement options on a case by case basis and may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution is the most appropriate and effective sanction.

Prior to imposing a civil penalty, the local authority will serve a notice of intent and this will give the recipient an opportunity to make representations against the proposed civil penalty.

### **3.6 Rent Repayment Orders**

The Local Authority may make an application to the First Tier Tribunal for a Rent Repayment Order (RRO) where they are satisfied beyond reasonable doubt that a landlord

has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months rent, either to a tenant for rent paid or a local authority for housing benefit or universal credit paid in relation to the rent of a property.

Local authorities must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The local authority can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

When deciding whether or not to apply for an RRO the local authority will consider:

- each case on its own merits
- ensure that applying for an RRO would meet the enforcement objectives in this policy
- consider the impact of the breach on the occupier or others affected by the offence committed.
- consider the likelihood of the application being successful.
- the level of resources it will take to make a successful application
- whether it is more appropriate for the tenant to apply for the order themselves.

The local authority is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities.

<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

### **3.7 Banning Orders**

The Housing and Planning Act 2016 provides that a local housing authority may apply for a banning order against a person who has been convicted of a banning order offence. A current list of banning order offences are set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. They include offences under the Housing Act 2004, Regulatory Reform (Fire Safety) Order 2005, Health and Safety at Work etc Act 1974 and the Protection from Eviction Act 1977.

The application for a banning order is made to the First-Tier Tribunal (Property Chamber). A banning order will last for at least 12 months and means that the subject of the order cannot:

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

If council becomes aware of a Banning Order Offence, it will consider applying for Banning Order in accordance with the provisions of the Housing and Planning Act 2016. The decision as to whether an order should be sought will be taken in line with government guidance.

### **3.8 Database of Rogue Landlords**

The Housing and Planning Act 2016 introduced the establishment and operation of a database of rogue landlords and property agents. The database is a tool for local authorities in England to keep track of rogue landlords and property agents. It can be shared to help keep track of landlords and property agents, including those operating across local authority boundaries and help target enforcement activities.

The local authority is obliged to have regard to the statutory guidance issued to local authorities

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697637/Database\\_of\\_rogue\\_landlords\\_statutory\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf)

### **4.0 Charging for Enforcement Action**

The Housing Act 2004 allows local authorities to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other legislation also allows recovery of costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.

There will be a charge for Notices served and Orders made under Part 1 of the Housing Act 2004. A charging notice will be served on the responsible party; this is served under section 49 of the Housing Act 2004.

If there is an appeal against the notice then the charge will not be applied until the appeal is resolved and subject to the notice being confirmed by the tribunal.

### **5.0 Fines Recovery of Costs and Proceeds of Crime**

In some cases the local authority can apply to court to recover rent from a landlord if a property has been let illegally.

### **6.0 Publicising prosecutions**

Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The local authority will publicise sentences following prosecution on a case by case basis. Publicising guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders.

### **7.0 Works in Default**

Where the local authority has legally required someone to do works but they have failed to do so, some statutory powers are available to enable the local authority to carry out the works in default. We will determine whether or not to commence work in default on a case by case basis taking into account all of the circumstances known to us. It is an offence for a person to obstruct us, or any of the contractors, whilst works in default are being carried out. The cost of the works and all associated costs will be recovered in accordance with the relevant statutory provisions.

The carrying out works in default does not prevent prosecution which may also be appropriate.

## **8.0 Tenancy Relations**

Allegations of illegal eviction and harassment or failure to provide required information about a tenancy will be investigated in accordance with this policy. Where the local authority believes it is appropriate it may take enforcement action using relevant legislation.

## **9.0 Appeals and Complaints Procedure**

The local authority's complaints procedure is available for complaints relating to the application of this policy where there is not an appeal procedure otherwise available. Any appeals against a formal notice should be through the statutory appeal provisions.