



ADUR & WORTHING
COUNCILS

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

1. PURPOSE OF THE POLICY

1.1. The purpose of this Enforcement Policy is to detail the process all officers will use when deciding what action to take when carrying out their statutory duties on behalf of the Private Sector Housing (PSH) team. It should be read with reference to the documents referred to in section 2 below.

1.2. The main areas of work covered by this Enforcement Policy are:

Private Sector Housing Conditions: Acting on intelligence received about housing conditions (including complaints) to include inspections, the service of formal notices and prosecutions where appropriate.

Houses in Multiple Occupation: Identifying houses in multiple occupation (HMOs), ensuring the higher standards of management are applied and implementing the mandatory HMO licensing scheme.

Filthy & Verminous: Engaging with, encouraging, persuading or coercing hoarders or occupiers of filthy or verminous dwellings to clean their properties to prevent smells and insects and reduce the risk of rats or mice.

Statutory nuisance: Requiring owners of poorly maintained or derelict properties to carry out works to prevent damage to neighbouring properties or nuisance to tenants.

Empty Homes: reduce housing need by bringing long-term empty homes back into use. This involves using a combination of grants, loans and enforcement to persuade owners to sell, rent or otherwise make a dwelling a home again.

2. RELATED DOCUMENTS

2.1. Documents related to this Policy include:

- The Code for Crown Prosecutors
- Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
- Police & Criminal Evidence Act 1984 (PACE) and associated Codes
- The Enforcement Concordat
- The Regulators' Code
- Regulation of Investigatory Powers Act 2000
- Legislation and statutory guidance relating to each service area
- Procedures and guidance notes within each team.

3. INTRODUCTION

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. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

3.3. The aim of the Services is to improve the health, safety and wellbeing of our residents, visitors and business community. To help us achieve this we will:-

- Work within the legal framework and apply the law fairly;
- Make the service accessible to all sectors of the community;
- Remain responsive to customer needs;
- Deal with customers with honesty and integrity;
- Work in partnership with groups which represent our customers;
- Use the resources available to the maximum benefit of our customers;
- Train and develop our staff to ensure their effectiveness;
- Treat our customers equally in line with the Equality Policy.

3.3. These objectives will be achieved through guidance, advice and appropriate legal action, including the service of statutory notices, and prosecution.

3.5. The Human Rights Act 1998, which fully came into force on 2nd October 2000 places general obligations on enforcement bodies to ensure fair treatment for all, to prevent any form of prejudice and to provide a right to privacy. This policy reflects the provisions of this Act in general terms as officers we are required to follow agreed policies and procedures and work within our legal powers. Individual team procedures and guidance notes will cover specific areas of our work where particular care must be taken to ensure the Act is followed.

- 3.6. The case officers will ensure that their enforcement actions follow all aspects of good enforcement practice in accordance with the elements of the Enforcement Concordat. The use of enforcement will be proportional to any offence committed, consistent in application (including consistency with other local authorities or enforcement agencies), transparent in its use and appropriate to the circumstances of the particular case in question.
- 3.7. PSH will carry out their enforcement functions in an equitable, practical and consistent manner and to this end are committed to:-
- Drawing up clear standards, setting out the level of service and performance the public and business people can expect to receive;
 - Dealing with the public and business community in an open and honest way;
 - Providing a courteous, efficient and helpful service;
 - Responding promptly and positively to complaints about the service;
 - Ensuring that enforcement action is proportionate to the risks in each case.
- 3.8. 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.
- 3.9. This Policy supports and supplements specific guidance on enforcement action contained in statutory Codes of Practice, Government guidelines, approved industry guides, co-ordinating bodies such as the Better Regulation Delivery Office (BRDO) and other approved sources.

4. RESPONSIBILITIES

- 4.1. The Private Sector Housing Manager (PSH Manager) is responsible for keeping this Enforcement Policy under review and monitoring it. It is recommended a full review is carried out every three years.
- 4.2. Where authorisation levels are specified within the document, those are considered to be the lowest level of seniority at which such action may be authorised.
- 4.3. All officers have individual responsibility for complying with the Enforcement Policy and must use the most appropriate legislation.
- 4.4. For the purposes of the Criminal Procedure and Investigations Act 1996 the officer initiating the case (the case officer) shall perform the function of Disclosure Officer for that case.
- 4.5. For the purposes of the Regulation of Investigatory Powers Act 2000, the Directors and Chief Executive are the Authorising Officers at the Councils for surveillance operations.

- 4.6. Where a shared enforcement role is identified, the PSH team will liaise with other agencies that may have a shared or complementary enforcement role, to prevent any conflict. Such partners include the West Sussex Fire and Rescue Service (WSFRS), Police, Trading Standards, Building Control, Planning, Immigration, etc.
- 4.7. Where premises subject to enforcement action are owned or managed by the local authority, all activities will be undertaken in accordance with procedures for non-local authority premises. In cases where statutory action would normally be taken, the PSH Manager will be informed at the earliest opportunity.
- 4.8. Any departure from the policy must be exceptional, justifiable and fully considered by the PSH Manager having regard to risks to public health, safety and welfare.
- 4.9. Under the Council's constitution and scheme of delegation the decision as to whether a prosecution or caution is appropriate in relevant cases will lie with the Head of Legal, following a review of the case with the case officer.
- 4.10. For the purposes of administering Simple Cautions the Head of Legal shall be designated as the "Cautioning Officer".
- 4.11. The training requirements to achieve and maintain the necessary competence levels for authorised officers will be regularly reviewed by the PSH Manager and training resources will be prioritised accordingly.

5. TRAINING, COMPETENCY AND AUTHORISATION

- 5.1. Only officers authorised by the Head of Wellbeing may undertake enforcement duties. The Head of Wellbeing will only authorise officers when satisfied with their level of qualification, training and experience. Newly appointed or transferred officers will also be assessed by the PSH Manager for competency and referred for training where necessary, in line with the Councils' training policy.
- 5.2. Officers undertaking enforcement duties will be suitably trained and qualified to ensure they are fully competent to undertake their enforcement activities. Qualifications will be based on current government guidance, where applicable. Appropriate training programmes for officers will be set up to achieve the necessary competence. The training requirements to achieve the necessary level of competence will be regularly reviewed by the PSH Manager. Training will be prioritised within available resources.

6. MANAGEMENT SYSTEMS

- 6.1. The Council will maintain a management system to monitor and review the quality and nature of the enforcement activities undertaken in the team in order to demonstrate the effectiveness of the policy with respect to its aims and objectives and to recommend changes and improvements. Issues arising and variations from this policy will be reported through the Private Sector Housing Team Meetings.
- 6.2. The PSH Manager will ensure all staff are trained to ensure they are fully conversant with this policy and arrange retraining and updating when necessary.

7. ENFORCEMENT OPTIONS

- 7.1. 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.
- 7.2. In order to achieve and maintain consistency of enforcement, officers will follow all official guidance and codes of practice.
- 7.3. 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;
- 7.4. 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;
 - To issue a Civil Penalty Notice;
 - To prosecute;
 - Simple caution;
 - Execution of work required by statutory notice where the recipient has not complied (Works in default)
 - Rent Repayment Orders
- 7.5. 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.

7.6. Officers will comply with Codes B, C and E of the Police and Criminal Evidence Act 1984 as it relates to local authority enforcement.

7.7. Enforcement options specific to the PSH function are detailed in Appendix 1-3 below

8. STATUTORY NOTICES

8.1. The statutory notice procedures will in general be used to enforce legislation which relates to risks to health or quality of life.

8.2. Failure to comply with statutory notices will, other than in exceptional circumstances, result in the issuing of a civil penalty notice, prosecution and/or works in default and the Council will seek to recover the costs from the relevant person.

8.3. All statutory notices and intentions to serve a statutory notice will be signed by appropriately trained, experienced and authorised officers. The officer will be satisfied that the contravention is significant and that all appropriate criteria are met. Sufficient evidence will be available to justify the notice, and details of all evidence will be properly recorded to satisfy PACE and CPIA requirements and any other area of relevant legislation.

8.4. Time limits given within notices will be reasonable and in accordance with statutory requirements.

8.5. Other relevant bodies will be informed of the action as necessary, for example tenants and persons with a legal or financial interest in the property, and copies will be forwarded on request.

8.6. Recipients of notices will always be informed in writing of their rights to appeal and these will normally be on the rear of the notice unless otherwise stated. They will also be informed in writing of the consequences of non-compliance.

8.7. Compliance with the notice will be checked as soon as possible after the expiry date of the notice, unless an extended timescale has been agreed. Requests for time extensions to notices will be agreed if the request is reasonable and justifiable. Confirmation of an extension or reason for a rejection of an extension will be put in writing to the applicant and will be dependent on the facts of each case.

9. SIMPLE CAUTIONS

- 9.1. The current guidance is 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.
- 9.2. A prosecution will only take place where it is in the public interest and where 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 may well be an alternative.
- 9.3. In deciding whether to offer a Simple Caution the Full Code Test as set out in the Code for Crown Prosecutions must be applied.
- 9.4. Such cases should be fully considered by the case officer who will present the case to the Head of Legal Services for authority to issue a Simple Caution.
- 9.5. The Cautioning Officer will be the Solicitor to the Council, who is the Head of Legal Services and the cautioning procedure in the Ministry of Justice guidance will be followed.
- 9.6. Where appropriate the issue of a simple caution will be notified to a home authority, originating authority, lead authority or primary authority.
- 9.7. If an offender refuses to accept a formal caution, the delegated officer will refer the matter to the Head of Legal who may pursue a prosecution, taking into account the relevant guidance and the Council's Constitution.

10. CIVIL PENALTY NOTICES

- 10.1. Local housing 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)

10.2. 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

10.3. 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.

11 RENT REPAYMENT ORDERS

- 11.1. 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)).
- 11.2. 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); and
 - Illegal eviction or harassment of the occupiers of a property (section 1 Protection from Eviction Act 1977).
- 11.3. 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
- 11.4. 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.
- 11.5. 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.
- 11.6. 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 a rent repayment order.
- 11.7. 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.

11.8. 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.

11.9. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order 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.

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

11.11. Where a landlord has not been convicted of the offence to which the rent repayment order 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.** Rent repayment orders 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.** Rent repayment orders 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 rent repayment orders 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 rent repayment orders: 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.

11.12. In deciding whether to apply for a rent repayment order, 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:

11.13. Before applying for a rent repayment order, 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 a rent repayment order 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 a rent repayment order until the period specified in the notice of intended proceedings has expired;
- An application for a rent repayment order can be made to the First-tier Tribunal once the notice has been made and the time for representations has passed.

11.14. Where the landlord fails to pay a rent repayment order, 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.

12 PROSECUTION

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

12.2. 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 PSH Manager prior to referring any case to the legal department. The case officer will then produce a case file and briefing note for the Legal department, who will decide whether the case meets the requirements of the Code of Practice for Crown Prosecutors.

12.3. 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 Head of Legal Services.

The Evidential Stage

12.4. 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.

12.5. 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

- 12.6. 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.
- 12.7. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. 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.
- 12.8. There may be circumstances where, as well as prosecution, it will also be appropriate to serve a statutory notice to enforce the remedy.
- 12.9. 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 PSH Manager to discuss any necessary future action.

13. COMPLAINTS AGAINST THE SERVICE

- 13.1. 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.

APPENDIX 1

Private Sector Housing – General

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

'No Action'

Private Sector Housing 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. 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 department 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.

To this end, unless circumstances suggest otherwise, initial inspections of dwellings will normally be made using general powers of entry under the Environmental Protection Act 1990. 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 on 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 are 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 Private Sector Housing 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.

PSH may, at their discretion, charge for the service of certain Notices. If the officer intends to charge for such Notices, they will notify the relevant person in advance. The charge will be based upon the time and resources used by PSH in identifying the hazards, determining the appropriate action and serving the Notice, but will be a minimum of £300.

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 are responsible for ensuring that their Notices are correctly drafted and will arrange for said Notices to be checked for accuracy by another officer 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.

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.

PSH 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 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 a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order 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 rent repayment order 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 rent repayment order 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 PSHM prior to referring any case to the legal department. The case officer will then produce a case file and briefing note for the Legal department, 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.

APPENDIX 2

Private Sector Housing - Empty Properties

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

Empty properties are generally brought to the attention of the Empty Property Officer when they are listed on monthly Council Tax records as being empty for longer than six months. The registered owner of the property will be sent a letter asking for information as to why the property is empty and plans for future use. If there is no response and the property remains on the Council Tax records as empty, then a letter will be sent in month 2 and a final letter, including a requisition for information notice, in month 3.

Properties where no response has been received to these letters will be considered for enforcement options to bring them back into use.

Empty properties, or properties suspected as empty, may also be brought to the attention of the Empty Property Officer by complaints due to their condition and will also be considered for enforcement options to bring them back into use.

In coming to any enforcement decisions consideration will be given to the following factors:

- The length of time that the property has been empty.
- The condition, location and context of the property
- The degree of cooperation and communication from the owner of the property
- Confidence in the intentions of the owner
- The consequences of non-compliance
- The likely effectiveness of the various enforcement options
- Statutory duties contained within the legislation

The enforcement options are:

- To take no action
- To encourage, advise and assist owners
- Enforced Sale Procedure
- Compulsory Purchase Orders
- Empty Property Management Orders

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. However, this escalation may not be appropriate in each case and an intervention at the higher end of the enforcement spectrum may be necessary. The general principles which will guide enforcement officers to the appropriate option are set out below.

'No Action'

National and Regional policies make it clear that minimising the number of long-term empty properties is a priority for local authorities. There are also budgetary penalties where there is a net increase in empty properties, as well as bonuses when the net total decreases. In addition, since such properties are often associated with other environmental or planning issues, 'no action' will only be considered when there is no pragmatic, practical or economic option to return the property into use.

For example, this decision was reached when an owner of an empty property in a 'good area' lived next door and had consciously decided to retain it as empty and maintain the property in good condition. Since they could afford the enhanced council tax and also could resist any enforcement action, which the condition of the property renders unlikely, they would also pay any debts that could be raised against the property, which makes action uneconomic and largely unnecessary.

Encourage, advise and assist owners

The preference is to work with the owner offering advice and assistance, including funding options, with the intention of bringing the property back into use through voluntary actions on the owner's part.

Whatever the situation the Empty Property Officer will identify and contact the owner, talking to them directly where possible and outline the options for their empty property, providing information that may assist them in deciding what to do. The Empty Property Officer will advise and forward relevant information, such as VAT rates, planning consents, availability of grants, the Empty Property Assistance Scheme and the Private Sector Letting Scheme.

The Empty Property Officer will also inform the owner as to any complaints that have been made about the property and whether action may need to be taken against them in respect of build-up of rubbish, vermin, 'nuisance' to adjoining properties, detrimental effects to the local amenity, etc.

Grants and loans may be suitable for charities that may have access to alternative funding streams and can take advantage of an empty homes loan or grant for match-funding. It is also useful for owners who need relatively small injections of cash to bring properties, such as flats within a block, up to habitable condition (i.e. free from category 1 and high category 2 hazards) and also means that the Councils obtain nomination rights for 5 years

Formal Action –

Where all other negotiation has failed we will seek to take the appropriate enforcement action to ensure the property is in a habitable condition and is brought back into occupation.

The enforcement options are:

Enforced Sale Procedure.

Under the section 103 of Law of Property Act 1952, local authorities are allowed to force the sale of a property with a local land charge on it. The local land charge can be engendered by council tax arrears or through the carrying out of works in default by PSH in respect of Notices served under the Environmental Protection Act 1990, the Town and Country Planning Act 1990 and the Housing Act 2004. There is a minimum debt that must be in place before a sale can be forced.

The owner, if known, has to be given the opportunity to repay the debt prior to the sale. The Council does not acquire the property, but it is sold to a third party. Any outstanding charges against the property, including any mortgage are paid following the sale and the money remaining (if any) is put into an account for the owner to claim.

The process is set out in an Enforced Sale Procedure (ESP) which has been adopted by both Councils. Legal Services will take the lead on the ESP, following a report from the EPO

It will be for the Empty Property Officer to decide what level of intervention is appropriate in any individual case, but the decision to proceed with formal action will be taken following agreement with PSHM prior to referring any case to the legal department.

The service or use of any formal notice that will lead to works in default will be in line with the PSH enforcement decision options.

A property has been empty for 10+ years. The owner lives out of district and has failed to engage with the local authority. There are Council Tax arrears and multiple complaints about the condition of the property. In the absence of any communication or cooperation, a Notice under s.215 of the Town and Country Planning Act 1990 was served requiring that the external appearance of the property be improved. Works in default were carried out and the costs registered as a charge against the property. An application was then made to the courts for the enforced sale.

Compulsory Purchase Order (CPO)

A compulsory purchase order (CPO) is made by a local authority but is not effective until it is confirmed, either by the Secretary of State (SoS) and by the council itself. Once confirmed, the CPO gives the local authority the power to take ownership of the property included within the CPO. The power remains available for three years following confirmation.

The test that the SoS applies in deciding if a CPO should be confirmed is that of “a *compelling case in the public interest*”. In the case of an empty house, this test is likely to be met if:

- the property has been empty for at least two years;
- attempts have been made to engage with the owner but this has not resolved the situation; and
- the property is likely to remain unoccupied if there is no change in ownership.

Section 226(1)(a) of the Town and Country Planning Act 1990 (the Planning Act) provides that a local authority can CPO any land and buildings if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land and buildings - provided the development, redevelopment or improvement will contribute to the promotion or improvement of economic, social or environmental well-being. Where the empty home requires improvement, perhaps because of its poor external appearance or because of its poor condition inside, this power is available.

Section 17 of the Housing Act 1985 (the Housing Act) provides that a local authority can acquire a house, or houses, for the provision or improvement of housing accommodation (whether by itself or someone else). If an empty property is in good condition and not in need of improvement, then only the housing power will be available for the CPO.

The ex-owner will be entitled to compensation once the council becomes the owner of the property, which includes the market value of the property (the sale price achieved by the council when the property is sold will be good evidence of this); a basic loss payment of 7.5% of market value; a disturbance payment; and to a refund of the fees he pays a surveyor to negotiate the compensation.

A basic loss payment can be avoided if, at the time of confirmation of the CPO,

- there is a section 215 Planning Act notice in force that has not been complied with, or
- there is a section 11 or 12 Housing Act 2004 notice in force that has not been complied with.

Certain prohibition orders also avoid a basic loss payment and a CPO will only be considered if one of these notices is, or will be, in force.

A budget of £20,000 to £30,000 would be required to cover the non-recoverable CPO costs. (i.e. administrative and legal costs of making the CPO and any basic loss payment, disturbance payment and surveyor's fees) and so is expensive and resource intensive.

The preference will be for enforced sale which will expose the Councils to less financial risk, but could be used for an empty property with a high public or political profile.

Empty Dwelling Management Order (EDMO)

Interim and Final EDMOs were introduced as part of the Housing Act 2004 and involve the local authority taking over management of a property; carrying out works if applicable and then renting the property out. Management costs and any refurbishment costs can be reclaimed from the rental income with any remaining balance going to the owner.

S134 of the 2004 Housing Act indicates the conditions that a Residential Property Tribunal must be satisfied with, before they will consider granting an Interim EDMO:

- Property must have been unoccupied for the last two years;
- Property not likely to be occupied in the near future;
- If an EDMO is made, there is a reasonable chance it will be occupied;

- The EDMO is in the interest of the community and the rights of the relevant proprietor and any third party have been considered
- The Council must have made reasonable efforts to notify the relevant proprietor and ascertain what steps they are taking to secure that the dwelling is occupied
- It (the property) does not fall within a prescribed exception.

The list of properties to which an EDMO cannot be applied includes such properties as:

- Non-residential buildings;
- Properties where only a part, or parts, are unoccupied;
- Those which have been occupied at any time during the last two years;
- Those where the owner is temporarily living away;
- Where the owner has moved out to be cared for, or has moved out to care for someone else;
- Where the owner is a member of the armed forces.

The Council may make a final EDMO to replace an interim EDMO if they consider that, unless a final EDMO is made in respect of the dwelling, the dwelling is likely to become or remain unoccupied, or, where the dwelling is unoccupied, they have taken all such steps as it was appropriate for them to take under the interim EDMO with a view to securing the occupation of the dwelling.

EDMOs may be used for properties similar in profile to those targeted by grants and loans but where the owner would prefer not to be involved in the running of the rental business. There is therefore significant overlap between the Private Sector Lease scheme, the Guaranteed Rent scheme and EDMOs.

The EDMO may be considered where the relevant proprietor cannot be identified and/or if the Council considers it should progress to a Final EDMO, to gain greater control over the tenants that can be placed in a property.

APPENDIX 3

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.

Adur District Council and Worthing Borough Council (the Council) are the enforcing authorities for this Order within their respective areas. The authority to enforce the Order shall be delegated to the Private Sector Housing Manager.

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 enforcement 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
- (iii) 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:

- (i) Internal failed preventative measures – in cases of national agents that have other branches registered but due to internal processes failing local office is unregistered.
- (ii) 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.
- (iii) Immediate and voluntary remediation – when the breach was brought to the attention of the agent they immediately joined a relevant scheme.
- (iv) No previous history of non-compliance with other Housing legislation – if this is a first breach of any housing related legislation.
- (v) Any relevant personal circumstances.
- (vi) 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 Councils 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.