

## **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

### **1. Introduction**

Mid Sussex District Council's Housing Standards Team is committed to improving standards in private sector housing, ensuring that all privately rented accommodation is well managed, properly maintained, safe and habitable.

- 1.1 Although Mid Sussex has some excellent landlords and letting agents, the Council has a vital role to play in tackling criminal, rogue and irresponsible landlords and preventing them from profiting from their non-compliance with the law.
- 1.2 In order to regulate private sector housing, the Council's Housing Standards Team will conduct pro-active and re-active property inspections, routinely respond to requests for visits and investigate complaints of disrepair together with other teams from within the Council, including Housing Needs, Housing Benefits and Planning. The team will request information, carry out inspections, process licence applications, bring empty properties back into use, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.

### **2. Aims and Principles of the Enforcement Policy**

- 2.1 The overall aim of the Housing Standards Team is to raise standards in the private sector housing stock. This benefits the health and wellbeing of Mid Sussex residents and helps maintain the housing stock for future generations.
- 2.2 The principles of the Private Sector Housing Enforcement Policy are to ensure that:
  - Tenants of private landlords and registered providers of social housing live in homes that are free of unacceptable hazards and risks to their health and safety;
  - All Houses in Multiple Occupation are safe, well managed and all relevant Management Regulations are adhered to;
  - All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met
  - The Council meets its statutory obligations in relation to private housing.
- 2.3 This Enforcement Policy provides an overview of the broad principles and processes with which the Council will seek to comply when taking action to ensure that all private sector housing in the district is healthy, well managed and safe. It should be read in conjunction with other strategies and policies.

- 2.4 When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:
- Regulators Compliance Code
  - Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
  - Police & Criminal Evidence Act 1984 (PACE) and associated Codes
  - The Enforcement Concordat
  - Housing Act 2004
  - Regulation of Investigatory Powers Act 2000
  - Housing and Planning Act 2016
  - Mid Sussex District Council Environmental Health Enforcement Policy
  - Legislation and statutory guidance relating to each service area
  - Procedures and guidance notes within each team

### 3. Principles underpinning Enforcement Action

- 3.1 This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Code.
- 3.2 The Private Sector Housing Team's enforcement activity will be:
- **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
  - **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
  - **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
  - **Consistent** – Enforcement action will be undertaken and monitored within the Private Sector Housing Team to ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and to share and develop good practice.
  - **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.
- 3.3 While it is understood that it is primarily the responsibility of individuals and businesses to ensure compliance with relevant legislation, the Council will help them, where possible, to understand their legal responsibilities. The aim of the

Council is to secure compliance with the legislation, which it will do by making the most efficient use of the Council's resources.

#### **4. ENFORCEMENT OPTIONS**

- 4.1 The officers will strive to ensure that all enforcement decisions are consistent, balanced, fair, and relate to common standards that ensure that the public and others are adequately protected.
- 4.2 In order to achieve and maintain consistency of enforcement, officers will follow all official guidance and codes of practice.
- 4.3 In coming to any enforcement decisions consideration will be given to the following factors:
- The seriousness of the deficiencies identified in the dwelling
  - The past history of compliance
  - The confidence in management and the degree of wilfulness involved
  - The consequences of non-compliance
  - The existence of statutory duties or discretionary powers
  - The likely effectiveness of the various enforcement options
- 4.4 In the event of a contravention being detected then the enforcement options available to the Council include:
- To take no action;
  - To take informal action;
  - To take formal action;
  - Simple caution;
  - To issue a Civil Penalty Notice;
  - To prosecute;
  - Execution of work required by statutory notice where the recipient has not complied (Works in Default)
  - Rent Repayment Orders
  - Banning Orders for the most serious and prolific offenders
- 4.5 Enforcement options may escalate up through the list so that informal action may lead to formal action, etc. dependent upon the success or otherwise of interventions, but this staged escalation will not be appropriate in each case and an intervention at the higher end of the enforcement spectrum may be necessary. In some cases a combination of enforcement options may be appropriate.
- 4.6 Enforcement options specific to the Housing Standards Team function are detailed in Appendix 1-3 below.

## 5. THE HOUSING HEALTH AND SAFETY RATING SYSTEM (HHSRS)

- 5.1 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause a hazard to the health of the occupants over a 12 month period. There are two categories of hazards:
- 5.2 **Category 1 hazards** represent a serious danger to health and the Council has a duty to take appropriate action to see these hazards reduced.
- 5.3 **Category 2 hazards** represent a lesser danger and, although it has no duty to take direct action, the Council has power to reduce category 2 hazards through appropriate action.
- 5.4 Much of this enforcement policy relates to our enforcement work under the Housing Act 2004. The Housing Standards Team uses other legislation as appropriate and most of these are listed later in this document.

## 6. INSPECTION AND COMPLIANCE VISITS

- 6.1 Dwellings are inspected both reactively (in response to a request or complaint) and proactively based on risk and intelligence. Where there is reason to believe a hazard may exist but access is denied or prior warning would defeat the purpose of the inspection, the Council can apply to the Magistrates Court to obtain a warrant to enter a property without prior notice and using force if necessary. The inspection may be limited to that part of the property where the Officer has reason to believe there may be a problem but may extend to the whole of the property, common parts and any gardens, garages and yards.
- 6.2 Once a property has been inspected and assessed, Officers will calculate the hazards found and consider what action to take. The actions can be broken down into 'informal' and 'formal' action (see below).
- 6.3 Before considering any action in respect of a tenanted property, the tenant/s will normally be expected to have first contacted their landlord or managing agent about the problem in writing. This applies to both private and social housing tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of a problem. Copies of correspondence between landlord and tenant, unless confidential, may be required by the Housing Standards team before any action is taken.
- 6.4 There are some circumstances in which this prior contact may not be appropriate, for example:
- Where the matter appears to present an imminent risk to the health and safety of the occupants;
  - Where there is a history of harassment, threatened eviction or poor management.

- Where the tenant is old and frail or otherwise vulnerable;
- Where the tenant's first language is not English and this is likely to cause difficulty in communicating with the landlord;
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent.

In these (or other similar) situations, Council officers may proceed directly with enforcement action.

## **7. INFORMAL ACTION**

- 7.1 Where the Housing Standards Team is made aware that hazards exist at a premises, the team will attempt to resolve this informally where possible. Informal action will include verbal advice and advisory letters given by Officers.
- 7.2 The Team will attempt to make contact with the person(s) responsible for remedying actionable defects to notify them of and invite them to attend any inspection. If it is not possible to contact the relevant person by telephone or email then a letter will be sent to any known address for that person.
- 7.3 The Team will aim to write to the owner, managing agent or landlord within 14 days of the inspection outlining the nature of the problem/s identified. The letter will provide confirmation of the remedial action to be taken to remedy the hazard or defect and will propose a reasonable timescale for works to be completed by. If suitable alternative remedies are proposed by the owner, managing agent, or landlord, they will be considered. Every effort will be made to mutually agree a way forward.
- 7.4 Action taken by the owner or landlord will be monitored and if necessary follow up letters, emails and telephone calls will be used in an effort to ensure the remedial works are carried out informally.

## **8. FORMAL ACTION**

- 8.1 It is not always possible to adopt an informal approach, especially where legislation requires formal action to be taken straight away or the owner, agent or other person/s responsible are not co-operating with the Housing Standards Team informally. There will be times when officers consider that the risk to the occupant is high enough to warrant formal action without an informal stage. Factors include whether the current occupants are vulnerable or where the property poses an imminent risk to health or safety.
- 8.2 Formal action will usually involve the service of a statutory notice. Most notices served require the recipient to commence and complete remedial works within specified time limits. In deciding whether to move into formal action involving the service of statutory notices, the property will be assessed for formal action according to:
- the number and type of category 1 and 2 hazards
  - the vulnerability and personal circumstances of the current occupiers

- In the case of HMOs, whether they are licensable or not, the number of households in residence, any overcrowding, poor management and/or risk from fire.
- 8.3 Under the Housing Acts, the following enforcement actions are available to the Council when considering the most appropriate course of action:
- Serve an Improvement Notice or Suspended Improvement Notice;
  - Make a Prohibition Order or Suspended Prohibition Order;
  - Serve a Hazard Awareness Notice;
  - Make a Demolition Order;
  - Declare a Clearance Area;
  - Make an Interim or Final Empty Dwelling Management Order
  - Take Emergency Remedial Action (Category 1 Hazards only);
  - Make an Emergency Prohibition Order; (Category 1 Hazards only);
  - Serve an Overcrowding Notice.
- 8.4 Officers will use the Housing Health and Safety Rating System Enforcement Guidance (published by the ODPM, February 2006) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7853/safetyratingsystem.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf) to determine the most appropriate course of action from the above list. They will adhere to the relevant consultation requirements set out in the legislation to take into account the views of occupiers, owners and other stakeholders.
- 8.5 Notices and Orders served under the Housing Act 2004 contain a 'Statement of Reasons' which will set out the reasons why one type of enforcement action was taken rather than another. The officer will be willing to discuss the works specified in the notice; the reason for serving the notice; and any alternative remedy the recipient may propose.
- 8.6 Not more than one course of action can be taken at a time for the same hazard (unless it is an emergency action) but alternative action can follow if one of the actions taken has proved unsuccessful. Emergency procedures cannot be used for category 2 hazards.
- 8.7 Where a Notice is served and there is a change in ownership of the property, the notice can be enforced against the new owner or recipient. However, any outstanding liabilities such as fines or costs remain with the original owner or recipient of the notice.
- 8.8 There are statutory rights of appeal against Notices, Orders and associated decisions made by the Council. Appeals against enforcement action are made to the First Tier Tribunal (FTT). The FTT may confirm, quash or vary a Notice, Order or decision. Details of these rights and information on making an appeal are contained in the Notices/ Orders.
- 8.9 Charges will be made for any formal enforcement action that the Council takes.

## **9 EMERGENCY MEASURES**

- 9.1 Where the Council is satisfied that a Category One hazard poses an imminent risk of serious harm to the health or safety of occupants or visitors of a premises, emergency measures can be taken. Emergency measures include Emergency Remedial Action or service of an Emergency Prohibition Order.

## **10 SANCTIONS FOR NON COMPLIANCE WITH NOTICES**

- 10.1 If a Notice or an Order is complied with or amendments are required to the Notice as a result of new information, a 'Revocation Notice' will be served confirming that the original Notice or Order has been withdrawn. However, if the Notice is not complied with, the following sanctions will usually be considered:

- Formal caution
- Civil Penalty Notice
- Rent Repayment Order
- Prosecution
- Carrying out the works in default;
- Carry out works in default and issue a civil penalty, prosecution or formal caution

## **11. SIMPLE CAUTIONS**

- 11.1 Guidance has been provided by the Ministry of Justice – Simple Cautions for Adult Offenders (the latest version is dated 13 April 2015). A Simple Caution (once known as a formal or police caution) is a formal warning that may be given to persons aged 18 or over who agree to it and admit to committing an offence. The Simple Caution scheme is designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution. Simple cautioning is not to be used as an alternative to a weak prosecution case.
- 11.2 A prosecution will only take place if it is in the public interest and there is sufficient evidence (see section 11 below) to support that course of action. In a case where there is sufficient evidence to warrant a prosecution but the public interest would not benefit from such a course of action, then a Simple Caution will be considered as an alternative.
- 11.3 In deciding whether to offer a Simple Caution the Full Code Test as set out in the Code for Crown Prosecutions must be applied.
- 11.4 Such cases should be fully considered by the case officer who will present the case to the Business Unit Leader of Environmental Health and Building Control for the authority to issue a Simple Caution.
- 11.5 The Cautioning Officer will be the Business Unit Leader of Environmental Health and Building Control and the cautioning procedure in the Ministry of Justice guidance will be followed.

- 11.6 Where appropriate the issue of a simple caution will be notified to a home authority, originating authority, lead authority or primary authority.
- 11.7 If an offender refuses to accept a formal caution, the delegated officer will refer the matter to the Head of Regulatory Services who may pursue a prosecution, taking into account the relevant guidance and the Council's Constitution.

## 12. CIVIL PENALTY NOTICES

- 12.1 Local authorities are able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

- 12.2 Income received from a civil penalty notice can be retained by the Council provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations.

- 12.3 The level of civil penalty to be imposed has to be determined on a case-by-case basis up to a maximum of £30,000 and the following factors must be considered to help ensure that the civil penalty is set at an appropriate level:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should



therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

12.4 Civil penalties can only be used as an alternative to prosecution. Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed above, a civil penalty can be issued for **each** separate breach of the HMO Management Regulations.

12.5 Where the Council is in a position to prosecute a letting agent and landlord for failing to obtain a licence for a licensable HMO, it has the option of imposing a (civil) financial penalty on the letting agent and the landlord as an alternative to prosecution. Where the letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both of them at different levels, depending on the circumstances of the case.

12.6 If the Council believes that it has a reasonable prospect of a conviction in a particular case, **it will always consider a civil penalty in the first instance** and only by exception will it seek alternative measures such as prosecution or formal cautions.

12.7 Where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the Council will need to be able to demonstrate *beyond reasonable doubt* that the offence had been committed.

### 13. RENT REPAYMENT ORDERS

13.1 The Housing Act 2004 introduced rent repayment orders (RROs) to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

13.2 Rent repayment orders have now been extended through Chapter 4 of Part 2 of the Housing and Planning Act 2016 to cover the following offences:

- Failure to comply with an Improvement Notice (section 30 Housing Act 2004 );
- Failure to comply with a Prohibition Order (section 32 Housing Act 2004);

- Breach of a Banning Order (section 21 Housing and Planning Act 2016);
- Using violence to secure entry to a property (section 6 Criminal Law Act 1977);
- Illegal eviction or harassment of the occupiers of a property (section 1 Protection from Eviction Act 1977).

- 13.3 Income received from a rent repayment order can be retained by the Council provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations.
- 13.4 An application for an RRO is made to the First-Tier Tribunal and can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed above.
- 13.5 Both local housing authorities and tenants have the power to apply for RROs and the maximum amount of rent that can be recovered is capped at 12 months.
- 13.6 If a local housing authority becomes aware that a person who is a landlord has been convicted of any of the relevant offences, and the offence was committed in their area, it must consider applying for an RRO.
- 13.7 The Council will apply for an RRO where:
- A landlord has been successfully prosecuted for one of the relevant offences and at least one of the tenants affected was in receipt of housing benefit or universal credit.
  - An RRO is likely to present a greater pecuniary penalty and deterrent than prosecution and at least one of the tenants affected was in receipt of housing benefit or universal credit.
  - A fixed penalty notice has been issued and at least one of the tenants affected was in receipt of housing benefit or universal credit.
- 13.8 The Council will assist tenants who are not in receipt of housing benefit or universal credit to apply for an RRO in the circumstances above by providing statements and advice.
- 13.9 Where an application for an RRO is made and the landlord has not been convicted of the offence for which the RRO application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence i.e. a criminal standard of proof is required.
- 13.10 Where a landlord has been convicted of the offence to which the RRO relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).
- 13.11 Where a landlord has not been convicted of the offence to which the RRO application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:
- RROs should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. We will consider the conduct of the landlord and tenant, the financial circumstances of the

landlord and whether the landlord has previously been convicted of similar offences;

- **Deter the offender from repeating the offence.** The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
- **Dissuade others from committing similar offences.** RROs are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of RROs is likely to help ensure others comply with their responsibilities.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of RROs: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

13.12 In deciding whether to apply for an RRO, the Council must have regard to 'Rent repayment orders under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities'. This process applies whether or not the landlord has been convicted of the offence:

13.13 Before applying for an RRO, the Council must give the landlord a notice of intended proceedings;

- A notice of intended proceedings must be served within 12 months of the date on which the landlord committed the offence to which it relates;
- A notice of intended proceedings must inform the landlord that the Council is proposing to apply for an RRO and explain why;
- State the amount that the Council is seeking to recover;
- Invite the landlord to make representations within a period specified in the notice which must be at least 28 days.
- The Council must consider any representations made within the notice period;
- The Council must not apply to the First-tier Tribunal for an RRO until the period specified in the notice of intended proceedings has expired;
- An application for an RRO can be made to the First-tier Tribunal once the notice has been made and the time for representations has passed.

13.14 Where the landlord fails to pay a RRO, the Council will refer the case to the county court for an Order of that Court. If necessary, the Council will use county court bailiffs to enforce the order and recover the debt.

## 14. PROSECUTION

14.1 The Councils recognise that the decision to prosecute is significant and could have far reaching consequences for all involved including defendants, victims and witnesses.

14.2 It will be for the case officer to decide whether prosecution is appropriate in any individual case, but the case will be discussed with the Business Unit Leader of Environmental Health and Building Control prior to referring any case to the Legal Team. The case officer will then produce a case file and briefing note for the Legal

Team, who will decide whether the case meets the requirements of the Code of Practice for Crown Prosecutors.

- 14.3 It follows that a prosecution will only be progressed when the case has passed both the evidential test and the public interest test. The decision to proceed with a prosecution rests with the Business Unit Leader of Environmental Health and Building Control.

### **The Evidential Stage**

- 14.4 For any prosecution to proceed, the Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge.
- 14.5 A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

### **The Public Interest Stage**

- 14.6 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. The Council will balance factors for and against prosecution carefully and fairly.
- 14.7 Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution.
- 14.8 There may be circumstances where, as well as prosecution, it will also be appropriate to serve a statutory notice to enforce the remedy.
- 14.9 On final completion of prosecution cases, officers must inform other interested parties of the outcome of the case as necessary. In particular, any complainants or victims will be informed. The outcome of the case will be reviewed with the relevant Business Unit Leader of Environmental Health and Building Control to discuss any necessary future action.

### **Banning Orders**

- 14.10 In certain circumstances and for the most serious offenders, the Council may apply for a Banning Order. These were introduced under the Housing and Planning Act 2016 and the provisions came into force on 6 April 2018. A Banning Order bans a person from letting a property in England and/or engaging in letting agency or property management work, if they have been convicted of a banning order offence.

The minimum period for a banning order is 12 months but there is no statutory maximum period.

14.11 Housing related offences regarded as Banning Order offences include:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977
- Any of the following offences under the Housing Act 2004;
- Failure to comply with an Improvement Notice (Section 30)
- Offences in relation to licensing of HMOs (Section 72)
- Allowing a HMO that is not subject to licensing to become overcrowded (Section 139)
- Failure to comply with management regulations in respect of HMOs (Section 234)
- Failure to comply with a Prohibition or Emergency Prohibition Order (Section 20 and 21)
- An offence under the Health and Safety at Work etc. Act 1974 where a person contravenes Section 36 of the Gas Safety (Installation and Use) Regulations 1998
- An offence under Section 32 of the Regulatory Reform (Fire Safety) Order 2005

## 15 WORKS IN DEFAULT

- 15.1 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works by formal Notice or Order, but has failed to either start works or make adequate progress.
- 15.2 The Council will only undertake works in default for emergency works to make the property safe.

## 16 HOUSES IN MULTIPLE OCCUPATION

- 16.1 As HMOs are higher risk than single family homes, the conditions, facilities and management are more closely regulated. Some HMOs are subject to mandatory HMO licensing.
- 16.2 Under the Housing and Planning Act 2016, HMO licences are required for all HMOs that are occupied by 5 or more persons forming more than one household who are sharing facilities from October 2018.
- 16.3 Prospective HMO licence-holders must complete an application form, supply various documents and pay their licence fee. Inspections are usually undertaken as part of the application process but may happen at any time during the lifetime of the licence. Licences are issued by the local authority and conditions may be attached to the licence (including the maximum permitted number of occupants and households that can occupy the property). Works may be required to meet minimum standards prior

to the licence being issued. Licences are issued for a five-year period and a new licence must be applied for before the end of that period.

- 16.4 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 16.5 It is a criminal offence if a person controlling or managing an HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence under section 72 of the Housing Act 2004. In cases where a licensable HMO property is found to be operating without a licence the Council will take legal action.

#### *Management Regulations*

- 16.6 All identified hazards and breaches of the relevant HMO Management Regulations in any HMO, whether licensable or not, will be dealt with in accordance with the enforcement approach set out in the main body of this policy.

#### *Redress Scheme*

- 16.7 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 introduced a requirement for letting agents and property managers to belong to an approved redress scheme. The redress scheme must be approved by Government or designated as a Government administered redress scheme.
- 16.8 Where the Council is aware of an offence, it is required to take enforcement action relating to activities undertaken within the district and may serve a Notice on the perpetrator requiring the payment of a monetary penalty of an amount determined by the Council.
- 16.9 The expectation in Government guidance is that a monetary penalty of £5,000 should be considered the norm and the penalty must not exceed this amount. A lower penalty should only be charged if the Council is satisfied there are extenuating circumstances.
- 16.10 Where a Notice is served requiring a monetary penalty, there is a right to appeal to the First-tier Tribunal, and the Notice will be suspended until the appeal is determined or withdrawn.
- 16.11 Further details of the redress scheme is contained in Appendix 2

### **17 OTHER LEGISLATION ENFORCED BY ENVIRONMENTAL HEALTH SECTION FOR PRIVATE SECTOR HOUSING.**

- 17.1 *The Smoke and Carbon Monoxide Alarm (England) Regulations 2015*

Since the 1<sup>st</sup> October 2015 all landlords are required to have at least one smoke alarm installed on every storey of their rental property which is used as living accommodation, and a carbon monoxide alarm in any room used as living accommodation where solid fuel is used.

The Regulations allow the Council to issue a Penalty Charge Notice where a relevant landlord has failed to take reasonable steps to comply with a remedial notice. Such Notice will allow 28 days to:

1. Fit one or more smoke alarms in an occupied rented property
2. Fit a carbon monoxide detector to a room with a solid fuel burning combustion appliance
3. Take steps to check that each smoke and carbon monoxide alarm required by Regulations is working correctly at the start of the tenancy.

Statement of Principles supporting Penalty Charge Notices issued under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 is attached in Appendix 3.

#### 17.2 *Environmental Protection Act 1990*

The Environmental Protection Act 1990 defines statutory nuisance, and gives the Council power to serve an Abatement Notice requiring the owner to remedy a building that is so far defective as to be prejudicial to the health of its occupier or a nuisance. Examples of such nuisances could include rainwater penetration through defective roof or windows, rising or penetrating dampness and condensation, defective (rotten) timber flooring, elements exhibiting structural failure e.g. ceilings, and dangerous fixtures and fittings.

#### 17.3 *Public Health Act 1936*

Though much of this Act has been repealed or its provisions resurrected in other legislation, it still provides the Council with power to require by notice the repair of defective sanitary facilities and the clearance, cleansing and, if necessary, fumigation of premises that are filthy and verminous. It also extends statutory nuisance provisions, (now in the Environmental Protection Act) to tents, vans, sheds (agricultural/migrant worker type accommodation) or canal boats used as dwellings.

#### 17.4 *Public Health Act 1961*

This Act still provides the Council with power to require by notice the unblocking of stopped-up drains or minor repairs to private drains. At the request of an owner, the Council may undertake the repair of a private drain and recover its costs from the owner.

#### 17.5 *Local Government (Miscellaneous Provisions) Act 1976*

This Act gives the Council powers to require details of the ownership of buildings and land, to intervene to bring about the restoration of disconnected services (electricity, gas, or water), and secure the unblocking of stopped up private drains in shared use.

#### 17.6 *Local Government (Miscellaneous Provisions) Act 1982*

This Act gives the Council power to require the making secure, by boarding up or otherwise, of empty buildings to prevent unauthorised entry and/or where the building is likely to become a danger to the public.

**17.7 *Building Act 1984***

Although primarily concerned with ensuring the safety of new buildings through the application of Building Regulations, the Building Act 1984 includes powers for the Council to adopt an accelerated procedure for dealing with defects in buildings that amount to statutory nuisances (see EPA 1990 above), to require major repairs to drainage systems and to deal with ruinous or dilapidated buildings including empty homes.

**17.8 *Prevention of Damage by Pests Act 1949***

The housing standards team can serve Notice where steps should be taken for the destruction of rats or mice on the land or to keep the land free from rats and mice. The team may serve notice on the owner or occupier of the land or property requiring works to clear, proof or treat the land from existing or likely pest infestations.

**17.9 *Caravan Sites and Control of Development Act 1960***

This Act enables the Environmental Health Section to prevent land being used as a caravan site without a license and to ensure the conditions and amenities on any site are provided and maintained in good condition.

**17.10 *Mobile Homes Act 2013***

This Act enables the Council to set and enforce site license conditions and take action to protect tenants against eviction and harassment.

**18. COMPLAINTS AGAINST THE SERVICE**

- 18.1 If any person believes that they have not received fair or consistent treatment as outlined in this Policy, they can access the Councils' Complaints Procedure. The matter will be considered and a decision made as to whether the Enforcement Policy has been breached in this instance and the complainant will be given a reply in writing explaining the decision. This is without prejudice to any formal appeal mechanism.



## PRIVATE SECTOR HOUSING - GENERAL

The general principles which will guide enforcement officers to the appropriate option are set out below.

### 'No Action'

Housing Standards Team has a duty to investigate complaints about deficiencies in dwellings, or alleged statutory nuisance. Where it appears to the officer that the problems have arisen through the lifestyle or actions of the tenant or similar, then advice will be given to the complainant and it may be appropriate that no further action is taken.

### Informal Action

The Housing Act 2004 requires that at least 24 hours notification of intention to enter a dwelling must be served on all interested parties prior to an inspection being carried out to validate any consequent formal action that may be taken. In certain circumstances if the matter is urgent or defeat the object, such as investigating HMO licensing or management offences, immediate access can be justified. This requirement means that landlords would be notified of any enquiries made by tenants and the tenants could be subject to pressure from landlords or even eviction. It is therefore desirable that tenants be afforded the option of receiving informal advice from this team without this pressure to allow them to make informed choices about further actions. This can include cases where condensation and associated mould growth is being caused by the incorrect use of available heating and ventilation.

Tenants are advised prior to visit that should a serious category 1 hazard be discovered during an informal advisory visit that the visiting officer must contact the landlord/owner to request that action be taken

Advice will be given to tenants both verbally and in writing regarding any deficiencies found, responsibilities for remediation and possible consequences of intervention.

If appropriate, and at the tenant's request, the landlord will be notified of any deficiencies within the dwelling and invited to provide details of any actions they may intend to take. The landlord will, if necessary, be informed that the environmental health service retain the option to carry out a formal inspection under the Housing Act 2004.

### Formal Action

Local authorities are obliged to carry out a formal inspection if they have reason to believe that a category 1 hazard, as assessed under the Housing Health and Safety Rating System (HHSRS), is likely to exist in a dwelling. If either initial information, or an informal inspection indicates that a category 1 hazard exists, or if the informal approach has not resulted in the mitigation of deficiencies within a dwelling, the officer will arrange for this formal assessment.

### *Notice of Intention to carry out an inspection.*

The owner, landlord, managing or letting agent, the tenant and other interested persons must be notified of the intention to carry out an inspection of a dwelling at a specified time

and date. Failure to notify relevant persons may invalidate any subsequent formal action under the Housing Act 2004.

#### *Assessment under HHSRS*

Following the assessment of the dwelling under the HHSRS, the officer has a number of options available to them to mitigate any Category 1 (band A-C) or Category 2 (bands D+) Hazards identified. The Housing Act 2004 requires that each option is considered and that the reasons for the use of any one option are explained and justified.

The Council is required to take action where it has identified category 1 hazards and has discretion to take action where category 2 hazards are identified. In general, the Council will take action if high category 2 hazards (bands D & E) are identified, dependent on the class of hazard. However, if only minor deficiencies which score band F or below using the HHSRS are identified in a dwelling, this will not normally result in formal action, as the deficiencies are of low risk.

If category 1 hazards are identified, the landlord, or person responsible for rectifying the deficiencies, will normally be notified that the Housing Standards Team is required to take enforcement action and will be offered the opportunity to comment on works required to mitigate the hazards and specify likely timescales for these works.

The Housing Standards Team charge for the service of Housing Act notices apart from Hazard Awareness Notices. The case officer will notify the relevant person in advance of the likely charges. The charge will be based upon the time and resources used by the Housing Standards Team in identifying the hazards, determining the appropriate action and serving the Notice, but will be a minimum of £150.

The officer will take the appropriate formal action based upon their consideration of the options available under the Housing Act 2004. The contents of any formal notice will take into consideration works already completed and the timescales indicated by the recipient, where they are considered reasonable in the opinion of the officer.

Officers will follow the Environmental Health procedure on serving of formal notices. Officers are responsible for ensuring that their Notices are correctly drafted and will arrange for said Notices to be checked for accuracy by the Team Leader prior to service. Officers will ensure that copies of the Notices are served on all relevant persons.

Failure to comply with the requirement of a Statutory Notice will normally result in prosecution or a civil penalty notice. Some statutory notices may require works-in-default, with costs being recovered from the relevant person.

#### *Emergency Action*

Where Officers are satisfied that a category 1 hazard poses an imminent risk of serious harm to the health or safety of occupants or visitors of premises, emergency measures can be taken. Emergency measures include Emergency Remedial Action or service of an Emergency Prohibition Order.

### Civil Penalties

Civil penalties were introduced through the Housing and Planning Act 2016. Local housing authorities have the power to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The level of civil penalty to be imposed has to be determined on a case-by-case basis up to a maximum of £30,000.

Housing Standards Team will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) Severity of the offence.
- b) Culpability and track record of the offender.
- c) The harm caused to the tenant.
- d) Punishment of the offender.
- e) Deter the offender from repeating the offence.
- f) Deter others from committing similar offences.
- g) Remove any financial benefit the offender may have obtained as a result of committing the offence.

### Rent Repayment Orders

An application for a rent repayment order (RRO) can be made in respect of the following offences:

- Failure to comply with an Improvement Notice (section 30 Housing Act 2004 );
- Failure to comply with a Prohibition Order (section 32 Housing Act 2004);
- Failure to obtain a licence for a licensable HMO (section 72(1) or house (Part 3, section 95(1) Housing Act 2004).
- Breach of a banning order (section 21 Housing and Planning Act 2016);
- Using violence to secure entry to a property (section 6 Criminal Law Act 1977);  
and
- Illegal eviction or harassment of the occupiers of a property (section 1 Protection from Eviction Act 1977).

An application for an RRO is made to the First-Tier Tribunal and can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed above.

Both local housing authorities and tenants have the power to apply for RROs and the maximum amount of rent that can be recovered is capped at 12 months. The Council will assist tenants who are not in receipt of housing benefit or universal credit to apply for an RRO in the circumstances above by providing statements and advice.

Where an application for an RRO is made and the landlord has not been convicted of the offence for which the RRO application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence i.e. A criminal standard of proof is required.

Where a landlord has been convicted of the offence to which the RRO relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

Where a landlord has not been convicted of the offence to which the RRO application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:

- Punishment of the offender;
- Deter the offender from repeating the offence;
- Dissuade others from committing similar offences;
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

### Prosecution

Prosecution will, in general, be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk and not used as a punitive response to minor breaches.

The circumstances where prosecution is appropriate should include one or more of the following:

- Where there is a blatant disregard for the law such that health or safety has been put at risk.
- Where there is a failure to comply in full or in part with the requirements of a statutory notice
- Where a particular contravention has the potential to cause harm.

It will be for the case officer to decide whether prosecution is appropriate in any individual case, but the case will be discussed with the Business Unit Leader of Environmental Health and Building Control prior to referring any case to the Legal Team. The case officer will then produce a case file and briefing note for the Legal Team, who will decide whether the case meets the requirements of the Code of Practice for Crown Prosecutors.

### Works in Default

If there is a breach of an improvement notice under the Housing Act 2004, or some Notices under other legislation, the local authority has the option to carry out works in default and to recover the costs from the recipient of the notice.

This option may be considered when an individual lacks the resources or ability to comply with the Notice, or where concurrent prosecutions are not considered appropriate. Any costs incurred by the local authority will be recovered through sundry debtors, including registering as a charge on the property as necessary.

### Interim Management Orders

Local authorities are under a duty to make an Interim Management Order (IMO) in some circumstances where an HMO or Part 3 house which is required to be licensed but is unlicensed. They also have the power to make IMOs and Special IMOs for other categories of house.

This option will be considered when we are statutorily required to do so or where this will be the most appropriate and cost effective means of improving the health and safety of the occupants.

### Banning Orders

For the most serious offenders, the Council will consider whether to apply for a Banning Order. These were introduced under the Housing and Planning Act 2016 and the provisions came into force on 6 April 2018. A Banning Order bans a person from letting a property in England and/or engaging in letting agency or property management work, if they have been convicted of a banning order offence. The minimum period for a banning order is 12 months but there is no statutory maximum period.

**Enforcement Procedure in respect of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme.

Mid Sussex District Council (the Council) is the enforcing authority for this Order within the district. The authority to enforce the Order shall be delegated to the Business Unit Leader of Environmental Health and Building Control.

The Council can impose a fine of up to £5,000 where it is satisfied, *on the balance of probability*, that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.

Government guidance on the enforcement of the Order states that the expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcing authority is satisfied that there are extenuating circumstances.

The procedure for issuing a fine is as follows;

**Step 1: Notice of Intent**

The Council will give written notice of their intention to impose a penalty. This will set out:

- (i) the reasons for the penalty;
- (ii) the amount of the penalty; and
- (ii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice will be served within 6 months of the date on which the Council has gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate.

The Council may at any time withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

**Step 2: Representations and Objections**

The person whom the notice of intent is served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

**Step 3: Final Notice**

At the end of the 28 day period the Council will decide, having taken into account any representations received, whether to impose the fine.

The Council will consider all representations on their own merit. In particular the following may be considered relevant in deciding the final level of fine issued:

1. Internal failed preventative measures – in cases of national agents that have other branches registered but due to internal processes failing local office is unregistered.
2. Good attitude and cooperation with the Council – in cases where the agent has cooperated fully with the Council in investigating the breach of the Order.
3. Immediate and voluntary remediation – when the breach was brought to the attention of the agent they immediately joined a relevant scheme.
4. No previous history of non-compliance with other housing legislation if this is a first breach of any housing related legislation.
5. Any relevant personal circumstances.
6. Undue financial hardship – if the fine would cause the agent undue financial hardship such that it might not be able to continue to operate.

Following the final consideration of the fine the Council will give at least 28 days for payment to be made. When imposing a fine, the Council will issue a final notice in writing which explains:

- (i) why the fine is being imposed;
- (ii) the amount to be paid;
- (iii) how payment may be made;
- (iv) the consequences of failing to pay;
- (v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

#### **Step 4: Appeals**

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- (i) the decision to impose a fine was based on a factual error or was wrong in law;
- (ii) the amount of the fine is unreasonable; or
- (iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the Council's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

#### **Step 5: Recovery of the penalty**

If the lettings agent or property manager does not pay the fine within the 28 day period the Council will recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the Council's chief finance officer stating that the amount due has not been received by a

date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.



## **Statement of Principles supporting Penalty Charge Notices issued under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### **Regulation 13**

This statement is required under Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) and relates to matters that Mid Sussex District Council (the Council) must have regard to in determining the amount of any penalty charge issued under the Regulation 8 of the same Regulations.

The Regulations allow the Council to issue Penalty Charge Notices where a relevant landlord has failed to take reasonable steps to comply with a remedial notice. Such notices allow 28 days to:

1. Fit one or more smoke alarms in an occupied rented property
2. Fit a carbon monoxide detector to a room with a solid fuel burning combustion appliance
3. Take steps to check that each smoke and carbon monoxide alarm required by Regulations is working correctly at the start of the tenancy.

In determining the amount of a penalty charge the Council takes into account the following principles:-

#### **1. Financial Penalty**

Landlords issued with a penalty charge notice have been given 28 days to comply with statutory provisions that they should already have undertaken. It is not enough to recover the cost of completing the works as this in itself does not deter inaction that puts tenants' lives at risk. The financial penalty should be set at an amount to ensure that those few landlords that fail to comply with the law are sufficiently penalised.

The amount of financial penalty is set at £5,000.

This amount is modified by the mitigating provisions noted below.

#### **2. Mitigating Factors**

The Council agrees to reduce the amount of the financial penalty element of the Penalty Charge in the following circumstances:

##### **a) Early Payment**

Where a relevant landlord issued with a penalty charge notice makes payment within 14 days of the service date, the penalty charge will be reduced by 50%

##### **b) Discretion by Head of Regulatory Services**

A landlord may write to the Head of Regulatory Services within 28 days of the date the Penalty Charge Notice is served requesting a review. Such a request should include such information as appropriate as to why he/she should not be required to pay the Penalty Charge. The Head of Regulatory Services may confirm, vary or withdraw the penalty charge notice.