

Stroud District Council's Private Sector Housing Enforcement Policy

1. Introduction

1.1 This policy applies to non-compliance with housing legislation which protects the health, safety and welfare of; private rented tenants, social housing tenants and owner occupiers.

1.2 Non-compliance in private rented accommodation is usually, but not exclusively, brought to the council's attention by a tenant complaint. The case officer will log details of the complaint and then contact the relevant parties to initiate an investigation.

2. The following sets out what private sector tenants, landlords and owners can expect from the private sector housing enforcement officers at Stroud District Council, when a complaint is received.

2.1 Tenants

- In most circumstances tenants are expected to inform their landlord of any defects within the property in writing and provide a reasonable time for compliance, before registering a complaint with the Council. However, it is accepted that there are circumstances where it would be difficult or inappropriate for a tenant to take this step, for example if the tenant is vulnerable, facing harassment from their landlord or otherwise unable to contact the landlord themselves for valid reasons. In these circumstances, The Council may initiate contact with the landlord directly. Complaints will not usually progress until the landlord has been made aware of the problem by their tenant and given an opportunity to carry out repairs /improvement without the need for further enforcement action by the Council.
- Social housing tenants are expected to raise formal complaints with their landlord in accordance with their Housing Provider's published complaints process. If the complaint is progressing the Council may not take further action until the outcome of that complaint is reached. However, if the complaint is not progressing or has taken an unreasonable amount of time to conclude, then the Council may intervene.
- The Council will provide tenants with at least 24 hours' notice of any intention to enter a property in compliance with section 239 of the Housing Act 2004, before an inspection is carried out, except in circumstances where entry is required under one of the exemptions prescribed under section 239 of the Act.
- The Council will advise tenants in writing of the outcome of an investigations and/or inspection and let the tenant know what action will be taken and any agreement reached with the landlord for remedial work. Copies of any statutory notices served will be provided to all tenants at the time the notice is served.
- Tenants are expected to allow the landlord and/ or any representatives, **reasonable** access to attend to remedial works and that they cooperate with the landlord, their representatives or contractors as appropriate.
- Tenants may be directed to a property agent redress scheme if appropriate, but this will not prevent the Council from taking further action if the tenant wants to pursue their complaint via the Council, and it is appropriate for the Council to take further enforcement.

2.2 Situations where the Council may not provide assistance to a tenant.

Whilst each case will be judged individually, there are some situations where follow up enforcement may not be possible due to the inappropriate behaviours or actions of a tenant. Such situations

would provide a statutory defence to a landlord or property owner that they had a reasonable excuse for failing to comply with the Council's notices or order. There would be little benefit therefore in the Council pursuing cases where there is a realistic prospect that the application of a statutory defence would be successful, and it would not be proportionate or fair to do so. The following actions /behaviours by the tenant will be considered:

- Refusing all access to a landlord or their representatives to inspect and/or carry out remedial works. Evidence would be requested.
- Deliberate damage to a property by the tenant, with reasonable proof being available.
- Repeated failure to keep appointments without reasonable excuse. Evidence may be requested.
- Aggressive behaviour; including verbal or physical abuse to landlord, council staff or contractors.
- The Council advise tenants to pay rent as required in their contract even if they have a dispute with their landlord.

2.3 Landlords (and their appointed representatives)

- Landlords must not let properties in contravention of legal requirements which relate to the health, safety and welfare of tenants. Inexperienced landlords should seek the advice of landlord groups or associations and/or use professional letting agents if they do not have the necessary experience or knowledge required to meet the legal requirements for letting a property.
- The Council will write to landlords to advise when a **formal complaint** has been made to the Council and give at least 24 hours' notice of any intention to enter a property in compliance with section 239 of the Housing Act 2004, except in circumstances where entry is required under one of the exemptions prescribed under section 239 of the Act.
- A Council Officer may visit or contact a tenant and discuss their concerns without informing the landlord, if the tenant only requires advice. If a subsequent complaint was made by the tenant then the formal processes would be followed.
- The Council will advise landlords of its findings in writing and provide an overview of any Housing Health and Safety Rating System assessment formally carried out. Landlords will be advised of any remedial works required to the property to address serious or persistent hazards.
- Landlords must have up-to-date copies that can easily be produced at the request of the Council of all mandatory safety documentation including where applicable; gas safety certificates, electrical safety reports, energy performance certificates. For licensable HMOs additional documents are required in line with the licence conditions and include a Fire Risk Assessment.
- The Council may ask landlords to confirm where a deposit is lodged, and if applicable, require letting agents to provide confirmation of membership of an approved Redress Scheme. A landlord must provide copies of test certificates for equipment on site including portable electrical appliances, fire alarms and other equipment, and provide a copy of tenancy agreement(s) or leases.
- Landlords will be required to provide confirmation that remedial work has been organised and to provide copies of quotes, name of and start date for a contractor, or other documentation as evidence that work has been arranged.

- Statutory notices or orders will be served where appropriate (see statutory action section) which will take into account the proposed remediation and agreed timescales where this has been established.
- Further formal enforcement action after the service of any appropriate notice or order will be conducted in accordance with this document and the corporate enforcement policy.
- Currently we do not charge for the service of notices but if this is introduced at a later date by the Council it will be publicised and attached to this document as an addendum.
- The Council will reinspect or consider other evidence to confirm that all remedial works required have been carried out to a satisfactory standard. A notice or order served cannot be revoked without formal confirmation that all works are completed.

2.4 Owner occupiers

- Owner occupiers are expected to maintain properties they live in to a reasonable standard free of serious health risks, and without causing nuisance to neighbours.
- If a property occupied by an owner is brought to the Council's attention and the condition is thought to present a serious health and safety risk to the occupiers or others living there or visiting, the Council will consider taking appropriate action, including service of a statutory notice or order to reduce or eliminate the risk.
- If eligible, the owner occupier may apply for any loan or grant funding available, and the Council will provide guidance and assistance to help vulnerable individuals improve their property.
- This policy doesn't cover void property. The Council has a separate policy for empty homes.

3.0 Statutory action to deal with poor housing standards - Housing Act 2004

3.1 The main power of the Council to deal with poor housing standards are covered by the Housing Act 2004 part 1. This relates to the enforcement of housing standards and the use of the housing health and safety rating system (HHSRS), a risk assessment tool. The tool scores hazards according to the potential for harm and determines a banding A-G, which relates to a category 1 high risk (A-C) or category 2 (D-G) which denotes medium to low risk.

3.2 Officers are trained and qualified in the use of the HHSRS risk assessment process. They are authorised to investigate, assess, and take further action in relation to HHSRS process. The outcome of the process will inform the officer on the severity of risk, which in turn will dictate the appropriate course of action, as detailed below. Principal Environmental Health Officers are authorised to take enforcement action by the Head of Environmental Health in line with the Council's delegated powers under its constitution.

High risk – category 1 hazards where there is high risk of harm to the occupier (bands A-C)

3.4 The Council has a **legal duty** to take an appropriate course of enforcement action where a category 1 hazard is established following an inspection and assessment of a property, this duty over-rides any other Council enforcement policy.

3.5 However, in undertaking this duty the Council will, wherever possible, consult with the property owner over the nature of remedial works and attempt to agree a realistic timescale for implementing that work. The appropriate course of action must be one of the following, although other options of demolition and clearance may be considered but are not covered in this document.

- Improvement notice
- Hazard awareness notice
- Prohibition order
- Emergency prohibition order
- Emergency remedial action

3.6 Statutory guidance regarding the appropriate use of these enforcement actions will be followed at all times. This also advises when it may be appropriate to suspend actions if circumstances permit, usually where there is no immediate risk, no vulnerable occupant or the risk is mitigated by other factors.

3.7 In most cases, it should be possible for the case officer to communicate with the owner following an inspection over the remediation actions required and agree a timescale for implementing them. However, in emergency cases or where the owner does not engage with the case officer it may be necessary to take action without agreement being reached.

3.8 In all cases the owner will be provided with the statutory appeals process and will be encouraged to contact the Council with any concerns they have. It is possible to vary a notice or order if subsequent issues arise which had not been known or considered prior to the action being taken.

3.9 Upon request, it is possible to extend compliance time for works to be completed when unforeseen matters delay progress. The owner must contact the Council as soon as they become aware of any delay. The case officer may ask for evidence to be provided or a written undertaking that works can be completed within the new timeframe. An extension would not normally be permitted if the works haven't commenced on site, unless there are genuinely compelling reasons. The Council has discretion to refuse an extension of time.

3.10 In some cases, works may be quickly progressed, or even completed, negating the service of any enforcement actions.

3.11 Medium risk - category 2 hazards (band D and E)

Category 2 hazards will be considered for formal action where they fall within one or more of the following criteria;

- Where there is still significant risk to health and safety of the occupant (such hazards are likely to be those rated at band D but not exclusively).
- The defects/disrepair contributing to the hazard are such that if not dealt with in a reasonable amount of time, are likely to deteriorate to an extent that the hazard rating will increase.
- The individual hazards present, though of a minor nature, their cumulative effect is to render the property a serious risk to the health and/or safety of any occupier of the property.

3.12 Low risk - category 2 hazards - bands E, F and G

For hazards categorised as low risk the council will only provide informative guidance to the landlord and tenant. A hazard awareness notice may be served or informal advice, including verbal advice, may be given.

3.13 Cumulative hazards

Enforcement action may also be taken where the individual hazards present, though of a minor nature, their cumulative effect is to render the property a serious risk to the health and/or safety of any occupier of the property.

4.0 Land charges

Notices and orders served must be registered as a local land charge. They will remain as a local land charge until formally revoked by service of a revocation notice by the Council.

5.0 Variation and revocation of order and notices

The Council must revoke notices and orders which have been complied with in compliance with the Housing Act 2004. It is also possible to vary notices where works are part completed, or other changes occur.

6.0 Statutory action to deal with standards in the private rented accommodation other than Part 1 of the Housing Act 2004

6.1 The Council is the enforcing authority for a number of other Regulations imposed on private sector landlords. These cover standards for energy efficiency, smoke and carbon monoxide alarms, electrical safety, and membership of letting agency redress schemes. The following regulations have separate enforcement policies which are attached as the following appendices:

- A - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended)
- B - The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
- C - The Electrical Safety Standards in the Private Rented Sector (England) Regulations (to be superseded by the revised civil penalty enforcement policy if agreed)
- D - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

6.2 The above Regulations lay out specific requirements that all private sector landlords must follow. Failure to comply with any of the above will result in proportionate enforcement action being taken by the Council. There is an expectation that landlords must be familiar with their legal duties under the above Regulations.

7.0 Houses in Multiple Occupation (HMO)

7.1 The Private Sector Housing service is responsible for the licensing of houses in multiple occupation and for ensuring that the Council's approved standards and national licensing conditions are met. The Council's agreed standard conditions for licensing HMOs is attached as Appendix E. Failure to comply with this is an offence under the Housing Act 2004, part 2.

HMO licences applications

7.2 The Council currently only issues licenses for national mandatory licensing, where 5 or more tenants share basic amenities.

7.3 The Council can refuse a licence if the property is not capable of meeting the criteria necessary for a licence to be issued. The Council can refuse a licence also if the licence holder and, or the manager are not considered under the Act, to be "Fit and Proper" to hold the licence. Guidance is provided in the Act.

7.4 Licences are issued for a 5-year period once an application is fully validated, processed, and issued. However, if circumstances arise which cast doubt on the ability of the manager or licence holder to meet the licensing conditions or Council's HMO standards, then this may be reduced to a shorter period, usually 12 months. There will be no reduction in the licence fee for licences issued for a shorter period of time than the usual 5 years.

7.5 If the Council discovers an HMO operating without a licence in contravention of the Act or if an HMO continues to operate after a licence is refused, but still has 5 or more tenants, then the Council will consider if the landlord has a realistic prospect of being able to succeed with a reasonable excuse defence in law. If there is no reasonable excuse then further enforcement options will be considered and the appropriate course of action followed. (See further enforcement options below)

7.6 A Temporary Exemption Notice may be used under section 62 of the Housing Act 2004 if the circumstances are appropriate.

7.7 Invalid applications will be refused, if after 14 days the application can not be validated, due to insufficient or missing documentation or lack of a licensing fee being paid.

HMO Licence Conditions and Management Regulations

7.8 There is an expectation that landlords of all HMOs will comply with the licence conditions and with the applicable Management of Houses in Multiple Occupation (England) Regulations at all times.

7.9 Minor contraventions may be dealt with informally either verbally or in writing. More serious or repeat offences will be considered appropriate for further enforcement action as described in this document. (see further enforcement options)

8.0 Illegal eviction and harassment

8.1 Illegal eviction, threats to evict and activity which is intended to cause harassment of private sector tenants will be treated seriously by the Council. Allegations of harassment will be swiftly investigated to collect evidence from tenants, and landlords will be issued with a first written warning that unlawful eviction or harassment which could lead to eviction will not be tolerated

8.2 In addition to enforcement under the Protection from Eviction Act 1977, for activities that cause harassment and interfere with the tenants' peaceful enjoyment of the property the Council will also consider the use of Community Protection Notices to deal with anti-social behaviour under the Anti-Social Behaviour, Crime and Policing Act 2014.

8.3 If evidence is obtained which suggests on going, sustained harassment then further enforcement action will be pursued. Tenants will be interviewed to obtain a statement and if required an interview under caution will be offered to the landlord.

8.4 We will work with our Housing Advice Team to ensure that tenants are aware of the support available from the Council if they are facing homelessness as a result of illegal eviction or harassment.

9.0 Further Enforcement options

9.1 Non-compliance or breaches of legislation will be escalated in line with the specific legislative areas detailed in this document. Landlords, Owners and Managing agents must comply with notices or orders served subject to any appeal outcome. They must let properties in line with all legal

requirements, comply with Management Regulations for HMOs and follow legal processes to bring a tenancy to an end. We may not consider that further enforcement action is necessary for a minor offence or breach.

9.2 There are a number of potential options for further enforcement:

- Issue a civil penalty
- Issue a warning
- Prosecution
- Rent repayment orders
- Works in default

9.3 For some Regulations detailed in the following paragraphs, issuing a civil penalty is the only enforcement option available.

10.0 Decision making

10.1 SDC officers, where appropriate, will use an enforcement matrix to aid decision making and help determine the most appropriate course of enforcement action to take. The principle of the matrix is to enable a score to be produced, reflective of the seriousness of the offence. Scores are banded and this then recommends the type of action to take. This is to aid officers in decision making but not necessarily the only consideration.

10.2 Prosecutions

The decision to prosecute is delegated to the Head of Environmental Health under the Council's constitution, supported as necessary by the Council's legal service.

The Council will also have regard to the Crown Prosecution Service Code for Crown Prosecutors when deciding whether or not to prosecute an offender.

10.3 Civil penalties

Financial penalties are available for a range of contraventions under the Housing Act and associated legislation. When a relevant offence or breach has been committed the case officer will prepare an infringement report setting out the particulars of the case and that the evidential and public interest tests are met.

10.4 The Council has adopted separate civil penalties policy for the following Regulations which are appended to this policy.

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended)
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations (To be superseded by a new civil penalties policy if agreed by committee)
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

10.5 Civil penalties may also be issued by the Council as an alternative to prosecution for the following offences of the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004)

- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004)
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004)
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

10.6 For the offences listed above and covered under section 126 and schedule 9 of the Housing and Planning Act 2016, the Council has the option to consider issuing a civil penalty up to a maximum of £30,000 as an alternative to prosecution.

10.7 The Council will issue civil penalties in line with its agreed policy and procedure to ensure a fair, proportionate and consistent approach is followed by officers. The agreed policy and procedure is appended to this document.

11.0 Rent repayment orders - Housing and Planning Act 2016

11.1 The Council will inform tenants of their rights to apply for a rent repayment order (RRO) and provide guidance and advice to them, including a statement of fact if requested. Application must be made by the tenant to the First Tier Tribunal.

11.2 The Council may also apply to the First Tier Tribunal for a RRO where a landlord has committed a relevant offence to recover an amount in respect of a relevant award of housing benefit or universal credit paid in respect of rent under the tenancy for up to 12 months. An application for an RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty.

11.3 Relevant offences where a rent repayment order may be made are:

- Illegal eviction or harassment
- Failure to comply with an improvement notice or prohibition order
- Breach of a banning order
Having control or managing an unlicensed HMO or property

12.0 Works in default

12.1 In situations where a landlord or property owner fails to comply with a formal notice requiring works, the Council may undertake works in default for the owner and then recover the costs or place a charge on the property. The costs recovered will include any reasonable charges incurred by the Council in exercising its powers including officers time spent in dealing with all related matters, charged at the applicable hourly rate. The power may be exercised in addition to further enforcement or penalties for non-compliance.

13.0 Banning Orders

For serious offenders, where a landlord has committed one or more offences specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council may apply to the First Tier Tribunal for a banning order that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

31.1 A banning order, if granted, must be for a minimum period of 12 months. There is no statutory maximum period for a banning order.

The Council will generally pursue a banning order for the most serious offenders. It will take into account the seriousness of the offence(s), whether the landlord has committed other banning order offences (or received any civil penalty in relation to a banning order offence) and any history of failing to comply with their obligations or legal responsibilities. It will also take into account other relevant factors, including:

- The harm, or potential harm, caused to the tenant
- The need to punish the offender
- The need to deter the offender from repeating the offence
- The need to deter others from committing similar offences.

14.0 Rogue landlords

14.1 The Housing and Planning Act 2016 part 2 gives the Council additional powers to deal with rogue landlords. This includes:

- A database of rogue landlords and property agents.
- Banning orders
- Civil penalties of up to £30,00 for specific offences.
- Extension of rent repayment orders – include failure to comply with an improvement notice under section 30 of the Housing Act 2024, and illegal eviction or harassment under section 1 of the Protection from Eviction Act.

14.2 The Council will make full use of these powers in line with national guidance to ensure that rogue landlords can not operate in the Stroud District.