

Housing Standards Team: Enforcement Policy for HHSRS.

This should be read in conjunction with:

- The Housing Health and Safety Rating System Enforcement Guidance www.communities.gov.uk
- Lancaster City Council, Health and Strategic Housing: Enforcement Policy
- Investigation of property conditions: Lancaster City Council

Introduction

The aims and objectives of the service are to:

- Improve the standards of homes in the private sector
- To assess local housing conditions
- To reduce the number of properties with serious risks to health and safety
- To reduce the number of vulnerable households living in non-decent homes
- To improve the energy efficiency and warmth of homes and to help reduce fuel poverty
- To improve standards in private rented accommodation
- To improve the standards in HMO's (houses in multiple occupation)
- To work closely with private sector landlords towards improving conditions and the standard of management of private rented housing

The Private Sector Housing team works **reactively** and **proactively** to achieve these in the following ways.

Reactively the service will respond to:

- Private sector tenants who contact the Council with complaints about disrepair or poor conditions within their home.
- Complaints about properties that may be causing problems for neighbouring properties.
- Enquiries from owner-occupiers or private tenants and landlords who would like advice about housing conditions.
- Enquiries for advice about the legal minimum housing standards, particularly HMOs (houses in multiple occupation)

Proactively the service will:

- Identify the general types and conditions of the private sector housing stock by carrying out surveys of the district
- Operate a risk assessment process to identify the risks in HMOs.
- Operate a programme of inspections of higher risk HMOs
- Take part in forums for landlords about the standards required for letting properties.

Enforcement Options

In exercising their duties and other functions, officers will seek to do so in a firm but fair, open and consistent and helpful way. Any enforcement action will be compliant with relevant legislation and guidelines in line with the principles of good enforcement outlined in the main enforcement policy. The policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing

and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution, but includes for example, the inspection of premises for the purpose of checking compliance with legislation and the provision of advice.

This enforcement policy seeks to support the Council's corporate aims, objectives and strategies with respect to private sector housing, and 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 Regulator's Compliance Code.

The various options are detailed below:

Improvement notice – this notice would normally be used to deal with Category 1 hazards identified during an inspection. Improvement notices can also include Category 2 hazards, either in their own right or together with Category 1 hazards, if such an action is considered appropriate.

You must indicate the length of time you are allowing for the works to commence and also the length of time for completion. An additional set of 'start by' and 'complete by' time periods have been provided if differential time periods for dealing with different hazards is being proposed. The time periods being permitted should be stated clearly in Schedule 2 of the notice.

A notice cannot require remedial works to start within **28 days** of the service of the notice.

Suspended Improvement notice - there may be occasions when the use of a Suspended Improvement notice may be considered appropriate. For instance, if you are dealing with a co-operative landlord you may wish to include items on an Improvement notice but suspend the enforcement of the notice for a defined period to allow him time to comply with the terms of the notice. The suspension period must be clearly stated in the notice. This notice will be upgraded to a full Improvement notice if the notice is not complied with during the period it was suspended.

Hazard Awareness notice – this notice can be used to deal with either Category 1 or 2 hazards, or both, but is neither enforceable nor capable of being registered as a Local Land Charge against the property. The use of such notices is therefore limited and serious consideration should be given to the value of such a notice before recommending this course of action.

Prohibition Order – this order can be used to deal with Category 1 and 2 hazards by prohibiting part or all of the premises for some or all purposes or occupation by particular numbers or descriptions of people. Such an order may be appropriate where conditions pose a serious threat to health and safety where remedial action is unreasonable or impractical due to cost or other reasons e.g. listed building. The effect is the same as a Closing Order or a Direction.

Suspended Prohibition Order – there may be occasions when the use of a Suspended Prohibition Order may be appropriate e.g. where the current occupiers are not members of a vulnerable group.

Emergency Prohibition Order – this order can only be used where a Category 1 hazard exists and there is an imminent risk of serious harm. It cannot be used on premises that are the subject of an interim or final management order. It can be used

to prevent occupation of all or part of premises and takes immediate effect on the day it is served.

Emergency Remedial Action - this action can only be used where a Category 1 hazard exists and there is an imminent risk of serious harm. The action is whatever remedial action you consider necessary to remove the risk. You must serve a notice within **7 days** of taking the emergency remedial action.

HMO Overcrowding notice – replaces the provision for dealing with overcrowding in HMO's previously contained in section 358 of the Housing Act 1985. Before serving such a notice you must serve Notice of Intention to serve an Overcrowding notice on the owner, manager or person having control at least 7 days before serving the full notice to allow them the opportunity to make representations. Every occupier of the HMO should be informed that a notice has been served.

Interim Management Order (IMO) – there is a duty on the local authority to make an IMO in respect of a licensable property which is not licensed (including where the licence has been refused or revoked) where it is satisfied that there is no reasonable prospect of the property being licensed in the near future or the health & safety of the occupants or neighbours is threatened. See sections 101 to 112 of the Act for further information.

Final Management Order (FMO)- there is a duty on the local authority to make a FMO where, on expiry of an IMO, the property is still required to be licensed but the local authority considers it is unable to grant a licence. See sections 113 to 123 of the Act for further information.

N.B. There is a requirement to consider the most appropriate course of action when dealing with a property and this means that demolition and clearance have to be considered. However, it is extremely unlikely that this action would ever be used.

Where time limits have to be imposed on notices/orders ensure that they are indicated alongside the choice of action being recommended.

Justification for action

Having chosen the course of action you wish to take, you must provide a justification for why you have chosen that option and why you discounted the others. In the case of informal action this should take the form of a file note, or in the case of notices it will be the Statement of Reasons.

Action on Category 1 Hazards.

The Act puts authorities under a general duty to take appropriate action in relation to a category 1 hazard. Where they have a general duty to act, they must take the most appropriate of the following courses of action:

- Serve an improvement notice in accordance with section 11
- Make a prohibition order in accordance with section 20
- Serve a hazard awareness notice in accordance with section 28
- Take emergency remedial action under section 40 or make an emergency prohibition order under section 43
- Make a demolition order under section 265 of the Housing Act 1985 as amended:

- Declare a clearance area by virtue of section 289 of the 1989 Act as amended.

Authorities cannot simultaneously take more than one of these actions – for example make a prohibition order and serve an improvement notices dealing with the same hazard on the same premises. However, the authority can take a different course of action, or the same course again, if the action already taken has not proved satisfactory. Emergency measures are the exception.

Action on Category 2 Hazards.

Authorities have similar powers to deal with category 2 hazards, but it is a discretionary power, not a duty.

Emergency measures cannot be used in respect of category 2 hazards and authorities cannot make a demolition order, or declare a clearance area in response to a category 2 hazard.

Lancaster City Council's policy for category 2 hazards.

In general the Council will not take action on category 2 hazards where they score below band D but it may be considered in the following circumstances

Where the hazard is rating at band D in the following priority areas:

- Fire
- Excess cold
- Slips, trips and falls

Multiple Hazards.

Properties may contain a number of more modestly rated hazards which appear to create a more serious situation when looked at together. The hazards may not combine in any measureable way, but the situation in the property may be considered unsatisfactory because the occupants encounter one hazard after another as they move around.

In such a case, category 2 hazards within the bands D – G should be actioned.

Deterioration over time.

Since a judgement is made of the likelihood of harm over the next 12 months, action should be taken where an inspector considers that any category 2 hazard is likely to become a category 1 hazard within the next 12 months.

Vulnerable People

Where certain vulnerable groups occupy the premises and there is a Category 2 hazard in the scoring band D to F. Action would be considered because of the greater risk of certain hazards such as fire occurring.

Charging for Enforcement.

The Housing (Fitness Enforcement Procedures) Order 1996 allowed Local Authorities to charge for enforcement notices. The maximum charge was set at £300 per notice.

Section 49, Housing Act 2004 allows local authorities the power to charge for certain enforcement action. The local authority may make such reasonable charges as they consider appropriate as a means of recovering certain administrative and other costs.

A local authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in:

- Serving an improvement notice
- Making a prohibition order
- Serving a hazard awareness notice
- Taking emergency remedial action
- Making an emergency prohibition order
- Making a demolition order.

The expenses are those incurred in:

In the case of an improvement or hazard awareness notice:

- Determining whether to serve a notice
- Identifying any action to be specified in the notice
- Serving the notice

In the case of emergency remedial action

- Determining whether to take such action
- Serving the notice required

In the case of a prohibition order, emergency prohibition order or demolition order

- Determining whether to make the order
- Serving copies of the order on a person as owners of the premises.

There is currently no maximum laid down in the legislation, but there is provision for the national authority to set a limit if they feel it necessary.

Calculation of Charges.

A calculation should be made based on the following using up to date hourly rates available from the Finance Service.

Time spent : Technical officer
 Administrative Officer
 Principal Officer

Other expenses: For example: electrical test, structural survey.

The maximum charge per notice is £300.

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Appeals:

Where an RPT allows an appeal against the underlying notice or order, it may reduce, quash or require the repayment of any charge under this section.

The owner/landlord can appeal to the Lands Tribunal. If no appeal is brought, the demand becomes operative at the end of 21 days following service of order/notice.

The local authority will register a land charge on the property. For the purposes of enforcing the charge the authority have the same powers and remedies under the Law of Property Act 1925, and otherwise as if they were mortgages by deed having power of sale and lease, of accepting surrenders of leases and of appointing a receiver.

Partnership Working:

Gas Safety: Concerns over gas safety should be referred to the HSE. Please follow procedure note on gas safety.

Energy Performance Certificates: If a property is found not to have an EPC and has been rented in the last 5 months, then refer the property details and a copy of the tenancy agreement to Trading Standards at Lancashire County Council. Procedure note : energy performance certificates.

Fire Safety: Lancaster City Council and Lancashire Fire and Rescue Services have signed up to a joint working protocol.