

Draft Private Sector Housing Regulation & Enforcement Policy

Item

EXECUTIVE MEMBER: Councillor Clements
LEAD OFFICER: Fergus Mc Morrow
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Summary: The Council must publish an explicit enforcement policy for its service that complies with the Regulators Compliance Code. The code applies to those parts of the Housing Acts, 1985, 1996 and 2004 that refer to the Council's role in the private housing sector.

The first draft Private Sector Housing Regulation & Enforcement Policy is attached as Appendix 1. Members comments are invited and the Panel is requested to approve the draft as the basis for public consultation only at this stage.

1 Introduction

- 1.1 The Regulators Compliance Code is a statutory code of practice that came into force in 2008. It was issued under Section 22 of the Legislative & Regulatory Reform Act, 2006. In essence, the Council must have regard to the code in the exercise of its relevant functions under the above Housing Acts. The relevant functions relate to the Council's duties and powers in relation to the private housing sector.

2 Work in Progress

- 2.1 The draft shown as Appendix 1 describes the general principles of the Council's approach to private sector housing, setting a standard of helpfulness but also being prepared to use its regulatory and enforcement powers when this is clearly necessary to improve standards.
- 2.2 Copies of the draft were circulated for comment at a Landlord's Forum held on 6 March 2009. This was relatively well attended by private sector landlords and their agents. Concern was expressed at some changes introduced by the adoption of the Local Housing Allowance in 2008 (a new way of dealing with Housing Benefit) and it was agreed to invite private landlords to a discussion in the near future about an early warning system to prevent rent arrears from leading to eviction. We also intend to use this

dialogue to engage them in consultation on the draft regulation and enforcement policy.

- 2.3 A wide range of agencies in the public and voluntary sector will also be consulted, particularly those who have contact, or whose clients are involved, with the private rented sector.
- 2.4 Examples of good practice will also be sought from sources such as the Audit Commission, Chartered Institute of Housing, Chartered Institute of Environmental Health and Housing Quality Network.

3 Next Steps

- 3.1 No finite timescale for the consultation has yet been set but is most likely to conclude with a report to a meeting of the Strategic Housing Panel in June 2009 after an equality impact assessment, hopefully with a recommendation to the Executive for adoption.
- 3.2 This will allow sufficient time for the policy to be adopted and introduced before the Audit Commission's Housing Inspectorate return, which is expected in September 2009.
- 3.3 It will be necessary to demonstrate whether and, if so, how the policy was changed as a result of the consultation.

4 Financial and Human resource implications (including sources of Finance)

The cost and staffing implications will be contained within existing budget estimates.

Is this a Key Decision? No

Copeland Borough Council
Private Sector Housing Regulation & Enforcement Policy
First Draft March 2009

1.0 Introduction

The Private Sector Housing Renewal Service deals with housing standards in the private sector.

All Housing Authorities must have a current enforcement policy that sets out what is enforceable, when it can be used and when enforcement is appropriate. Most problems can be and are resolved without resorting to powers of enforcement, but the Council is determined to use its powers when it is clear there is no alternative.

This service will be open, fair and honest and we will be very willing to help and advise where we can. We will advise you about the minimum legal standards required for housing and when and where the Council has powers to intervene. We will direct you to any other service or agency which may be more appropriate to your particular enquiry.

Our objectives are to:

- Improve the standards of homes in the private sector
- To assess local housing conditions
- To reduce the number of unfit and/or empty homes
- 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 HMOs (houses in multiple occupation)
- To work closely with private sector landlords towards improving conditions and the standard of management of private rented housing
- To provide an excellent service that is accessible to anyone living in the private sector who may have poor living conditions

In doing so, this Service will help to achieve the following Corporate objectives:

- A decent home for all
- Improving the condition of housing to support healthier communities

Our aim is to have a service that is

- Easily accessible to all members of the community
- Efficient
- Confidential

- Understanding
- Responsive
- Accountable

The Private Sector Housing Service works reactively and proactively.

Reactively we 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)
- Enquiries about the definition of a HMO and the types of HMO
- Enquiries about management standards in HMOs
- Enquiries about fire safety in HMOs
- Enquiries about the maximum number of tenants a HMO is suitable for
- Enquiries about what is enforceable

Proactively we will:

- Identify the general types and condition of the private sector housing stock by carrying out surveys of the district
- Operate a programme of inspections of higher risk HMOs
- Work in partnership with the Fire & Rescue Service for their advice about fire safety standards
- Take part in educational forums for landlords about the standards required for letting properties

The purpose of this enforcement policy is to ensure that people who own and let property in the Copeland Borough area are aware of what they can expect from the Council and officers of the Private Sector Housing Renewal Service.

The Housing Acts set the standards for properties and the Council has a duty to review housing conditions and has the powers to intervene where housing conditions fall below the legal standards.

The Council can take enforcement action in extreme cases, should it be necessary, but legal enforcement is only used as a last resort when all other reasonable attempts have failed to achieve necessary action voluntarily. Our policy is to work with you in a positive way and we encourage useful and meaningful dialogue so that any problems can be discussed in a reasonable way. You will be treated fairly and with respect and you will always be kept fully informed of the Council's involvement.

Copeland Borough Council formally adopted this policy on * (insert date when adopted) following consultation with the ???

It complies with the Government's Concordat of Good Enforcement.

Paper copies of this policy will be made available, free of charge, on request. If you have special needs or English is not your first language please let us know. We can provide copies in large print format, on a recorded tape, or translated into a different language, please allow seven to ten days notice of such a request. A copy of this policy can also be downloaded from the Council's website www.copelandbc.gov.uk

2.0 PRINCIPLES OF GOOD ENFORCEMENT

The Authority has adopted the principles and standards of the Government's Enforcement Concordat and considers the following principles as the basis for good enforcement:

2.1 Openness

- We will provide information and advice in plain language and, as far as possible, avoid jargon.
- We will always discuss general issues, specific failures or problems with anyone who is facing enforcement action.
- We will seek to ensure that people understand what is expected from them as well as knowing what they can expect from us.

2.2 Helpfulness

Our staff will provide a courteous and efficient service. When you contact a member of staff they will identify themselves by name. All staff visiting properties will carry identification and/or authorisation.

We will always provide a contact point and telephone number for further dealings with Officers.

2.3 Proportionality

Where we can, we will endeavour to minimise the costs of compliance with Notices by ensuring the action we take is proportionate to the risks. We will work with property owners so that they can meet their legal obligations without unnecessary expense.

Similarly, any sanctions we impose will take account of the seriousness of the offence.

2.4 Consistency and Fairness

Although Officers have to exercise judgement in individual cases, Officers will carry out their duties in a fair and consistent manner. To this end, we will develop procedures for the range of enforcement activities we carry out and ensure that Officers follow such procedures.

2.5 The Council's commitment to Equal Opportunities

It is the Council's policy to treat all who use its services fairly and on an equitable basis, regardless of gender, sexual orientation, marital status, race, nationality (including citizenship) disabilities, religious or political affiliation. The Council will regularly monitor its policies and procedures to ensure they comply with current equal opportunities legislation and the Council's Race Equality Scheme and the Comprehensive Equality Policy.

2.6 Provision for Consumers and Stakeholders

2.6.1 What you can expect from us

- We will enter into discussion and offer advice to anyone to try and ensure that they do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding, or information.
- We will be consistent in our approach by following criteria and guidance set down in relevant legislation, codes of practice and written procedures.
- We will ensure that before deciding to offer a formal caution, or commence a prosecution, the case will be subject to independent review by a senior manager.
- We will provide a courteous and efficient service and our staff will identify themselves by name when they visit or speak to you on the telephone.
- The enforcement duties of the Private Sector Housing Service will be carried out during normal, weekday office hours 8.45 to 5.15 Mondays to Thursdays, 8.45 to 4.30 Fridays – except national holidays.
- We will respond within 24 hours to matters where someone might be in danger.
- Appointments for visiting you at home will be arranged within normal working hours but at times as convenient to you as possible.

3.0 ENFORCEMENT

While formal enforcement is a necessary and important part of the enforcement process, it is generally viewed as a last resort and Local Authorities should take all reasonable steps to achieve improvements without resorting to official enforcement action. Notwithstanding, authorities are not prevented from taking immediate enforcement action in any case where such action appears to be necessary and, in particular, where someone is exposed to danger. Factors to be considered in arriving at a decision will vary according to the particular circumstances. Wherever possible, a decision will be made within the context of the Council's private sector housing regulation and enforcement policy, taking into account the views and circumstances of those directly affected by any decision taken.

The Council will have to satisfy itself that an enforcement decision represents the most appropriate course of action, be able to provide reasons for that decision, and be able to demonstrate that they have had regard to the relevant legislation in reaching a decision

Failure to comply to official Action Notices is a criminal offence, if it can be shown that the person intentionally did not comply with it, and can lead to prosecution and/or the Council carrying out works in default, the full cost of which is passed to the person responsible or/and the recipient of the Notice. The courses of action available to deal with an unfit property include the following options:

- Take no action
- Offer informal advice
- Serve a Statutory Notice
- Prosecute
- Carry out works in default

These courses of action are not necessarily mutually exclusive and an act of enforcement could involve a number of these options.

Take no action:

If upon investigation no breaches of legislation are identified.

Taking Informal action/ offering advice:

This includes offering oral or written advice, oral warnings and written requests for action. Advice will be clearly stated and confirmed in writing, if requested or required, and will explain why remedial work is necessary over what timescale it must be carried out and what are the minimum legal requirement as well as any advisory information.

Informal action is appropriate when:

The matter is not serious enough to warrant formal action

Previous history suggest informal action will achieve compliance

There is confidence in the owner; landlord etc carrying out whatever is required

Generally standards are high

The consequences of non-compliance do not present a significant risk

The matter concerned is not a strict breach of law but the advice is good practice

An investigating officer may determine that even where some of the above criteria are not met that informal action may be more effective than a formal approach initially.

Service of Statutory Notice:

The use of statutory notices will be linked to criteria including risk. Service of Statutory Notice is appropriate when:

There are significant contraventions of legislation

Owners, landlords etc have shown reluctance to comply with legislation

There is a lack of confidence in a successful outcome from an informal approach

There is a serious risk to health and/or safety

The consequences of non-compliance present a significant risk

There are multiple breaches of legislation

No remedial action has been taken after an informal approach

Generally standards are not good

There is a lack of confidence in the owner/landlord etc carrying out whatever is required

There is a statutory duty to take formal action

Notices must only be served where there is proof that an offence has been or will be committed such that the evidence available would be admissible as evidence in a court of law.

The limits specified in the notice must be realistic and where possible all requirements of the notice should be agreed with the recipient in advance. In arriving at limits and requirements for a notice

the officer must give due consideration to the likely cost of works, extent of works, availability of equipment and/or expertise required in order to ensure a realistic outcome.

All statutory notices served must set out rights of appeal and clearly state that failure to comply may result in court proceedings or work being carried out in default, if appropriate, at the owners/landlords expense.

The Council, for certain notices, may be required to undertake a process of advance disclosure of their intention to act. The Council may utilise the advance disclosure process on a voluntary basis if considered appropriate.

Prosecution:

Prosecutions in general will be restricted to more serious offences and will occur only after full consideration of the circumstances of a case. When considering a prosecution regard must be had to the Code of Practice for Crown Prosecutors.

There must be reliable evidence of an offence, a realistic prospect of conviction, consideration of the likelihood of the defendant being able to establish a suitable defence and the availability of witnesses and their willingness to co-operate.

If the evidential criteria above are met then the public interest criteria in support of prosecution should be considered:

A conviction is likely to result in a significant penalty.

It is also necessary to consider public interest criteria against prosecution:

the offence is serious;

There has been a blatant disregard for the law, including where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it.

When there appears to have been reckless disregard for the health and safety of occupiers or others.

Where there have been repeated breaches of legal requirements in a property or several properties in the same ownership and it appears the owner/landlord is neither willing nor able to deal adequately with these.

Where, as a result of a substantial legal contravention, there has been a serious accident or a case of ill health.

The requirements and recommendations previously provided have been ignored and the owner/landlord has failed to correct a serious risk having been given reasonable opportunity to do so.

A statutory notice has been served and the time allowed for works to be undertaken expired, without an appeal being lodged.

It is also necessary to consider public interest criteria against prosecution:

The court is likely to impose a very small fine or nominal penalty.

The offence was committed as a result of a genuine mistake or misunderstanding, (balanced against the seriousness of an offence).

Loss or harm suffered can be considered minor and was the result of a single incident, particularly if caused by misjudgment.

- There has been a long delay between the offence occurring and the date of the trial, unless:
- the offence is serious; the delay has been caused in part by the defendant;
- the offence has only recently come to light; or
- the complexity of the offence has meant that there has been a long investigation.

- A prosecution is likely to have a very bad effect on the physical or mental health of the tenant/victim, (bearing in mind the seriousness of the offence).
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility it may be repeated.
- The defendant has put right the defects, loss or harm that was caused, (defendants will not avoid prosecution simply because they can pay compensation).
- A willingness of the defendant to prevent a recurrence of the problem.
- Information may enter the public domain that the Council or other public bodies may at least consider inappropriate.
- It would it be a more efficient use of public funds to simply proceed to carrying out works in default, (bearing in mind the seriousness of the offence).

The decision on public interest is not simply an arithmetic calculation of pros and cons but involves officers deciding how important each factor is in the circumstances of individual cases and reaching an overall conclusion.

A decision to prosecute does not necessarily preclude the act of serving a notice or carrying out works in default as well.

Works in Default:

The use of this power will initially be determined by the legislation under which a statutory notice was served and whether it allows for work to be carried out in default.

Works in default will generally be carried out when:

- The person served with a notice fails to comply with its requirements.
- There has been no appeal against the notice, or an appeal has been quashed.
- It is considered more appropriate/effective than prosecution or a successful prosecution has been taken and the problem remains.
- The problem may be so serious as to require quick remediation through work in default at the same time as prosecution.
- The recipient of the notice has requested such and given an undertaking in writing to pay.

In considering whether to carry out works in default the following criteria will be considered:

- The seriousness of the defect and the urgency of the need to remedy the situation.
- The ability of the Council to reclaim the cost of undertaking the works, plus an administration charge, should the recipient of the notice appeal the costs.
- The comments of the recipient of the notice.

In commissioning any works so as to carry out works in default, the Councils' standing orders governing financial matters will apply including the provisions requiring works in emergency situations.

In all cases the Council will seek to recover their costs incurred in the cause plus reasonable charges for administration. Where payment is delayed compound interest will be charged. Outstanding monies owed may be recovered by placing a charge on a property.

General Matters:

Enforcement action taken under this Policy shall have due regard to the advice of the Council's Solicitor and will be carried out in line with the Council's scheme of delegation.

The rights of a defendant to refuse a Formal Caution or appeal a statutory notice will be provided in writing to that person. The right to appeal against a prosecution will be detailed by the court's administrators.

In carrying out this enforcement policy the Council's duly authorised officers may use any of their powers, including power of entry. If entry to premises is initially refused following an informal notice requiring entry at least 24 hours in advance, an investigating officer may apply for a warrant for entry, using force to enter if necessary.

The Council will ensure all officers carrying out enforcement duties are suitably trained.

The Council may make a charge for undertaking enforcement action.

3.1 HOUSES IN MULTIPLE OCCUPATION (HMO)

HMOs are categorised in many different types and what the legislation requires can vary according to the type and particular risk. Some are more at risk of fire, for example. Please contact the Private Sector Housing Service for clarification and the interpretation of a HMO.

3.2 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Section 16 – Requisition for Information

When the Council is proposing to take enforcement action with regard to a property, we will need to obtain further information. To obtain this we will serve a requisition for information on the occupier and/or any person who has a legal interest in the property, or to the person who directly or indirectly receives rent, or is authorised to manage or acts as an agent for letting the property. We will always indicate the Act and section of the Act that we are proposing to enforce. Generally speaking a Requisition for Information is served at an early stage to ensure that we are corresponding with the correct person or agent, but where the Council may have to take urgent enforcement action, it may be served at the same time as the formal Notice.

3.9 APPEAL PROVISION

The majority of the Notices the Council may use are subject to appeal provisions. At the time of service, all Notices are accompanied with notes explaining the rights of appeal. These notes list the grounds of appeal and the time limit in which to lodge an appeal. The Notices will also indicate to

which Court (Magistrates Court or County Court) an appeal should be directed. This can vary according to the type of Notice served.

The usual period for appeal is within 21 days from the service of the Notice, however, it is advised that all persons served with a notice should read the document fully and seek independent legal advice.

Notices with a 21 day appeal provision become operative, if no appeal is brought, on the expiration of 21 days from the service of the Notice.

Where an appeal is made the Notice does not normally become operative until after the court decision has been made.

4.0 ENFORCEMENT

Private Sector Housing Officers are authorised to operate the service according to this policy and prepare enforcement work on behalf of the Council.

5.0 SERVICE COMPLAINTS

5.1 How to complain if you are unhappy with our service

If you are dissatisfied with the service you have received, please let us know. We are committed to providing good quality services and we would welcome your suggestions and comments about how you think we can improve the service we provide. You can write to the Council or send an e-mail to housinggrantenquiries@copeland.gov.uk. All comments will be considered and we will always reply in writing. If necessary we will also contact you by telephone. You can also use the Council's Corporate Complaints System if you have any specific grievance.

What we will do

Wherever possible we will attempt to resolve your complaint informally through the officer dealing with the case in consultation with the Housing Renewal Manager. If we cannot do this, you will be informed about the Council's Complaints System. We will keep you regularly updated of progress until your complaint is resolved. Alternatively, you can discuss your complaint with your local Ward Councillor, or Member of Parliament.

5.2 How to contact us:

We can be contacted in writing or by calling in person

Housing Renewal Service
Copeland Borough Council
The Copeland Centre
Catherine Street
WHITEHAVEN

Cumbria
CA28 7SJ

By telephone 0845 054 8600

Fax 01946 598307

E-mail housinggrantenquiries@copeland.gov.uk

You can find some useful information about this service and other council services on our website www.copeland.gov.uk

6.0 CONFIDENTIALITY.

The Council will at all times strive to maintain the confidentiality of people using our service and adhere to the Data Protection Act.

7.0 MONITORING THE POLICY

It is essential that this policy is followed by the officers of this service. Random checks will be made by the Housing Renewal Manager to ensure officers follow a consistent approach to our work and adhere to the direction of this policy. Any alterations made to this policy will be approved by the Council's elected members.

March 2009