

Housing Renewal Service

HOUSING ENFORCEMENT POLICY

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Document Distribution

This policy is to be distributed to all staff and elected members of Copeland Borough Council and placed on the Council's Intranet Site. A copy must also be provided to contractors and 3rd parties undertaking work on Copeland Borough Council premises.

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Foreword

The Housing Renewal Service sets out to maintain and improve the housing conditions in privately owned and, where necessary, socially rented property in Copeland.

The Housing Renewals Service's standard approach is to give informal advice, assistance and information. Where this approach fails or it is necessary to protect the health, safety and welfare of residents, the service will take the necessary enforcement action.

The Housing Renewals Service's functions include but are not limited to; the licensing of houses in multiple occupation (HMOs), empty properties, enforcement of the housing health and safety rating system (HHSRS) and overcrowding. The services provided meet the objectives contained in Copeland Borough Council's Housing Strategy.

This policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens on businesses. This policy takes into account Copeland Borough Council's approach to better enforcement as a result of the Government's Better Regulation agenda.

The policy sets out the service's transparent approach to enforcement so that people understand how they will be dealt with by the Council.

1. Introduction

1.1 Aims of the Policy

The aims of the policy are to:

- Ensure the council meets its statutory duties around unfit properties and rogue landlords
- Set out the legal responsibilities, policies, principles and priorities that the Housing Renewal Service will follow when enforcing legislation
- Help provide safer and healthier Housing Stock within the Borough that meets the needs of a changing population
- Increase public confidence in the quality of accommodation leading to a vibrant Private Rented Sector in Copeland
- Raise the profile and increase transparency of enforcement in the Private Rented Sector

1.2 What is Enforcement Action?

Enforcement means an action carried out in exercise of or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or service of legal notices. It includes inspections or investigations related to property and any relevant person where the purpose is checking compliance with legislation and/or to give advice to a landlord and/or occupier to help comply with the law.

1.3 Enforcement Objectives

The Housing Renewal Service primarily covers all privately owned residential accommodation in the borough. Social Housing providers are required to meet the Decent Homes Standards and are regulated through a different route. However legislation around the HHSRS still applies to social housing stock and where there is a report of an unfit social property it will be dealt with in line with this policy. Where the matter relates to Home Group property the process followed will be in line with the agreed local protocol.

In normal circumstances enforcement action will be carried out with the objective to ensure that:

- Symptoms/hazards arising from empty homes are tackled in line with the Empty Homes Policy to ensure the amenity of the area is not affected, the property is safe and secure and not causing a statutory nuisance.
- Tenants of a private landlord live in homes free of actionable hazards which affect their health and safety;

- Privately rented houses, including Houses in Multiple Occupation (HMOs), are managed in accordance with any relevant statutory regulations or other legal requirements.
- All licensable HMO's are licensed and licence conditions are met;
- The Housing Renewal Service meets the Council's statutory duties which it is responsible for

1.4 Regulatory Services Enforcement Policy

The Regulatory Services Enforcement Policy sets out general principles of good enforcement practice that should be followed by any of Copeland Borough Council's regulatory services and their officers. It follows the "Principles of good regulation" set out in the Legislative and Regulatory Reform Act 2006 (2006 Act):

- Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- Regulatory activities should be targeted only at cases in which action is needed.
- The Regulatory Service's policy anticipated that there would be more specific policies applying to different regulatory service areas and this policy is one of those.

1.5 Regulators' Codes

The 2006 Act requires that we have regard to the current Regulators' code when developing policies and procedures that guide our regulatory activity.

1.6 Providing Assistance, Information and Education

We start from the position of working with our service users (including owner occupiers, tenants, leaseholders and landlords) to meet our objectives rather than having to take enforcement action. We will provide clear, accessible advice and guidance and provide contact details where further information is required. Our first aim will be to seek a resolution without recourse to formal action where possible.

In addition, we provide advice and assistance through:

- Liaising with landlords and agents from the Private Rented Sector (PRS) in Copeland.
- Promoting improved relations with the PRS through the Copeland Housing Partnership
- Attend landlords' meetings if required
- Hold landlord forums —open meetings for Landlords and Agents to address current issues.

2. Targeting Enforcement Action

To ensure that we meet our policy and enforcement objectives effectively we will need to target our enforcement activity from time to time, resources permitting.

These are some examples of how we may target action — this is not an exhaustive list:

2.1 Property type or occupation

- Empty properties - door to door surveys, Council Tax information or identified by neighbours
- Landlords whose tenants receive Local Housing Allowance/Universal Credit. These tenants tend to be more vulnerable and the standards in these properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers
- Unlicensed HMO's
- Poorly managed privately rented properties or those with anti-social behaviour linked to them
- Construction type
- Where there is a problem with a particular method of construction, for example precast reinforced concrete (PRC) properties;
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC)

2.2 Areas

- Where there are particular problems in a specific locality. This can be on a street by street basis or an area of Copeland
- Where an area of Copeland is identified as having adverse health or socio-economic indicators
- Where there are areas of specific regeneration activity and the existing housing stock condition is a contributing factor

2.3 Individuals

The Council recognises that the majority of landlords in the private rented sector provide a decent standard of housing and service to their tenants.

Where a landlord, agent, individual or organisation:

- Persistently fails to manage privately rented accommodation in accordance with legal requirements.
- Repeatedly fails to comply with informal or formal requests to meet legal minimum requirements of Private Housing legislation or commits offences;
- Persistently fails to submit a valid licence application or meet licensing standards;
- Places tenants in overcrowded accommodation; or their activities result in the need for us to work proactively to meet our enforcement objectives

These persons may be referred to as "*Rogue Landlords or agents*" as per the Oxford English Dictionary definition of a rogue - "a dishonest, unprincipled person".

The Housing and Planning Act 2016 introduced a range of measures to assist Local Housing Authorities to tackle rogue landlords and drive up standards in the private rental sector, such as banning orders, a national database of rogue landlords/letting agents which is maintained and accessed by Local Authorities, and rent repayment orders.

To ensure that there are checks and balances in our enforcement approach any targeted action will be agreed with the Strategic Housing and Social Inclusion Manager before it is undertaken.

3. Policy Details including Procedures

Licensing of Private Rented Sector properties

3.1 Mandatory HMO licensing

A Mandatory licence is required for HMOs with five or more occupiers living in two or more households sharing some facilities. Changes to the legislation in October 2018 removed the three storey condition and potentially brought many more properties under the mandatory licensing scheme, though in Copeland many of our potential HMO's are not classed as the residents' sole or main residence and so do not need to be licenced. Once a full application including all the necessary supporting information and certificates plus the payment has been received, the Council will process that application within 28 days.

3.2 Discretionary HMO licensing

Councils have the discretion to bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Housing Act 2004; this allows local authorities to require landlords of some privately rented properties to apply for a licence. There are two types of discretionary licensing. *Additional licensing* may be appropriate where a large number of

HMOs in an area are not being managed effectively and are causing particular problems for the people who live in these HMOs or members of the public. *Selective licensing* may be appropriate where there is a problem with antisocial behaviour in an area or an area of low housing demand, where some or all of the landlords in the area are failing to take action to combat the problem.

3.3 Operating an unlicensed property

Systematic surveys using all relevant information held by the Council will be carried out to find unlicensed properties. If a landlord has approached the Council for a licence an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently duly made within 14 days. We will consider any representations regarding exceptional circumstances that may have resulted in the application not being made. In other circumstances the Council will carry out an investigation and if appropriate consider taking formal action in the form of a Simple Caution or a prosecution.

Landlords who fail to reapply for a licence in properties that require a renewal of their licence or who fail to provide the required information or the appropriate fee within 28 days of a previous licence expiring may also be investigated for failing to licence a licensable property. This can result in a Simple Caution or prosecution.

Where landlords have been prosecuted for operating an unlicensed property the Council will use Rent Repayment Orders to claim back any Housing Benefit or equivalent paid whilst the property was unlicensed and provide tenants with information and advice on how and when they can claim back the rent they paid whilst the property was unlicensed.

3.4 Duration of HMO Licences

Licences will normally be granted for the full five year period. We may reduce the length of the licence from five years to an appropriate lesser period:

- Where the property has not been satisfactorily managed; or
- Where we are concerned the proposed management arrangements may not be satisfactory and want to see evidence that they are before allowing a longer licence period to be granted.

3.5 Fit and Proper Person

In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are 'fit and proper persons'. A person's fit and proper status may be reviewed at any time if circumstances change. Removal of this status could lead to refusal and or revocation of licence(s) (see formal action below).

3.6 Management Orders

These powers will be used as a last resort where other attempts have failed, where there is no reasonable prospect of an licence being granted or it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity or where anti-social behaviour is affecting other occupiers, visitors or persons in the vicinity of the premises.

4 Empty Properties

The Housing Renewal Service systematically identifies long term empty properties and the Council will work with the owner to bring the property back into use wherever possible. The Empty Property Policy sets out the detail of our priorities in this area, which include that:

- Action will be tailored to match housing need, nuisance issues and length of time the property has been empty;
- We recognise that some areas of the borough suffer from higher levels of empty properties and housing need.

As the overall aim is to provide more accommodation of the type required in Copeland we will take action on empty properties within a procedure that could ultimately lead to the use of Compulsory Purchase Orders to bring a property into use.

Where necessary, we will work with Environmental Health colleagues to take enforcement action to deal with the symptoms that arise when a property is left empty.

Please see the Empty Homes Policy for more information on the Council's approach to empty homes.

5. Overcrowding

Overcrowding is defined in Section 324 of The Housing Act 1985 by reference to room and space standards with regards to the number and ages of occupants within a premises let as a separate dwelling.

We will investigate complaints from private rented sector tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on a neighbours' health, safety or welfare.

We will liaise with the Council's Housing Options Service where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.

When deciding on the most appropriate course of action each case will be judged on its own merits. We may only advise persons living in overcrowded living conditions that their health is at risk and not require them to move out if they do not wish to do so.

6 Enforcement Action

The provision of assistance, information and education will be the first step unless there is an immediate and/or significant risk to life or the matter relates to mandatory licencing of HMOs.

Where assistance, information and education has failed to ensure compliance with a statutory requirement or failed to ensure compliance with requirements made through use of our discretionary powers enforcement action will be taken.

For clarity, responses may include advice giving, suspending action pending other events such as the probate process, no action informal action and formal action.

6.1 No Action

In certain circumstances, relating to unfit properties (and not HMOs), it may be appropriate to take no action. For example:

- when we decide that the health and safety risk is sufficiently low enough;
- where there are extenuating circumstances regarding the person against whom we would take action on; (for example vulnerable service users or those suffering terminal illness and/or where action would be detrimental to their well-being and the ultimate resolution of the case),
- Taking legal action would be disproportionate, not in the public interest or inappropriate taking into account the circumstances of the case.

We may however make recommendations which are above the legal minimum requirements, provide advice if there are legal avenues open to persons to resolve the issues themselves or refer to another appropriate regulator or advice service.

6.2 Informal Action

In most cases, officers will endeavour to seek the desired improvements such as an application to register a HMO, or protection of the public's health and safety in relation to unfit housing, by working initially on an informal basis with those involved. Informal action may take a variety of forms, for example:

- Verbal requests
- Letters or emails
- Schedules of work

It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

However, where the circumstances of the case justify it, officers will be expected to take a formal approach in the first instance. Formal action will also be taken where compliance with a statutory requirement has not been achieved by informal action.

6.3 Formal Action

Circumstances where it is appropriate to take formal action include where there is a statutory requirement to hold a licence and an actionable risk to health and safety; for example:

- A person refuses to carry out the works informally;
- No heating in cold weather;
- No hot water to wash and prepare food safety;
- Exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres;
- Exposed live electrical wiring which people are likely to make contact with
- No electricity
- Raw sewage entering into a neighbour's property;
- There is history of failure to meet requests to carry out legally required works;
- There is history of a failure to manage a property in line with legal requirements;
- There is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last five years or a simple caution has been issued in the last two years;
- It is necessary to safeguard and protect health and safety in the future;

The above is not intended to be an exhaustive list. Each case will be considered on its individual merits.

When an officer decides to take formal action first, without taking informal action, they will inform the owner, landlord agent or other appropriate person of this decision and the reasons for their decision to do so.

There are a number of options for formal action. The decision as to which is the most appropriate will depend on the circumstances of the case, the relevant legislation, the risk to health and safety and tests relevant to each option. The options are:

- Service of formal notice or order;
- Emergency action;
- Issue a penalty charge notice;
- Simple cautions;
- Prosecution;
- Work in default of the person served with notice;
- Revocation or refusal of a licence.

- Management order
- Warrant to enter

6.3.1 Service of formal notices or orders

Notices and orders will be served in accordance with the requirements of the relevant legislation. The person on whom the notice or order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are required, representations that may be made and relevant appeal periods, details of any charges and the consequences of non-compliance. Contact details will be provided so that the detail and requirements of the notice can be explained.

6.3.2 Emergency Action

In certain emergency situations where it is not possible to contact the relevant person and gain their co-operation, enforcement action will be taken that will involve carrying out work without the prior need to serve legal notice, for example:

- where there is an imminent risk of serious harm to the health or safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004);
- Where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of The Local Government (Miscellaneous Provisions) Act 1982.

6.3.3 Penalty Charge Notice

Certain legislation enables enforcement through issuing a Penalty Charge Notice. Failure to pay will result in Copeland Council pursuing recovery of the debt through the County Court.

6.3.4 Simple Caution

Simple Cautions may be appropriate where someone has admitted to an offence, where it is their first offence of this type and they have as far as practical assisted officers in remedying the situation that led to the offence; for example applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple Cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences.

6.3.5 Prosecution

Recommending a case for prosecution is a serious step. Cases are referred to the Council's Legal Services for them to consider whether the case has been investigated sufficiently to ensure we have met the evidential and public interest tests set out in the Code for Crown Prosecutors and whether any statutory defences are available to the persons under investigation. The decision to start prosecution proceedings in court is taken by Legal Services.

Regard shall also be had to equalities issues, compliance with the current Regulatory Services Enforcement Policy and this enforcement policy. Consideration will also be given to action under the Proceeds of Crime Act 2002.

6.3.6 Publicising prosecutions

Verdicts and sentences in criminal cases are given in open court and are a matter of public record.

The Council will publicise sentences following prosecution on a case by case basis in line with the Justice Department's guidance. The guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:

- reassure the public;
- increase trust and confidence or improve the effectiveness in the criminal justice system;
- discourage offending and or re-offending

6.3.7 Work in Default

Where the Council has legally required someone to do works but they have failed to do so, powers are available to carry out works in their default. The powers are provided in the specific legislation being used in relation to the case. A decision to carry out Work In default will be made in conjunction with the Executive Director and the Councils Solicitor.

In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once we have started works it is an offence for that person to obstruct us or any of the contractors that have been employed to carry out the works.

The complete cost of the works and all costs will be recovered in accordance with the relevant statutory provisions.

6.3.8 Revocation of licences

Revoking a property licence under the Housing Act 2004 may be taken under the following circumstances:

- Breach(es) of licence condition(s);
- Where the licence holder and/or manager are no longer considered to be a Fit and Proper person(s).
- By agreement.

6.3.9 Charging for Enforcement Action

The Housing Act 2004 allows councils to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other legislation also allows us to recover costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.

The Housing Renewal Service will recover all costs and fees when formal action is taken when we think it is reasonable to expect the owner to pay these in the circumstances. The full costs of all officers' time, including overheads and any relevant expenses, will be charged. In some cases we will force the sale of a property to recover our cost. We will only do so if we have the power to and it is reasonable and proportionate to do so in the circumstances of that case.

Hazard Awareness Notice

- Hazard Awareness Notice relating to Category 1 Hazards; section 28 of the Housing Act 2004
- Hazard Awareness Notice relating to Category 2 Hazards; section 29 of the Housing Act 2004

We will issue a Hazard Awareness Notice where a hazard has been identified but it is not necessarily considered serious enough for us to take more formal action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

Improvement Notice

- Improvement Notices relating to Category 1 Hazards; section 11
- Improvement Notices relating to Category 2 Hazards; section 12

An improvement notice will provide the most appropriate action for most Category 1 hazards where reasonable remedial works can be carried out to reduce the hazard sufficiently.

Our current fees and charges are set out in Appendix 1 but we reserve the right to charge for other enforcement activity not listed as and when necessary, based on the actual cost of the activity.

The Council will make a charge to cover the cost of carrying out a review of Suspended Notices and for serving a copy of the Council's decision on a review and that charge will also be registered as a charge against the property.

All enforcement costs, including legal and court costs incurred and recovered will be based upon the activities listed within section 49 of the Housing Act 2004, and will be charged at the actual cost incurred to the Council of performing the chargeable activity.

6.4 Enforcement – General

Any officer carrying out enforcement work will be authorised to do so by the Council. Each authorised officer in the Housing Renewal Service will carry both an identity card and, where necessary, a warrant card.

We will use all available powers to meet the enforcement objectives within this policy. These include powers of entry, the ability to require the production of documents under the Housing Act 2004, the power to require information about a person's identity, or interest in land and the power to require certificates regarding gas and electrical safety in Houses in Multiple Occupation. We will have regard to any relevant Government guidance as part of our enforcement activity.

When carrying out enforcement we will have regard to other legal requirements that might apply to our actions; for example, the Data Protection Act 1998, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984.

7. Appeals and Complaints Procedure

This policy and the guidance and other policies referred to in it will be relevant documents to consider when reviewing complaints in relation to our enforcement activity. It is important to stress that they are not the definitive list of guidance available and there may be more relevant or up to date guidance that should be considered in relation to any complaint. We will inform all persons who are the subject of formal enforcement activity of their right of appeal; this will vary dependent on the particular legislation being used.

If a property owner wishes to appeal against a formal notice or order they should use the statutory appeal rights open to them and set out within the Council's Complaints process.

Appendix 1 Fees and Charges

PROPOSED FEES & CHARGES 2018/19	CURRENT FEES 2018/19	BASE PROPOSAL 2019/20
HMO Licence	£330	£500.00
Hazard Awareness Notice	N/A	£153.00
Improvement Notice	N/A	£315.00