

Private Sector Housing Enforcement Policy

Date – 7 September 2018

1.0 INTRODUCTION

The purpose of this policy is to set out the Private Sector Housing Service's intended approach to bring about compliance with the regulatory and statutory requirements it enforces.

The services we deliver seek to support private sector residents to live in good quality, safe accommodation and help them to maintain and improve property standards.

Effective and well-targeted enforcement is essential in promoting fairness and protection from harm and Harrogate Borough Council will adopt a positive Prevention, Intervention and Enforcement approach to ensure compliance by helping and encouraging Business and the wider community to understand and meet their regulatory duties and by responding proportionately to regulatory issues that we identify.

As an integral part of this policy we will work with businesses and our communities throughout the district for the benefit of residents and the local economy. We recognise that enforcement can be successful only if the policy has the support of both our local communities and local businesses and if we work in partnership with other agencies in providing enforcement services.

As such we will consult on any major changes to this policy.

This Enforcement Policy is the core of our approach to enforcement. It incorporates best practice and sets common principles that we will follow. It describes the range of enforcement activities we use and how we intend to comply with the [Regulators' Code](#). The Regulators' Code provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

We must have regard to the Code when developing policies and operational procedures that guide our regulatory activities. We must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If we conclude, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, we are not bound to follow that provision, but explain the reasons for it.

2.1 A BALANCED APPROACH TO ENFORCEMENT

The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that, legal requirements are met and that everyone acts/operates within the law. It does not just mean taking formal action, such as prosecution, but includes a wide range of actions and measures to make sure that, things are as they should be and giving help or advice. We will generally endeavour to support both businesses and individuals to meet their legal obligations before considering any kind of enforcement action.

We recognise that most business owners (letting agents/landlords etc), their employees and the public want to comply with the law and thereby operate legitimately and responsibly. We will help and advise wherever possible but will take firm action against those who ignore legal requirements or act irresponsibly. To achieve this we will:

- make available information and advice on the law in electronic and printed formats
- publicise enforcement campaigns where appropriate especially for new initiatives and new or changed laws
- produce newsletters and hold an annual event to increase awareness of legal requirements and developments within the sector either alone or in conjunction with a neighbouring local authority
- work with our partner agencies where appropriate to co-ordinate enforcement activities for the benefit of our communities and where a more effective resolution can be achieved
- carry out targeted inspections
- investigate complaints
- carry out surveillance in accordance with relevant legislation and codes of practice
- talk to witnesses and obtain witness statements, where appropriate
- conduct interviews to investigate offences and obtain the facts.

The Council is also signatory to a protocol that establishes joint working arrangements with the North Yorkshire Fire and Rescue Authority, the purpose of which is to deliver the objective of improved fire safety.

Officers will carry out a mix of informal and formal visits and inspections depending on the nature of a request for service.

There is a range of actions we can take where we do find problems, breaches or contraventions:

- give verbal or written guidance
- send a cautionary letter or notice
- serve formal Statutory Notices
- prohibit use of accommodation
- carry out a formal interview under caution
- issue a simple caution
- revoke a license
- issue legal proceedings e.g. prosecutions and injunctions (civil or criminal).

We will take an evidence based approach to determining the priority risks in our areas of responsibility and will allocate resources where they would be most effective in addressing those priority risks. We will consider risk at every stage of our decision making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

Appendix A - sets out a guide to the main pieces of legislation available and their use. It summarises the main housing assessment methodology, and provides information on Housing in Multiple Occupation as well as setting out any new or upcoming legislation.

Guiding Principles:

- **Regulators' Code** – Harrogate Borough Council has adopted the Code. The council is committed to its aims and will abide by the following principles when considering and undertaking enforcement.
- **Openness** - We will provide accessible information and advice on the legislation we enforce, wherever possible in plain language and in languages understood by those affected. We will be open about how we work and why it may be necessary to take enforcement action.
- **Helpfulness** - We believe that prevention is better than cure and we will actively work to advise and assist to achieve compliance with the law. Our staff will be courteous and efficient, identify themselves by name where appropriate, and carry an identity card with a photograph. We will offer a contact point, telephone number and email address for further help.
- **Clarity** - We will work with our customers to help them meet their legal obligations without incurring unnecessary expense. Advice will be put clearly and simply, confirmed in writing on request, explaining what is necessary, why and when, together with the implications of non-compliance. Legal requirements will be clearly distinguished from best practice advice.
- **Consistency** - We will carry out our duties in fair and consistent ways. We have arrangements in place to promote consistency, including liaison with other Local Authorities and agencies e.g. The Police, Health & Safety Executive, Trading Standards, etc., particularly where we may share an enforcement role.
- **Suitable action** - Every case is unique and must be considered on its own facts and merits. When making decisions on the actions we will take, we will always take account of our service standards (see section 4).
- **Human Rights** - We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).
- **Equal Opportunities and Diversity** - We believe in openness and equality in the way we provide services and that every individual is entitled to dignity and respect. When making enforcement decisions we aim to ensure that there will be no discrimination against any individual on the basis of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

3.1 POLICY APPLICATION

This policy is relevant to services in the following service areas:

- Private Sector Housing

Certain services require detailed specific enforcement policies and when this is the case these policies will follow and complement the principles and practice of this Policy. Therefore, detailed policies must be read in conjunction with this policy.

4.0 SERVICE STANDARDS

If officers find breaches of the law they have to choose the most appropriate method of achieving compliance from the range of possible actions available to them.

Action taken will be **proportionate** to the risk to people and property caused by the breach and as far as the law allows will take account of the circumstances of the case and the attitude of the alleged offender.

Emphasis will be given to informal enforcement actions that support the achievement of the council's vision aims and objectives.

Where immediate action is considered necessary, an explanation of why such action is required will, where possible, be given at that time. However, in certain cases, where emergency action is deemed necessary, no notice is required to be given in law. Nevertheless, we will endeavour to give notice, if possible, in such cases.

Where there are rights of appeal against formal action, advice on how to appeal will be clearly set out in writing at the time the action is taken.

All communications will be clear and in plain English and will distinguish between practical advice, best practice and legal requirements. Appropriate translated material will be provided where necessary and practical help provided for people with impaired hearing, vision or other impairment.

You can contact us by;

Telephone 01423 500600

Email: privatehousing@harrogate.gov.uk

By Post: Private Sector Housing, Housing and Property, Harrogate Borough PO Box 787 HG1 9RW

Web: www.harrogate.gov.uk

In person: by appointment only

Enforcement action may be taken by the council alone or in conjunction with other agencies such as the North Yorkshire Fire and Rescue service, Health and Safety Executive, North Yorkshire Trading Standards, the Police, Department of Works and Pension, Inland Revenue etc. We may share information and data on compliance and risk, where the law allows, helping target regulatory resources.

5.1 FORMAL ENFORCEMENT ACTION

This part of our Enforcement Policy sets out how we will deal with any alleged breach of law, which the council is empowered, or duty bound to enforce:

Verbal Warnings and Advice

We may seek to resolve matters informally whenever possible. Accordingly, advice and/or verbal warnings may usually be sufficient in the majority of cases as a means of resolving minor offences and technical infringements that are capable of being sorted out immediately and are unlikely to be repeated. Failure by alleged

offenders to act on verbal warnings or advice may result in more serious enforcement action being taken against them.

Written Warnings and Advice

Where the issue demands a more formal approach than verbal advice, written guidance clearly identifying the infringement involved and giving advice on how to put it right and a deadline by which to do it will be provided. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. The circumstances of each case and the implications of infringements will be taken into account. In some cases the council has a statutory duty to take action and on these occasions formal action will be instigated without first issuing warnings.

Formal Statutory Notices

Notices may be served to require offenders to stop illegal activities immediately to give them reasonable time to remedy a breach. Any time allowed to put things right will be reasonable, but will take into account the implications of the contravention. Statutory Notices may be issued where:

- there is a statutory duty to do so
- there are significant contraventions of legislation
- there is a lack of confidence in the individual or management of a business to respond to an informal approach or this approach has previously failed
- there is a history of non-compliance
- standards are generally poor with little management awareness of statutory requirements
- the consequences of non-compliance could be potentially serious to public health, or cause public nuisance, or be irreversible
- where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating; or
- failure to comply with a statutory notice will usually result in prosecution and/or we may carry out any works in default and recover our cost of doing so.

The council can also charge for the service of certain types of notice and these are detailed in Appendix A.

Simple Caution

A simple caution will only be considered when all the evidential requirements necessary to bring a prosecution are met. The offender must understand the significance of the simple caution and admit to the offence. Any simple caution will follow the criteria laid down in relevant Home Office Guidelines. If a decision to offer a simple caution is rejected by the alleged offender, then a prosecution will normally follow.

Prosecution

The council may prosecute in respect of serious or recurrent breaches of legislation, or where other enforcement actions, such as the service of statutory notices have failed to secure compliance.

Before a prosecution is considered we will have regard to The Code for Crown Prosecutors.

We will only bring a prosecution if

- a) there is a realistic prospect of a conviction (the evidential test) and
- b) a prosecution would be in the public interest (the public interest test).

The Evidential Test

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential test must not proceed, no matter how serious or sensitive it may be.

The Public Interest Test

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

The following will be taken into account;

- the seriousness of the alleged offence
- the general record and approach of the offender
- the ability of any important witnesses and their willingness to co-operate
- the willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- any explanation offered by the alleged offender
- whether there is a strong case to show that 'Best Practicable Means' is being employed
- whether any other action (including simple caution) would be more appropriate or effective
- the views of any complainant and other parties including victims with an interest in a prosecution.

These factors are **NOT** listed in order of significance. The rating of the various factors will vary with each situation under consideration. The decision to prosecute does not preclude injunctions. In exceptional circumstances, contraventions may not warrant any action.

Revocation of a Licence

The council is responsible for issuing certain types of licenses and as such has a role to play in ensuring that appropriate standards are met. Licenses include conditions which require the licence holder to take steps to ensure that a business (e.g. a licensable House in Multiple Occupation) is properly run. Anti-social Behaviour is one of these conditions. Breach of these conditions may lead to a review of the licence which may in turn result in its revocation or amendment.

When considering future licence applications, the council will take previous breaches and enforcement action into account.

Injunctive Action

Injunctive action may be considered where an alleged offender persistently acts in a way that acts against the collective interests of the public or where formal undertakings are ignored.

Works in Default / Remedial action

Some legislation gives power to the council to carry out works itself to achieve compliance, e.g. with a Statutory Notice. These powers will be used in situations where it is clear that the works required will not be carried out, even if reasonable additional time has been allowed, taking account of all the circumstances of each case. We will always seek to recover all costs reasonably incurred in carrying out works in default.

Civil Penalty Notices, Monetary Penalties and Penalty Charges

Civil Penalty Notices, Monetary Penalties or Penalty Charges can be applied under certain legislation where there is a breach in legal requirements.

The Council will normally serve civil penalty notices for relevant Housing Act offences in the first instance. The decision to do so will be based on risks, present and future, to health, safety and welfare.

Decisions relating to civil penalty notices or monetary penalties will be made in line with the Council's policies and/or general principles relating to those specific duties and powers. All decisions will be documented.

Where a penalty is not paid within the prescribed period, legal proceedings will be instigated for non-payment.

The Council has further policies and principles in relation to the:

- Civil penalties issued under the Housing and Planning Act 2016 and
- Financial penalties issued under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These are available on the Council's website.

Anti-social Behaviour

In relation to anti-social behaviour the council acts through the Harrogate and District Community Safety Partnership and its members to reduce anti-social behaviour and the fear of crime.

Referral to another Agency

Subject to the provisions of Data Protection and Human Rights laws information on infringements will be passed to other interested enforcement agencies.

Naming Offenders

The names and trading addresses of businesses or individuals who act in ways that represent significant risk of detriment to communities, particularly the young and vulnerable, may be published. Offenders may also be named if it is felt that by doing so could act as a deterrent within the community to offences of a similar nature. This action will be taken in circumstances where:

- It is in the public interest to do so
- There is no risk of prejudicing legal proceedings or other formal enforcement action

- To do so does not breach Human Rights or Data Protection law or the Children and Young Persons Act 1933.
- Following prosecution

6.0 MANAGEMENT SYSTEMS

We will monitor the quality and nature of enforcement activities undertaken, to ensure, as far as is reasonably practicable, a uniform and consistent approach.

Where local or national co-ordinating bodies exist, we will ensure that wherever possible its enforcement practices are consistent with best practice identified.

A review of enforcement activities may involve any of the following:

- Quality Management Systems
- Monitoring visits by line manager
- Shadowing visits by colleagues
- Peer review
- Monitoring of statutory notices
- Training sessions and workshops on enforcement issues
- Customer satisfaction surveys
- Business forums
- Staff competency

7.0 TRAINING AND APPOINTMENT OF OFFICERS

We will ensure that our officers have the necessary knowledge and skills to support and understand the needs of those they regulate that enables them to choose proportionate and effective approaches. We will also ensure that our officers understand the statutory principles of good regulation and of the Regulators Code, and how we deliver activities in accordance with them.

All officers will be formally authorised by the council to exercise specified powers under relevant statutes.

The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be in writing, which will be shown on request.

The council supports the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills.

8.0 APPEALS

We will provide a timely explanation in writing of any right to representation or right to appeal. This explanation will be in plain English and include practical information on the process involved.

9.0 ACCOUNTABILITY

This document will be reviewed annually. Improvements will be made if there are any changes in legislation or in local needs. We will consult with our existing business forums and other key stakeholders over this policy and any significant changes.

We try hard to provide high quality and efficient services. We aim to get it right first time, every time. But things sometimes go wrong and when this happens, we need to know. We provide a well-publicised effective and timely [complaints procedure](#) which is accessible to businesses, the public, employees and consumer groups. For a copy of the complaints procedure telephone Customer Services on 01423 500600, email us at customerservices@harrogate.gov.uk or complete the feedback form on our website at www.harrogate.gov.uk

We welcome your feedback if you have any comments about this policy please put them in writing to the Head of Housing and Property, PO Box 787 HG1 9RW email directoratesupportspringfield@harrogate.gov.uk

