

# Private Sector Housing Enforcement Policy

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This document is also available in Braille, on tape and in **large print**. If you require it in one of these forms please contact **Bradford 431010**

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# PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

## Aim

The aim of this policy is to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.

The policy is explained in general terms, as it is intended to be applied in a wide range of situations, the approach adopted by the Private Sector Housing Service when carrying out the Council's powers to enforce a wide range of legislation.

The policy is based on the following principles: -

- \* **Consistency:** to ensure that similar issues are dealt with in the same way
- \* **Fairness:** to ensure a fair and even handed approach
- \* **Transparency:** to ensure that the enforcement action taken by the Council is easily understood by individuals, organisations and businesses
- \* **Objectivity:** to ensure that decisions are not influenced by the gender, race, disability, culture, religious or political beliefs, age, sexuality, financial status or any disadvantage of the offender, victim or witness.

The policy has been written with regard to the content of the Government's Enforcement Concordat. The Concordat outlines what individuals and businesses can expect from enforcement officers employed by Local Authorities. The City of Bradford Metropolitan District Council formally adopted the principles of the Enforcement Concordat on June 27<sup>th</sup> 2001.

## **1.0 Introduction**

1.1 One of the priorities for action for Bradford Metropolitan District Council is to ensure good quality healthy housing for all, targeting those that present the greatest risk to health and safety.

In order to achieve this priority the Council: -

- a) Will seek to ensure properties achieve the appropriate standards in co-operation with the owners/agents and tenants by the provision of clear advice, guidance, encouragement and planning of improvements.
- b) Will utilise all appropriate enforcement action to achieve the appropriate standards in properties found to be jeopardising the health, safety or welfare of individuals and will, where legislation allows, make an appropriate charge for doing so.
- c) Will regularly review its policy, standards, schemes and methods of assessing risk and will, in doing so, consider the views of interested parties and individuals. All such policies and standards, etc. will be made freely available.
  
- d) Will seek to carry out its responsibilities efficiently and effectively in a way, which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.
- e) Will ensure that provision is made for interpreting information where individuals have difficulty in understanding English.
- f) Will make arrangements to carry out visits outside of normal office hours where appropriate.

1.2 It is the Council's policy that enforcement action in relation to Private Sector Housing will be related to risk. The policy will be implemented through visits and inspections; all enforcement decisions will be based on risk to health/safety.

1.3 Assessment of risk will be based on current research, legislation and specific guidance.

- 1.4 Action taken by the Council will be appropriate to the risk or hazard identified, having regard to the occupancy and type of property.
- 1.5 In the case of requests for service, the Council would normally expect the tenant of a property to have informed the landlord of any problem and allowed reasonable time for remedial action before contacting the service for assistance.
- 1.6 On completion of the investigation the next course of action shall be determined by reference to Section 3.0 of this Policy document.
- 1.7 The Council's officers will abide by the policy at all times.
- 1.8 The legislation relating to Private Sector Housing is enforced by several enforcement agencies. Where there are shared enforcement roles e.g. with West Yorkshire Fire & Civil Defence Authority, Health & Safety Executive, West Yorkshire Police etc., officers will take advice from the partner organisation, where appropriate, and/or will advise such agencies of any contraventions for which that agency is responsible.
- 1.9 It is recognised that any policy is unlikely to take account of every individual situation. Each case therefore needs to be considered on its merits. This policy will act as the guide for officers. In cases where officers consider that a decision should be made outside this policy, they will first refer the matter to the Director of Regeneration and Housing who will consider all of the information prior to making a decision.

## 2.0 Enforcement Action

In order to achieve and maintain consistency in Private Sector Housing enforcement the Council will use the following range of enforcement options as appropriate: -

No action

Informal Action

Statutory Notices

Formal Caution

Prosecution

Default

Emergency Measures

### 2.1 Informal Action

Informal action will include verbal advice, advisory letters and “Notification of Works Required ” (in respect of contraventions of housing legislation).

Informal action will be considered appropriate in the following circumstances: -

- a) the act or omission is not serious enough to warrant formal action,
- b) from the individual/company’s past history it can be reasonably expected that informal action will achieve compliance,
- c) the consequences of non-compliance will not pose a significant risk to the health and safety of the public.
- d) in instances where action is deemed necessary to remedy breaches of housing legislation “Notification of Works Required” will normally be

given to individuals/companies prior to any formal action being taken. The use of informal action in these circumstances will be related to risk to health/safety.

Any documentation sent to individuals/companies through informal action will: -

- i) indicate the legislation contravened (if appropriate) and the measures to be taken to ensure compliance with any legal requirements
- ii) contain all the information necessary to understand what work is required and why it is necessary
- iii) in the case of informal action taken under housing legislation, include an advisory warning that should it be necessary for the Council to take formal action in respect of the said matter that a charge will be made at a level fixed within the Council's agreed charges, and that the Authority will take steps to recover debts incurred in this way. This warning will also indicate methods by which the debt may be recovered, including the use of rent sequestration.
- iv) give individuals/companies the opportunity to contact the appropriate officer to discuss the matter further.

Officers giving verbal advice will ensure that they clearly differentiate between those items, which are legal requirements, and those, which are recommended as good practice. Where necessary, verbal advice will be confirmed in writing.

## 2.2 Statutory Notices/Orders

The Council will serve statutory notices where they have a statutory responsibility to do so, taking into account the following criteria :-

- a) there are significant contraventions of legislation but prosecution is not appropriate,
- b) where informal action has not achieved the desired effect,
- c) there is a lack of confidence that the individual/company will respond to

an informal approach,

- d) there is a history of non-compliance with informal action,
- e) standards are generally poor with little management awareness of statutory requirements,
- f) the consequences of non-compliance could be potentially serious to the public health,
- g) although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy conditions, which pose an immediate risk to health/safety.

The use of statutory notices will be related to risk to health/safety.

Officers serving statutory notices will be prepared to discuss the works specified with individuals/company representatives and will fully consider the availability and suitability of alternative solutions.

Where a formal notice is served, the method of appealing against the notice (i.e. if you feel that the notice is excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate), what will happen if the notice is not complied with and, where statute dictates, will specify the reasons for the enforcement action being taken.

Failure to comply with a statutory notice will normally result in the instigation of legal proceedings.

The decision whether to take Informal or Formal action should be documented (see Appendix 1).

### 2.3 Formal Cautions

A formal caution is a serious matter. It is recorded on the Central Register of Convictions and may be used to influence any decision whether or not to institute proceedings if the person should offend again. Formal cautions may

also be referred to in subsequent court proceedings.

The Council may offer formal cautions as an alternative to prosecution in order to: -

- a) deal quickly and simply with less serious offences
- b) to divert less serious offences away from the Courts, and
- c) to reduce the chances of repeat offences

The Council will only offer formal cautions where: -

- a) there is evidence of the offender's guilt sufficient to give a realistic prospect of conviction
- b) the offender admits the offence, and
- c) the offender clearly understands the significance of a formal caution and gives informed consent to being cautioned
- d) the use of a formal caution is considered to be in the public interest.

Formal cautions must not be used as a substitute for prosecutions, which would otherwise be defective.

Formal cautions may not be appropriate where it would prevent a Compensation Order from being made through the Courts.

The procedure for deciding whether to prosecute offenders or issue a formal caution (included in Appendix 2) should be followed by officers in making this decision.

The matrix in Appendix 2 should be completed and the recommendation of the officer should be documented. This document should then be passed to the appropriate Private Sector Housing Manager and Principal Officer (P.O.) for their consideration.

The Principal Officer may exercise discretion in reaching a decision to issue a

formal caution or prosecute, even though the results of the matrix may indicate an alternative decision. The P.O. must be able to justify a decision, which is contrary to that indicated by the matrix.

If the decision is taken to prosecute, a copy of the matrix must be placed in the prosecution file so that the advocate can indicate to the Court how the decision was arrived at, if necessary.

Formal cautions will only be administered by those officers listed in Section 3.1 – “Decision Making – Formal Cautions”. The Principal Officer will normally administer the caution.

Formal cautions will only be administered in the Council’s offices except where the offender is elderly, infirm or otherwise vulnerable.

When considering the issuing of a formal caution the Principal Officer may consult Legal Services if necessary.

A central register of cautions issued will be maintained. One copy of each formal caution issued must be sent to the Management Officer within one week of issue. The Management Officer will send a copy of the formal caution to the:

Office of Fair Trading: -  
Central Register of Convictions  
Office of Fair Trading  
Craven House  
40 Uxbridge Road  
London  
W5 2BS

Where an individual/company declines the offer of a formal caution the Council will invariably instigate legal proceedings.

## 2.4 Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequences upon the alleged offender.

The Council will only instigate legal proceedings where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

The decision to prosecute will only be made by those officers listed in Section 3.2 - "Decision Making – Prosecutions".

In making the decision to prosecute the following factors will be considered, in line with the guidance in the Code of Practice for Crown Prosecutors: -

- a) the seriousness of the offence;
  - the risk to health
  - identifiable victims
  - failure to comply with a statutory notice served for a significant breach of legislation
  - failure to comply with statutory management responsibilities resulting in a significant risk to health
  - operating a licensable House in Multiple Occupation (H.M.O) without a licence
  - failure to comply with the conditions attached to a licence issued in respect of a licensable H.M.O
  - disregard for the public health for financial reward
  
- b) the previous history of the landlord/owner or person responsible;
  - offences following a previous history of similar offences
  - failure to respond positively to past warnings
  - failure to comply with statutory notices

- c) the ability of witnesses and their willingness to co-operate;
- d) evidence that the individual or company is concerned to prevent a recurrence of the problem;
- e) whether a prosecution would be in the public interest and the importance of the case,
  - the likely penalty on conviction
  - the offender's age and state of health
  - the offender's attitude to the offence
- f) whether other action, such as issuing a formal caution or the service of a statutory notice would be more effective
- g) any explanation by the individual/company.

In exceptional circumstances the Council will consider prosecution at the same time as the service of a statutory notice.

Any departure from this policy when making a decision with regard to prosecution will require justification and authorisation from a Principal Officer.

The decision whether to prosecute or take an alternative course of action should be documented (see Appendices 1 and 2).

All prosecutions will be brought without unnecessary delay.

## 2.5 Default

The Council will normally only carry out works in default of a statutory notice where

- a) there is an imminent risk to health/safety, such that the consequences of not taking immediate and decisive action would be unacceptable or
- b) statute does not permit prosecution for non-compliance with a statutory notice, e.g. Local Government (Miscellaneous Provisions) Act 1982 section 29, Public Health Act 1936 section 79 or
- c) in the case of Building Act 1984 Section 59, where the Private Sector Housing Manager is satisfied that circumstances are such that default is the best course of action.

In exceptional circumstances, the Council will consider default in addition to prosecution.

## 2.6 Emergency Measures

The Council will only use emergency enforcement powers under housing legislation where there is an imminent risk of serious harm.

In such circumstances the Council will take whatever remedial action it considers necessary to remove an imminent risk of serious harm. This could include taking remedial action in respect of a hazard and the recovery of reasonable expenses or prohibiting the use of all or part of a property.

Such emergency measures will only be taken where the Private Sector Housing Manager is satisfied that the use of emergency powers is the best course of action.

Where emergency measures are taken, the owner of the property or other relevant person will be advised of the method of appeal against the action taken.

### **3.0 Decision Making**

#### **3.1 Formal Cautions**

The following officers are authorised to administer formal cautions: -

The Director of Housing and Regeneration  
Head of Housing Operations (Private Sector)  
Principal Officer (Private Sector Housing)

#### **3.2 Prosecutions**

The following officers may authorise the instigation of legal proceedings subject to the final approval of Legal Services: -

The Director of Housing and Regeneration  
Head of Housing Operations (Private Sector)  
Principal Officer (Private Sector Housing)

The following officers will be consulted as part of the decision making process: -

Private Sector Housing Managers  
The Officer dealing with the case

#### **4.0 Houses In Multiple Occupation ( H.M.O's )**

- 4.1 Housing legislation requires that certain categories of H.M.O must be licensed by the Council.
- 4.2 Properties inspected will be assessed in accordance with the Council's approved standards for H.M.O.'s. These standards are available from the Area Offices and on the Authority's website.
- 4.3 The Council will seek to identify all HMO's in the District and will, in the first instance, assess each property under its approved risk assessment process and identify those that require a licence. It will endeavour to re-assess properties at least once every five years and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements.
- 4.4 The Council will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. However, properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.
- 4.5 The Council will endeavour to inspect all licensed H.M.Os at least once during the licence period for that property. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.
- 4.6 Documentation issued as part of an H.M.O licence will include details of the appeals process.

## **5.0 Harassment and Unlawful Eviction**

- 5.1 Requests for service in connection with alleged harassment and unlawful eviction will be dealt with in accordance with the Council's agreed prioritised response policy.

## APPENDIX 1

### Initial Action Assessment Sheet

Address .....

Date & Officer (initials) ----- S/R Ref. ....

#### Level of Risk

No risk to occupants' health &/or safety	A
Risk to health &/or safety possible but unlikely	B
Potential minor effect to health &/or safety, potential for more serious effect in more vulnerable groups	C
Identified or potential serious effect on health &/or safety *	D

#### Previous History (relates to any formal/informal action taken in the past)

No previous history	A
Some, but acted promptly on informal action	B
Some, not acted promptly on informal action, but promptly on formal action	C
Considerable &/or failure to act promptly on formal action *	D

#### Confidence Rating

(Prior experience or indication from recent contact or if no contact from condition of property)

Highly confident remedial works will be completed promptly & to an acceptable standard	A
--	---

Doubts exist	B
No or little confidence	C
Owner openly demonstrates unwillingness to undertake any action	D

A's/B's only = Informal action, unless justification can be made to Manager

D\* = Formal Action/Service of Notices should usually be taken based solely on either of these circumstances.

Any other circumstances to be discussed with Manager or Officer to justify.

**Summary of action taken** (tick appropriate box)

Informal	<input type="checkbox"/>
Formal	<input type="checkbox"/>
Referred to another agency	<input type="checkbox"/>

## APPENDIX 2

### Deciding whether to Prosecute or offer a Formal Caution

The decision to prosecute or offer a formal caution should be made using the following two-stage process:

<b><u>STAGE 1</u></b>		
<b>CRITERION</b>	<b>PROSECUTE</b>	<b>OFFER CAUTION</b>
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending?	Yes	No
Is the offender willing to prevent a recurrence of the problem?	No	Yes
Would a prosecution be in the public interest?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes

Ring the appropriate response to each criterion and total the number of rings in each column. The decision will be influenced by the total number of rings.

<b><u>STAGE 2</u></b>		
Is the use of a formal caution appropriate given the views, circumstances and any action taken by the victim	Yes	No

#### Recommendation of Investigating Officer

- **Formal Caution/Prosecution**

Signed \_\_\_\_\_ Date: \_\_\_\_\_

- **Agree/Disagree (PSH Manager)**

**Signed** \_\_\_\_\_ **Date:**

**Decision of Principal Officer**

\_\_\_\_\_

**Signed** \_\_\_\_\_ **Date:**

\* Delete as applicable