

Housing Enforcement Policy

2021



Introduction

The Council is the statutory Strategic Housing Authority and therefore has the responsibility for ensuring all housing in the Borough, irrespective of tenure, meets the requirements of the Housing Act 2004 and other relevant legislation. Having high quality housing stock is fundamental to the quality of life and health and wellbeing of people and families in Chorley.

This policy sets out Chorley Council's approach to its housing standards compliance and enforcement activities in relation to private sector housing conditions, including the owner-occupied, private rented and social rented sectors of the housing market.

Chorley Council are committed to improving standards within the housing sector, ensuring that landlords are aware of the standard of property they should be offering, and that all properties are well managed, properly, maintained, habitable and safe.

It sets out the general principles the Council will follow in relation to regulation and enforcement of the Housing Act 2004 and other housing related legislation. It describes what property owners and tenants can expect if enforcement action is warranted and the circumstances that may lead to prosecution for non-compliance with legislation.

The Council has had regard to the Regulators Compliance Code and the Enforcement Concordat in developing this enforcement policy.

The Council expect landlords to comply with the law and proactively manage their properties to ensure that the health and welfare of tenants is protected. Where individuals or companies are failing in their responsibilities and duties, the Council will take appropriate action.

The Council will provide advice and guidance to assist landlords in complying with their legal requirements to keep tenants safe and healthy. The council will seek to help with opportunities to develop their knowledge and understanding, which should reduce the risk of enforcement action being taken.

Contents

1.0 Policy Aims and Objectives	4
1.1 Aims	4
1.2 Objectives	4
2.0 Legislation	5
2.1 Enforcement Options	5
2.2 Remedial Actions	5
2.3 Powers on Entry.....	6
2.4 Powers to Require Documents.....	6
2.5 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.....	6
2.6 Housing Act 1985 (as amended).....	6
2.7 Local Government (Miscellaneous Provisions) Act 1976	7
2.8 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	7
2.9 Remedial Work	7
2.10 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014	7
3.0 Houses in Multiple Occupation (HMO's)	9
3.1 Additional Licensing	9
3.2 Selective Licensing	9
3.3 Management Order	9
3.4 Variation of licences	10
3.5 Revocation of licences	10
3.6 Temporary Exemption Notice	10
3.7 Licence Appeals	10
3.8 Public Registers.....	10
4.0 General Enforcement Policies and Principles.....	11
4.1 The Regulators' Compliance Code.....	11
4.2 Informal actions.....	11
4.2 Formal Action	11
4.3 Charging for enforcement activity.....	12
4.4 Work in Default	12
4.5 Recovering Costs	12
4.6 Rent Repayment Orders	13
4.7 Cautions	13
4.8 Prosecution.....	14
4.9 Working with Other Regulatory Bodies.....	14

1.0 Policy Aims and Objectives

1.1 Aims

- To protect public health and safety from housing related standards issues
- To support homeowners in meeting the required housing standards in accordance with the principle legislation
- To improve the overall standards of the housing stock across the borough
- To ensure a consistent a balanced approach when making enforcement decisions
- To assist and support owners and those who are responsible for the upkeep and maintenance of their homes.
- To target assistance to tackle issues where it is most needed
- To explain the legal responsibilities, principles and priorities the Council will follow when enforcing legislation in relation to housing standards
- To increase the public confidence in the private rented sector
- To ensure the Council meets its statutory duties as a public authority

1.2 Objectives

- To ensure that when brought to the Council's attention, tenants of a private landlord or registered social landlord live in homes free from hazards that pose risks to their health and welfare
- To ensure that satisfactory management of all rented properties including houses in multiple occupation (HMO's)
- To ensure letting and management businesses are members of a Government registered Redress Scheme
- To ensure all HMO's which require mandatory licensing are licensed when require, and that licensing conditions are met and the properties are safe.
- To work with Lancashire Fire and Rescue Service to ensure satisfactory means of escape and means of detection and alarm are provided in rented accommodation.
- In serious cases, to support owner occupiers who are living in homes which could be detrimental to their health and wellbeing.

2.0 Legislation

The Housing Act 2004 is the significant piece of legislation enforced by the Environmental Health Team in relation to housing standards. The Act together with regulations made under it, prescribes the Housing Health and Safety rating System (HHSRS) as the means by which Local Authorities assess housing conditions and decide on the action to be taken to deal with poor housing.

The HHSRS is a risk based assessment method which looks at how housing conditions effect the health of occupants. 29 hazards are assessed and scored for their severity. The scores for each hazard are ranked into Bands. Hazards falling into Bands A-C are more serious, and are classed as Category 1 hazards. Less serious hazards fall into bands D to J and are classified as Category 2 hazards.

The scoring is based on the risk posed to the most vulnerable potential occupant of the property over a 12 month period. In determining what action to take the Council will not only consider the score but will also take account of the duty to act, the view of the occupiers and the presence of other hazards along with any history of the relevant landlord.

The Council must take appropriate action in respect to Category 1 hazards and may do so in relation to Category 2 hazards. Generally appropriate action will be undertaken on high Category 2 hazards, i.e. those scoring bandings D & E. While action on lower Category 2 hazards will generally be considered when Category 1 and high category 2 hazards exist.

It is still permissible to take informal action unless there are indicators to the contrary such as a previous history of non-compliance or where it is known that the person responsible for the premises has been aware of the hazard and has not taken any remedial action. Informal action will be replaced by a statutory notice if at any time it appears that satisfactory progress to reduce or remove the hazard(s) is not being made.

The Council will liaise with Lancashire Fire and Rescue Services in relation to fire safety within all properties to ensure satisfactory means of escape and means of detection and alarm are provided in rented accommodation, specifically when considering enforcement action.

2.1 Enforcement Options

The statutory notices for category 1 hazards can include:

- Improvement Notice
- Prohibition Order
- Hazard Awareness Notice
- Emergency Remedial Action
- Emergency Prohibition Order
- Demolition Order
- Declaration of a Clearance Area

The statutory notices for category 2 hazards can include:

- Hazard Awareness Notice
- Improvement Notice
- Prohibition Order

2.2 Remedial Actions

As a minimum, category 1 hazards should be reduced to category 2 hazards assessed below a band F. Regard will be had to the extent of the work that is reasonable in order to reduce the hazard(s) significantly without incurring excessive costs.

Short term fixes should be avoided wherever possible, the works should be substantial and specified to be effective for a minimum of five years.

2.3 Powers on Entry

Authorised Officers have powers of entry to carry out a survey and examination of any residential premises to determine whether hazards exist and the action required. Wherever possible occupiers and owners will be given at least 24 hours' notice, usually in writing of an intended inspection. It is a criminal offence to obstruct an Authorised Officer from undertaking their duty.

If entry to a property is refused the Council will consider applying to the Magistrates Court for a Warrant to authorise entry especially where the Council believe serious hazards exist at the property.

2.4 Powers to Require Documents

Section 235 of the Act allows the Council to require documents from a person to assist the Council undertaking their duties in relation to the Act of for the purpose of investigating whether any offence has been committed.

2.5 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The regulations require private rented sector landlords, to have:

1. At least one smoke alarm installed on every storey of their rental property which is used as living accommodation.
2. A carbon monoxide alarm in any room used as living accommodation where solid fuel is used.
3. The landlord must make sure the alarms are in working order at the start of each new tenancy.

2.6 Housing Act 1985 (as amended)

Section 265 - Power to make Demolition Order

A demolition order is an option for the Council to use to deal with the existence of Category 1 hazards on a residential premises. A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly. Should the Council be required to demolish the property, and the demolition leaves an adjacent terrace property party wall exposed, then the Council will construct a new gable wall and will recover the cost from any compensation monies owing to the owner.

Section 289 - Declaration of clearance area

A clearance area is an area that is to be cleared of all buildings. Where Category 1 hazards exist on a residential premises, the Council can declare a clearance area. If this is chosen as the most appropriate enforcement action. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.

Section 324 – Overcrowding

A property is overcrowded when the number of persons sleeping in the dwelling contravenes either the specified room or space standard. It is an offence for either an occupier or landlord to cause or permit overcrowding. The Council can prosecute the person causing such an offence. Where a dwelling is found to be overcrowded the Council may serve notice on the occupier, in writing requiring him to abate the overcrowding within 14 days from the date of service of notice.

2.7 Local Government (Miscellaneous Provisions) Act 1976

Section 16 - Requisition for Information

When the Council need to obtain information about a property in respect of which we are proposing to take enforcement action we will serve a requisition for information on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

It will always indicate the Act and section of the Act that it is proposing to enforce. Generally speaking a Requisition for Information is served at an early stage to ensure that it is corresponding with the correct person(s) but where the Council feel that urgent enforcement action is necessary it may be served at the same time as a formal Notice.

2.8 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Landlords must have the electrical installations in their properties inspected and tested by a person who is “qualified and competent”, at least every five years. Landlords have to provide a copy of the electrical safety report to their tenants, and to their local authority if requested.

Under the regulations, they must:

- Ensure that national standards for electrical safety are met, which are set out in the 18th edition of the ‘Wiring Regulations’.
- Ensure that electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every five years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test, new tenants before they move into the premises and any prospective tenant within 28 days of receiving a request for the report.
- Supply the local authority with a copy of this report within seven days of receiving a request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion.

2.9 Remedial Work

If the report shows that remedial work or further investigation is required, as set out above, landlords must complete this work within 28 days or any shorter period if specified as necessary in the report. Landlords must then provide written confirmation that the work has been carried out to their tenant and to the local authority within 28 days. Breaches of the regulations could result in financial penalties of up to £30,000.

2.10 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

It is a legal requirement for all letting’s agents and property managers in England to join one of three Government-approved redress schemes.

Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This requirement will

mean that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received. Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards. The requirement is enforced by the Council who can impose a fine of up to £5,000 where an agent or property manager who should have joined a scheme has not done so.

DRAFT

3.0 Houses in Multiple Occupation (HMO's)

Sections 254-259 of the Housing Act defines what is considered a HMO, a building or part of a building which:

- Is occupied by more than two households, in which amenities are shared
- Is occupied by more than two households which is a converted building which does not comprise of self-contained flats
- Is a building comprises of converted self-contained flats which do not meet the standards required by the 1991 Building Regulations.

The Licensing Of Houses In Multiple Occupation (Prescribed Description) (England) Order 2018 requires certain mandatory licensing of HMO's by the local authority. Mandatory licensing applies to a property of five or more occupants which consists of two or more households, this legislation removed the requirement for a property to have three or more storey in October 2018.

The Act places the following duties on local authorities;

- To effectively implement a licensing regime – a regime is in place and requires the owner of a licensable HMO to apply for a license.
- To determine licence applications within a reasonable time – the Council will work towards determining all HMO licence applications within 90 days of a valid application being received. To be valid the application must:
 - Be fully completed with all required signatures and dates
 - Have all associated documentation attached e.g. gas safety certificates, electrical certificates
 - Payment of the correct fee
 - A plan of the property
 - Any other information requested by the Council to assist in determining the application

If the above is not received within 90 days the application will be determined as invalid.

Mandatory licenses last for a period of 5 years from the date of issue. Where non-compliance with the Licensing conditions has been identified a number of enforcement options are available to ensure risks to the health and safety of the occupants are reduced to acceptable levels.

3.1 Additional Licensing

Section 56 of The Act permits Council's to extend the licensing of HMO's beyond the scope of the mandatory licensing regime. The requirement for additional licensing will be reviewed individually for each application.

3.2 Selective Licensing

There are currently no selective licensing areas within Chorley. The Council may in the future declare areas of the Borough as selective licensing designation areas. A license will be required for each rented dwelling within these areas.

3.3 Management Order

The Local Authority may use Management Orders to take over the control of problematic properties:

- When there is no reasonable prospect of the property being licenced
- To protect the health, safety or welfare of the tenants
- To protect the health, safety or welfare of other occupiers or landowners in the neighbourhood of the property.

3.4 Variation of licences

The Council can vary the terms of a licence with or without the agreement of the licence holder if the circumstances regarding the relevant HMO or other property have changed.

3.5 Revocation of licences

The Council may have to revoke a licence. The grounds for revoking a licence include:

- A request of revocation from the owner
- Where the Council believes that the licence holder is no longer a fit and proper person
- As a result of the number of occupants or other current standards that apply the HMO would not have been licensable under its current conditions.

3.6 Temporary Exemption Notice

The Council may serve a temporary exemption notice where a person who is required to be licensed notifies the Council that they propose to take steps to ensure the property is no longer required to be licensed. The notice is served on this person and exempts that property from being licensed for a period of 3 months.

In exceptional circumstances the Council may serve a second temporary exemption notice that lasts a further 3 months. No further notice can be served after the expiry of the second.

The Council can refuse to serve a temporary exemption notice which allows a right of appeal. Such circumstances where the Council may refuse to serve a temporary exemption notice is where the owner has failed to supply clear evidence showing that they are taking steps to exempt the HMO or other property from the criteria for licensing.

3.7 Licence Appeals

The applicant or any relevant person may appeal to the First Tier of the Lands Tribunal against a decision by the Council to:

- Refuse or grant a licence
- Grant a licence
- To vary or revoke a licence
- To refuse to vary or revoke a licence.

3.8 Public Registers

Section 232 of the Housing Act 2004 requires every housing authority to establish and maintain a register of:

- all licenses granted under Part 2 and 3 of the Act (HMO and selective licensing);
- all temporary exemption notices served and
- all management orders made.

The register may be in such a format as the authority consider necessary subject to requirements prescribed in regulations.

4.0 General Enforcement Policies and Principles

4.1 The Regulators' Compliance Code

The Council are required by the Legislative and Regulatory Reform Act 2006, to have regard to The Regulators' Compliance Code.

This Enforcement Policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement, thereby improving regulatory outcomes without imposing unnecessary burdens upon property owners and occupiers. Any departures from the Code will be properly reasoned, documented and based upon material evidence.

The Code does not however apply to actions under Part 1 of the Housing Act 2004 relating to the HHSRS. Actions under Part 1 will therefore continue to be subject to the principles of the Enforcement Concordat.

4.2 Informal actions

Where applicable the council will ensure to exhaust all informal actions in order to support a property owner in achieving improved housing standards and compliance with the relevant legislative.

We will provide advice on appropriate housing standards, legislation, and legal procedures to property owners. Advice and guidance is an essential part of the work that we do to raise housing standards. The following methods will be used to provide advice:

- The posting of information on the Council's website,
- Verbal advice,
- Written advice, guidance, information leaflets, dissemination of official good practice guidance,
- Ensuring officers undertaking Housing Inspections are appropriately qualified, trained and receive adequate updates of private sector housing enforcement matters,
- Obtaining information on grants, national funding schemes and local funding arrangements available.

When considering formal action consideration will be given to the track record (if any) of the person (or company). Officers will consider whether any enforcement notices have had to be served in the past, the recipient's response to them and the ability and willingness of the recipient to keep to agreed timetables of work.

There are cases where informal action is not applicable on occasion where the risk posed by the hazards identified will be so great that emergency works will be required.

4.2 Formal Action

Formal action involves the serving of enforcement notices and orders. Most notices and orders served require the recipient of the notice or order to commence and complete specified works within the specified time limits.

The decision regarding when to serve a notice or order depends upon whether there is a duty or a power to take such action and will consider the following:

- Where the pre-enforcement action has not resulted in compliance with the legislation,
- There is a lack of confidence that the recipient of the notice or order will comply,

- There is a history of non-compliance,
- The consequences of non-compliance have a serious risk of harm to the health, safety or welfare of the public.
- The owner/person having control is unknown or unable to be contacted,
- The owner/person having control is incapable of undertaking the required works (Usually owner-occupied property).

All notices and orders have notes with them that explain the effect and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the notice or order and the reason for the service.

Statutory notices and orders are legal documents. Once served failure to comply with them has serious implications, normally resulting in one or more of the following sanctions. Any extensions of time limits for compliance with a statutory notice or order, once served must be justified, recorded and confirmed in writing to all recipients of the notice or order.

4.3 Charging for enforcement activity

Section 49 of the 'Act' allows for Council's to make a charge for certain enforcement activities to recover the costs involved in those actions. In line with the requirements of this section of the act the Council will generally make a charge when we:-

- Serve an improvement notice
- Make a prohibition order
- Take emergency action
- Make an emergency prohibition order, and
- Make a demolition order

The authority will not normally charge for making a serving a hazard awareness notice. The council reserves the right not to invoice or to waive the charge for enforcement action in exceptional circumstances with each case being considered on its own merits.

4.4 Work in Default

Work in default is a power contained in several types of statutory notice. The legislation authorises the Council, to employ a contractor to enter the property and carryout the work required to ensure compliance. If the Council has to do this, it will charge the appropriate person for the cost of the works, together with the costs involved in arranging for the work to be done. These costs will be added to those already incurred in serving the original notice.

The Council has a duty to ensure that the works are carried out at a fair price and to an adequate standard. However, the Council must undertake the works in a short timescale. This can be expensive as contractors carrying out emergency works often do so at a premium rate.

It should be noted that carrying out work in default does not exclude the Council from either issuing a formal caution or prosecuting the offender. The Council is entitled to ensure that the work is carried out and Officers will then also consider if it is appropriate to take further action.

4.5 Recovering Costs

The Council will recover its costs incurred in enforcing housing related legislation.

When a charge is imposed under section 49 of the 'Act' or by completing works in default, the sum recoverable becomes a local land charge on the premises concerned. Costs will include officer time in determining whether to serve a notice/order and serving a notice/order. In addition, for works in default full contractor costs incurred and time for arranging and overseeing the contractors work plus an administrative cost will be charged.

If enforcement action has been taken against a named person or legal entity the Council will seek to recover the charge by invoice. If the debt is not recovered by payment of an invoice all outstanding debts will be registered with the Local Land Charges Registry as a financial charge. Once registered, interest will be added to the debt at a compound interest rate of 8%* starting on the date the charge became applicable until the debt is settled in full.

The Council may recover the costs incurred in carrying out work in default by one of the following methods:

Invoice, followed by county court action	for debts less than £500.00 where debtor has sufficient means to settle the debt where other forms of debt recovery are not possible
Charge placed on property (compound interest of 8% *in exceptional circumstances the interest rate may be reduced), where permissible by legislation.	Where owner occupiers are unable to settle the debt Where landlords are unable to settle the debt and mortgage repayments make sequestering the rent unviable Where the responsible person cannot be traced
Sequestering the rent – by serving notice on the tenant requiring them to pay rent directly to the Council until costs are recovered	Where the property is tenanted and there are no or low mortgage repayments.
Enforced sale – under the Law and Property Act 1925 the Council can force the sale of the property through the Courts and recover the costs from the proceeds of the sale	Where the property is empty Where the property is tenanted but there are multiple debts on the property and the landlord is not maintaining the property

4.6 Rent Repayment Orders

Where housing benefit has been paid to a landlord and the Council is satisfied that the landlord has committed one or more specific offence, the Council can apply for a Rent Repayment Order. Where the landlord is convicted of one of the relevant offences, the Council is under a duty to consider applying for a Rent Repayment Order. The Specific offences are:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Offences in relation to licensing of HMO's
- Offences in relation to licensing of HMO's under Part 3 of the 'Act'
- Breach of a Banning order
- Using violence to secure entry to a property
- Illegal eviction or harassment of the occupiers

The Council will usually apply for the full amount that can be recovered and lesser amounts will only be sought in exceptional cases.

4.7 Cautions

An alternative to prosecuting a property owner is the issuing of a formal caution. A formal caution is where an offender is given written details of the offence and he/she signs to say that he/she admits the offence. It is not a form of sentence.

A record of the caution will be kept at the Council for a period of three years and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

The service of a formal caution will be considered when the circumstances of the offence satisfy the criteria detailed below:

- The offence is sufficiently serious to warrant prosecution; and
- It is a first offence; and/or
- The offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in future; and
- The officer believes that a formal caution will prevent repeat offences.
- A formal caution may only be issued if the following criteria are satisfied:-
 - There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.
 - The offender admits that they are guilty.
 - The offender will accept the formal caution and understands its significance.
 - It is in the public interest to issue a formal caution rather than instigate prosecution proceedings.

4.8 Prosecution

The Council recognises that the decision to prosecute is important. In making a decision to prosecute, a two-stage test is applied:

- The first stage is the evidential test, which requires that there must be 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. If the case does not pass this test, it must not proceed, no matter how serious or important it may be
- Secondly, a decision must be made as to whether a prosecution would be in the public interest.

A prosecution will normally be pursued in the following circumstances:

- Where an individual or company has deliberately, negligently or persistently breached legal obligations
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices and / or orders
- Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or the public to a serious degree
- Where an individual has assaulted or obstructed an Officer in the course of their duties
- Where a HMO or house is required to be licensed and has been operating without a licence.

All prosecutions will be brought without unavoidable delay, and there is a requirement to lay information with the Courts within six months of the identified date that the offence was committed.

4.9 Working with Other Regulatory Bodies

Where other regulatory bodies have enforcement powers to investigate housing related matters referrals will be made to those bodies. Officers will liaise with that other body to ensure effective co-ordination, avoid inconsistencies, and ensure that contraventions of legal requirements are investigated by the most appropriate agency. These agencies include:

- Health and Safety Executive.
- Transco
- Lancashire Fire & Rescue Service.
- Police
- UK Border Agency
- Lancashire Social Care and Health

- Revenues and Benefits Departments
- HMRC

DRAFT