



**Private Sector Housing
Enforcement Policy
2016
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1.0 Introduction

1.1 The Council's Private Sector Housing service covers a wide range of responsibilities related to housing. These sit within the context of delivering the Council's adopted Housing and Homelessness Strategy.

1.2 The responsibilities of the service include:

- to improve the standards of homes in the private sector, predominately private rented accommodation;
- to assess local housing conditions;
- to reduce the number of properties with serious risks to health and safety (reduce Category 1 hazards);
- to reduce the number of vulnerable households living in sub-standard homes;
- to improve the energy efficiency and warmth of homes and to help reduce fuel poverty;
- to improve the standards in Houses in Multiple Occupation (HMOs) through the implementation of the Mandatory Licensing Scheme and enforcement provisions;
- to work in partnership with private sector landlords to improve conditions and the standard of management of private rented housing;
- to provide a service that is accessible to anyone living in rented housing that may be subject to poor living conditions; and
- to help bring empty homes back into use.

1.3 The Private Sector Housing team works reactively and proactively.

Reactively the service may respond to:

- tenants who contact the Council with complaints about disrepair or poor living conditions and complete and return a referral form. The Council normally expects tenants to have contacted their landlord with proper details about their complaint and then allow a reasonable time period for the issues to be resolved prior to contacting the Private Sector Housing team;
- 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; and
- enquiries about empty homes.

Proactively the service may:

- 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 landlord forums; and
- contribute to regeneration initiatives.

1.4 This Policy deals with the practical application of enforcement procedures that may be used to achieve improvements to housing. It sets out what owners, landlords, managing agents and tenants of private sector properties can expect from officers.

2.0 Principles of Good Enforcement

2.1 The Council has signed up to the Government's 1998 Enforcement Concordat – Principles of Good Enforcement. The Concordat sets out what business and others being regulated can expect from enforcement officers.

2.2 The aim of the Concordat is to ensure that all enforcement actions comply with the following three principles:

Consistency
Proportionality
Openness

2.3 **Consistency** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and actions of those involved.

2.4 **Proportionality** means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.

2.5 **Openness** means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what is desirable).

2.6 In exercising their duties, enforcement powers and other functions, officers will seek to do so in a firm, 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 Enforcement Concordat.

2.7 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.

3.0 Enforcement Options

3.1 In responding to a service request, the choices available for action are:

- take no action;
- take informal action; and
- take formal action through one or more of the following routes:
 - Serve statutory notices
 - Undertake works in default
 - Make management orders
 - Issue a formal caution

- Prosecution
- Issue a Fixed Penalty Notice

The list of options is not exhaustive as changes in legislation and guidance may affect the sanctions available.

- 3.2 Whatever action is deemed to be appropriate, the decision to take it will need to stand up to a test of consistency, and must demonstrate both a balanced and fair approach to enforcement.
- 3.3 A summary of the relevant legislation governing enforcement powers relating to housing conditions is set out in the Appendix. This is not exhaustive and is intended as a guide only.

4.0 Informal Action

- 4.1 “Informal action” means to secure compliance with legislation without recourse to formal action; including offering advice, issuing verbal warnings and requesting action, the use of letters, and the issue of informal schedules of works.
- 4.2 The Private Sector Housing service is willing to offer help and advice and will explain the reasons for the Council’s involvement and what should be done to improve housing conditions. The Council’s preferred approach is therefore to work with the parties involved to help prevent the need for formal enforcement action.
- 4.3 It should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken.

When Informal Action is Appropriate

- 4.4 Informal action may be appropriate when one, or more, of the following applies:
- the matter does not involve a Category 1 hazard; or failure to apply for a HMO licence;
 - it is the first occasion that the Council has been called upon to deal with a particular property or complaint;
 - the act or omission is not sufficiently serious to warrant formal action;
 - from the individual’s/landlord’s previous history, it can be reasonably expected that informal action will achieve compliance within a reasonable period of time e.g. six weeks and confidence in the landlord/managing agent/other management is high;
 - the consequences of non-compliance will not pose a significant risk to occupiers/public health and safety; and
 - the relevant person has confirmed in writing their willingness to complete the works on an informal basis with a timescale for completion.
- 4.5 Where some of the above criteria are not met, there may still be circumstances in which informal action will be more effective than a formal approach. This will generally apply to an organisation such as RSL partners in line with joint protocols.

- 4.6 Inspection reports and clear advice about what works are required will be issued to the owner, managing agent, and tenant etc. following the decision to deal with the case on an informal basis.
- 4.7 When an informal approach is used to secure compliance with legislation, written documentation will be issued which will:
- contain all the information necessary to understand what work is required and why it is necessary; and
 - specify the legislation that covers the contravention, the measures that will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen.

Officers may also make further recommendations of good practice if appropriate, even where these may not be a legal requirement.

5.0 Statutory Enforcement Notices

- 5.1 The most common form of formal action involves the service of Enforcement Notices. The majority of Notices served by the Private Sector Housing team will require the recipient of the Notice to commence and complete specified works within specified time limits.
- 5.2 All Notices are accompanied by notes that explain the effect of the Notice and the recipient's right of appeal. Officers will normally be willing to discuss the works specified in the Notice and the reason for the service of the Notice, particularly in the period immediately after the notice is served.
- 5.3 Notices may be used (unless remedial action completed informally) when one, or more, of the following applies:
- a statutory duty exists to do so e.g. a Category 1 hazard has been identified;
 - there are significant contraventions of legislation e.g. Category 2 hazards have been identified;
 - there is a lack of confidence in the landlord/managing agent/other relevant person to respond to an informal approach;
 - there is a history of non-compliance with informal action;
 - management standards are generally poor, with little awareness of statutory requirements;
 - the consequences of non-compliance with relevant legal requirements could be potentially detrimental to the health and safety of occupiers/members of the public; and
 - although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions which are serious or deteriorating.
- 5.4 The use of statutory Notices will, in general, be related to the risk to health and safety. Officers considering enforcement action under Part 1 of Housing Act 2004 will have due regard to the 'Housing Health and Safety Rating System: Enforcement Guidance. Housing Act 2004 (ODPM, February 2006)'.

Appeals

- 5.8 Appeals against Notices served under the Housing Act 2004 are made to the First Tier Tribunal. This is made clear on the notes attached to relevant Notices which also detail the time period for appeal.
- 5.9 There is a charge associated with an appeal to the First Tier Tribunal and all relevant information must be submitted. Landlords etc. can represent themselves or arrange a legal representative at their expense.

Recovery of Costs

- 5.10 Where the relevant legislation permits, the Council will apply its standard charge for the recovery of costs incurred in the service of formal Notices, the level of which will be reviewed annually.

6.0 Failure to comply with a Notice

- 6.1 Depending on the type of notice served, non-compliance can include:
- not doing any work at all;
 - not starting the work by the time specified within the Notice; and
 - starting the work and then not finishing it by the completion date.
- 6.2 If the recipient of a notice does not comply with the notice, the Council can impose the following sanctions:
- undertake Works in Default;
 - issue a Formal Caution; and
 - pursue a Prosecution or issue a fixed penalty notice or civil penalty (appendix B)

7.0 Works in Default

- 7.1 Works in default is a power given to the Council to ensure work is carried out to a property. If the recipient of a Notice does not do the work required by the Notice, the Council may employ a contractor to enter the property and carry out the work. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.
- 7.2 Works in default may be carried out where for example (but not limited to this list):
- there is no prospect of the person responsible carrying out the work e.g. the landlord is absent or infirm;
 - there is an imminent risk to an individual's or public health and safety e.g. overflowing sewer, blocked toilet etc.;
 - a prosecution is not appropriate;
 - a prosecution has been brought (and is successful) and the works have still not been carried out; and
 - it is appropriate to get the nuisance abated quickly.
- 7.3 It should be noted that carrying out the work in default does not prevent the Council from either issuing a formal caution or prosecuting. The Council is

entitled to ensure that the work is carried out and to consider if it is appropriate to take further action.

- 7.4 The decision to carry out works in default is made on a case-by-case basis.
- 7.5 The Council will seek to recover all the costs incurred including officer time. The costs of the works are re-charged plus the cost of administration, including officer time.

Recovery of Costs

- 7.6 There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of notice that has been served:
- Sundry debtor method: the Council will send the appropriate person an invoice requesting payment.
 - Charge on the property: where the legislation governing the enforcement action allows the Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.
 - Forcing sale of the property: the Council can reclaim its costs by bringing about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

8.0 Formal Cautions

- 8.1 The statutory Code of Practice on legal matters advises that local authorities should consider issuing a formal caution as an alternative to a prosecution.
- 8.2 The purpose of the formal caution is:
- to deal quickly and simply with less serious offences;
 - to divert less serious offences away from the Courts; and
 - to reduce the chances of repeat offences.

When the Caution should be used

- 8.3 A caution will be considered if the under-mentioned advice indicates that the issue of a caution is a proper, and more appropriate, alternative to the employment of statutory action, when considered in conjunction with the policy detailed elsewhere within this policy document.
- 8.4 A record of the caution is kept by 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.

Advice

8.5 To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to give realistic prospect of conviction;
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

8.6 If there is insufficient evidence to consider taking a prosecution, then by implication the conditions are not satisfied for the use of a formal caution. It will also be inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence. It should be noted that there is no legal obligation for any person to accept the offer of a formal caution, and no pressure should be applied to the person to accept a caution.

Cautioning Officer

8.7 The designated cautioning officer is the Head of Service-Environmental Health, Licensing and Community Safety.

9.0 Prosecution

When to Prosecute

9.1 The circumstances likely to warrant prosecution may be characterised by one or more of the following:

- where the alleged offence involves a flagrant breach of the law such that occupiers/member of the public, safety or well-being is, or has been, put at risk;
- where the offence involves a failure to comply in full, or in part, with the requirements of a statutory Notice;
- failure to licence a HMO, non-compliance with license conditions; and
- if a "warning letter", notifying the offender that an offence has been committed has been sent within the last two years a prosecution should normally result if a further offence is committed.

9.2 Authorised officers will provide the Head of Service-Environmental Health, Licensing and Community Safety with a written report relating to the outcome of an inspection or investigation which the officer considers, in light of relevant guidance warrants enforcement action.

9.3 Regard shall be had to the advice of the Council's legal advisor concerning issues of law and the propriety of prosecution having regard to the Crown Prosecution Service code.

9.4 If the legal advice is that a prosecution is unlikely to succeed, this decision will ordinarily be final. Reasons for declining to proceed should be documented and due regard had to any remarks in so far as they may affect future prosecutions. This will be especially the case if the decision is based on failure to comply with statutory requirements.

- 9.5 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information will be considered, to enable a consistent, fair and objective decision to be made.
- 9.6 If a decision has been taken that there is enough evidence for a prosecution and that other action such as a formal caution (which requires an acceptance of guilt by the person concerned) would be inappropriate, the Investigating Officer prepares a case for consideration by the Council's Solicitor. He/she will be asked to commence a prosecution if he/she is satisfied that there is a more than even prospect of obtaining a conviction and the requirements of e.g. Criminal Prosecutions and Investigations Act 1996 have been complied with. In certain circumstances he/she may require further investigation to be carried out.
- 9.7 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria that it is in the public's interest to prosecute. The Code of Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.
- 9.8 In deciding whether or not to prosecute, regard will be made to the guidance contained in the relevant Code of Practice. Factors to be considered will include the following:
- (a) The seriousness of the alleged offence:
 - the risk of harm to an individual's or public health and safety;
 - identifiable victims;
 - failure to comply with a statutory Notice served for a significant breach of legislation; and
 - disregard of health or safety for financial reward.
 - (b) The previous history of the party concerned:
 - offences following a history of similar offences;
 - failure to respond positively to past warnings; and
 - failure to comply with statutory Notices.
 - (c) The ability of any important witnesses and their willingness to co-operate
 - (d) The willingness of the party concerned to prevent a recurrence of the problem
 - (e) The probable public benefit of a prosecution and the importance of the case (e.g. whether it might establish a legal precedent)

As indicated above, advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is "the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution."
 - (f) Any explanation offered by the company or the suspected offender

LACORS recommends that suspected offenders are invited to offer an explanation before prosecution decisions.

(g) The defendant is elderly, suffering from mental or physical ill health, etc.

9.9 Investigations into alleged breaches of legislation will comply with the requirements of relevant legislation including, but not limited to:

The Human Rights Act 1998
The Regulation of Investigatory Powers Act 2000
The Police and Criminal Evidence Act 1984, and Codes of Practice
The Criminal Procedure and Investigation Act 1996

10.0 Management Orders (Housing Act 2004)

HMO Management Orders

10.1 The Council's use of HMO Management Orders will be in line with government guidance. Further information about management orders can be downloaded from <https://www.gov.uk/government/publications/licensing-and-management-provisions-in-the-housing-act-2004-draft-guidance>

Empty Dwelling Management Orders (EDMOs)

10.2 The Council's use of EDMOs will be in line with government guidance (this document can be downloaded from <https://www.gov.uk/government/publications/empty-dwelling-management-orders-guidance>

10.3 Further EDMO guidance for property owners can be downloaded from <http://www.dover.gov.uk/Housing/Private-Sector-Housing/Empty-Dwelling-Management-Orders-Guidance-for-residential-property-owners.pdf>

Operation of Orders

10.4 The Council will appoint a third party provider to manage a number of the main functions required by Management Orders. The third party provider will be required to comply with any legal duties and responsibilities and these will be set out within an appropriate legal agreement.

11.0 Shared Enforcement Responsibility

11.1 In circumstances where enforcement responsibility is shared between enforcement agencies, the Private Sector Housing team will have regard to procedures agreed with other enforcement agencies, particularly where memoranda of understanding and agreed protocols exist.

11.2 In some cases, enforcement powers will rest with another agency (for example the Health and Safety Executive has responsibility for enforcement of gas safety in domestic property). In these situations, the Private Sector Housing team will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

12.0 Vulnerable Persons

12.1 Before taking action that may affect a property occupied by a vulnerable person, officers should ensure that appropriate consultation has been carried out with social services and other relevant support agencies.

Displaced Occupiers

- 12.2 Officers will inform the Housing Needs Manager at the earliest opportunity when there is likelihood of an occupier being displaced from their property because of informal/formal enforcement action related to the Council's direct/indirect action. This is to ensure the client receives appropriate housing advice/action.

13.0 Owner Occupied Properties

- 13.1 Enforcement action against owner occupiers will be taken on a case-by-case basis where there is a clear risk to public health or safety. In other circumstances officers may signpost owner occupiers to sources of advice and/or funding.
- 13.2 The Council will otherwise only take action in respect of owner occupied properties where defects are causing a statutory nuisance to adjoining property.

14.0 Social Housing Providers

- 14.1 The Council expects Social Housing providers to manage their stock professionally and ensure that they properly investigate complaints from tenants about their living conditions. The Private Sector Housing team will have minimum input in these complaints unless the case involves a significant Category 1 hazard.
- 14.2 In the majority of cases social housing providers have established procedures for responding to tenant complaints and the Council's preferred approach is to rely on the provider to respond appropriately. However, if the social housing provider fails to respond to the hazard, the Council will take action in the same way as with a private landlord.

15.0 Service Complaints

How to complain if you are unhappy with our service

- 15.1 If you are dissatisfied with the service you have received, please tell us. We are committed to providing quality services and your suggestions and comments about any aspect of our service will help us to do this. We will deal with any complaint you have in strict confidence. The details of the Council's complaint procedure can be found on the website at www.rother.gov.uk/complaint
- 15.2 Officers issue a satisfaction form to all service users and we encourage customers to complete and return these so that we can assess where improvements can be made to the delivery of the service.

If you are still unhappy, making a formal complaint

- 15.3 Details of the Council's formal complaints procedure and how you can make your complaint can be found at www.rother.gov.uk/complaint

The Local Government Ombudsman

- 15.4 If you think that the Council has done something wrong, has done something it should not have done or has failed to do something it should have done, you

can ask the Local Government Ombudsman to investigate. The Ombudsman can be contacted at: The Local Government Ombudsman; P.O. Box 4771, Coventry, CV4 0EH or Telephone: 0300 061 0614 / 0845 602 1983

Email: advice@lgo.org.uk

Web: www.lgo.org.uk

16.0 How to Contact Us

By e-mail privatesectorhousing@rother.gov.uk

In writing Private Sector Housing Team
Rother District Council
Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX

By telephone

You can use the telephone number given on any correspondence we have sent you, or 01424 787000.

17.0 Confidentiality

- 17.1 The Council will at all times maintain the confidentiality of persons requesting our service. However, in the case of prosecution and witness statements, the Council may be required to reveal the names and addresses of the parties involved.
- 17.2 The Private Sector Housing team does not investigate complaints made anonymously or those without a completed referral form.

Legislation Summary

This section lists the legislation commonly enforced by the Private Sector Housing service and outlines the provisions. It is not an exhaustive list and is not a full statement of the law – it is simply a summary.

The Council has a range of enforcement powers to address hazards that exist in residential premises including:

- Improvement Notices – section 11 and 12 Housing Act 2004
- Prohibition Orders – section 20 and 21 Housing Act 2004
- Hazard Awareness Notices – section 28 Housing Act 2004
- Emergency Remedial Action – section 40 Housing Act 2004
- Emergency Prohibition Order – section 43 Housing Act 2004
- Demolition Order – section 265 Housing Act 1985 as amended
- Clearance Areas – section 289 Housing Act 1985 as amended

The first three options are available for both Category 1 and Category 2 hazards. The last four are not available for Category 2 hazards:

Category 1 hazards are those which pose the highest risk of injury or harm. Category 2 hazards are those with lower levels of risk, but still can be significant. Further information and detailed guidance about the Housing Health and Safety Rating System, including Category 1 and 2 hazards can be downloaded via the following: <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/housing-health-and-safety-rating-system-hhsrs-guidance>

The action the Council chooses to take will be the most appropriate course of action in relation to the hazard(s) identified at a property.

Officers considering enforcement action under Part 1 of Housing Act 2004 will have due regard to the 'Housing Health and Safety Rating System: Enforcement Guidance. Housing Act 2004 (ODPM, February 2006)'. This document can be downloaded free of charge from <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/housing-health-and-safety-rating-system-hhsrs-guidance>

Improvement Notices – section 11 and 12 Housing Act 2004

An Improvement Notice under section 11 or 12 Housing Act 2004 can be served in response to a Category 1 or Category 2 hazard. Under section 11, action must as a minimum remove the Category 1 hazard but may extend beyond this.

Should the notice not be complied with, the Council may carry out the works in default and recharge the person upon whom it was served. Not complying with a notice is a criminal offence and the Council may choose to prosecute the person who received the notice if they failed to comply with it.

Normally, an Improvement Notice becomes operative 21 days after service of the notice. However, the Council may suspend the action specified in an improvement notice. The notice may specify an event that triggers the end of the suspension, such as non-compliance with an undertaking given to the authority, or a change of

occupancy. Suspension may be appropriate where the hazard is not sufficiently minor to be addressed by a Hazard Awareness Notice but the current occupiers are not members of a vulnerable group. However, in this kind of circumstance, officers will need to judge whether a risk exists that will warrant a programme of improvement over a more relaxed timescale.

Prohibition Orders under section 20 or 21 Housing Act 2004

A prohibition order under section 20 or 21 Housing Act 2004 may be served in response to a Category 1 or Category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order must specify the nature of the hazard, the deficiency giving rise to the hazard, the premises or part of the premises to which prohibitions are imposed and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal.

Using premises or permitting premises to be used, knowing that a prohibition order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.

Normally a prohibition order becomes operative 28 days after service. However, the Council may suspend the action specified in the order and can specify an event that triggers the end of the suspension.

Hazard Awareness Notices under section 28 Housing Act 2004

In certain circumstances, the Council may determine that advisory action only is needed in respect of a hazard, and may serve a Hazard Awareness Notice. A Hazard Awareness Notice under section 29 of the Act may be a reasonable response to a less serious hazard, where the Council wishes to draw attention to the desirability of remedial action.

A Hazard Awareness Notice must specify the nature of the hazard, the deficiency giving rise to the hazard and details of any remedial action that the Council considers would be practicable and appropriate to take.

This procedure does not require further action by the person served with the notice and therefore there is no appeal provision.

The service of a Hazard Awareness Notice does not prevent further formal action, should an unacceptable hazard remain. This also provides a way of recording and monitoring the action needed and can provide evidence to support further enforcement action if needed should the remedial works not be carried out, or be carried out inadequately.

The Council will use the Hazard Awareness Notice procedure where an owner or landlord has agreed to take remedial action and officers are confident the work will be done in reasonable time.

Emergency Remedial Action under section 40 Housing Act 2004

Section 40 of the Housing Act 2004 empowers the Council to take emergency remedial action against Category 1 hazards which present an imminent risk of serious harm to the occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk or serious harm.

Emergency Prohibition Orders under section 43 Housing Act 2004

Section 43 of the Housing Act 2004 empowers the Council to make an Emergency Prohibition Order where Category 1 hazards present an imminent risk of serious harm to the occupiers. The order may prohibit the use of all or any part of a premise with immediate effect.

The Council will serve an Emergency Prohibition Orders only where it is considered essential for the safety of the occupiers.

Demolition Orders under part 9 of the Housing Act 1985 (as amended)

Demolition Orders are available under part 9 of the Housing Act 1985 (as amended) as a possible response to a Category 1 hazard. A Demolition Order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied after a Demolition Order has come into effect. Should the building not be demolished, the Council can demolish it and recharge the person upon whom the notice was served.

Clearance Areas under section 289 Housing Act 1985 (as amended)

A clearance area can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets); and any other buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions. Full Council approval would also be required.

Power to Charge for Enforcement Action

Section 49 of the Housing Act 2004 allows the Council to make a reasonable charge as a means of recovering costs incurred in serving an Improvement Notice, making a Prohibition Order, serving a Hazard Awareness Notice, taking emergency remedial action, making an Emergency Prohibition Order or making a Demolition Order. The costs recoverable relate to officer time and other expenses incurred in connection with the inspection of the premises, subsequent consideration of any action to be taken, and the service of notices.

The Council will seek to recover the costs of taking enforcement action in all cases where permitted to do so under the relevant legislation. The Council will apply its standard charge for the recovery of costs, which will be reviewed annually.

Houses in Multiple Occupation (HMOs)

The Council has a statutory duty and powers to ensure adequate standards in HMOs are met and maintained.

The Housing Act 2004 introduced a mandatory scheme to licence HMOs. The mandatory licensing scheme applies only to larger high risk HMOs of three or more stories occupied by five or more people, comprising two or more households and there is sharing of a basic amenity (such as kitchen or bathroom).

The HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and

suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property.

It is a criminal offence if a person controlling or managing a HMO does not have the required licence. Breaking any condition of a licence is also an offence.

Where housing benefit has been paid in respect of an unlicensed HMO, the Council may apply to the First Tier Tribunal for an order to recover a sum equivalent to the housing benefit paid.

Licensable HMOs without planning permission will be dealt with according to the HMO licensing/Planning Protocol:
<http://www.rother.gov.uk/index.cfm?articleid=2429>).

The Housing Act 2004 also provides powers to the Local Authority to take over the management of unlicensed or problem HMOs, with a view to protecting occupiers and those in the vicinity and, where possible getting properties licensed and properly managed. This is achieved by way of Management Orders.

Interim Management Orders (IMO)

The Council must make an IMO in respect of a licensable HMO which is not licensed if it is satisfied that there is no reasonable prospect of the property being licensed in the near future or it is necessary to protect the health, safety or welfare of occupiers of the property or properties in the vicinity.

An IMO is in force for a maximum of 12 months and allows the Council to manage the property with all the rights of a landlord and to collect rent and expend it on work to the property.

An IMO ceases to have effect once a licence is granted. There are provisions to vary, evoke and appeal against an IMO.

Final Management Order (FMO)

The Council must make a FMO where, on expiry of an IMO, the property requires to be licensed but the Council considers it is still unable to grant a licence.

A FMO is similar to an IMO in that the Council continues to manage the property with all the rights of the landlord, but they must be reviewed from time to time.

As with IMOs, there are provisions for varying, revoking and appealing the making of a FMO.

Management Regulations

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations.

Overcrowding Notices

Overcrowding Notices may apply to HMOs that are not required to be licensed. The effect of an Overcrowding Notice is that the person served must comply with the terms of the notice and if they fail to do so they commit an offence for which the Council can prosecute.

An Overcrowding Notice must either prohibit new residents or limit the number of people sleeping in the HMO.

Empty Properties

The Housing Act 2004 introduced Empty Dwelling Management Orders (EDMO) in order to unlock the potential of empty houses and to get them back into use as houses as quickly as possible. EDMOs are designed as a backup to voluntary leasing arrangements with a Registered Provider and an alternative to enforcement action under other legislation.

There are two types of order, Interim EDMO and Final EDMO. EDMOs allow the Council to secure the occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period (at least six months).

Interim EDMOs

In order to make an Interim EDMO the Council must apply for authorisation from First Tier Tribunal. The property must have been empty for at least six months and there must be a reasonable prospect that the property will become occupied if an interim EDMO is made.

An Interim EDMO comes into force as soon as it has been authorised and can last for 12 months. Once an Interim EDMO is in force, the Council must take steps to secure occupation and proper management of the property. However, the Council may only grant a tenancy with the consent of the owner.

Final EDMO

The Council may make a Final EDMO to replace an Interim EDMO or a previous Final EDMO if the Council considers the property would otherwise remain unoccupied.

The Council does not need to obtain authorisation from the RPT to make a Final EDMO. Once a Final EDMO is in force, the Council must review its operation and take steps to secure occupation of the dwelling.

Subject to any appeal, a Final EDMO comes into force no earlier than the day after the period for appealing has expired and last for the period specified in that order, which can be up to seven years.

Other Legislative Provisions

The Private Sector Housing team is also responsible for enforcing the provision of other legislation including:

- Public Health Acts 1936 section 45 Defective sanitary conveniences
- Building Act 1984 section 59 Defective drainage to existing buildings
- Building Act 1984 section 76 Defective Premises
- Environmental Protection Act 1990 Statutory Nuisance related to domestic premises
- Prevention of Damage by Pests Act 1949
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- Redress Schemes for Lettings Agency work and Property Management Work (Requirement to Belong to a Scheme) (England) Regulations 2014

**Rother District Council
Housing and Planning Act 2016
Civil Penalties and Rent Repayment Orders Policy
April 2018**

This policy sets out the criteria for using a civil penalty as an alternative to prosecution, the use of Rent Repayment Orders and the methodology to be used in setting civil penalty fines. It takes into account the statutory guidance that has been issued by the Government under Schedule 9 and Section 41 of the Housing and Planning Act 2016, and should be read in conjunction with the Council's Private Sector Housing Enforcement Policy (Minute CB15/70).

1. Introduction

Section 126 and schedule 9 of the Housing and Planning Act 2016 came into force on the 6 April 2017. These provisions give the Council as the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences after the 6 April 2017 as an alternative to prosecution.

The offences include:

- Failing to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under part 3 of the Act (selective Licensing) (section 95)
- Offences in relation to the contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit the Council to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.

2. Policy approach and decision-making

As set out below, a civil penalty of up to £30,000 can be imposed where a serious offence has been committed and the Council may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

The decision on whether to use civil penalty powers (and to what extent) or to seek a prosecution will be made by the Executive Director or the Service Manager – Environmental Services and Licensing.

Overall, each case will be considered on an individual basis, however the principles in determining the form of action will be:

- What outcome are we trying to achieve – e.g. set an example, get the works done or a deterrent to committing future offences (a civil penalty will not be in the public domain unlike a prosecution).
- Severity of the offence – is prosecution a better option based on the significance of the offence and the impact it has had.
- Type of property and its occupiers – are the occupiers particularly vulnerable.

Where the civil penalty is considered the most appropriate course of action the Council must provide guidance on how the fine levels will be set. Section 6 of this policy provides a proposed fine setting methodology; each case will need to be assessed on an individual basis using this framework as a guide.

3. Burden of proof

The same criminal burden of proof is required for a civil penalty as for a prosecution. This means that before formal action is taken the Council must be satisfied that if there was a prosecution there would be a realistic prospect of conviction.

The Council must determine beyond reasonable doubt that the offence has been committed and this evidence would be required if an appeal is made against the civil penalty.

As also outlined in the Enforcement Policy, the local authority will have regard to the Code for Crown Prosecutors when determining whether to take action. There are two stages to this code:

- The evidential stage, and
- The public interest stage.

4. Procedure and appeals

The procedure for imposing a civil penalty is set out in Schedule 13A of the Housing Act 2004 and summarised in the MHCLG guidance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf.

There is no scope for the Council to deviate from this procedure.

At any time, if circumstances dictate, the Council may withdraw a notice or reduce the amount specified in a notice in relation to a civil penalty.

A landlord receiving the final notice of a civil penalty may appeal to the First Tier Tribunal against the decision to impose a penalty or the penalty amount. The appeal has the effect of suspending the notice and requirement to pay until determined.

5. Enforcement and other consequences

Where the landlord or property agent fails to pay a civil penalty, the Council will refer the case to the county court for an Order of that Court. If necessary, the Council will use county court bailiffs to enforce the order and recover the debt.

The Council's powers to carry out works in default under the Housing Act 2004 are unaffected by the civil penalty provisions.

If a landlord receives a civil penalty, that fact can be taken into account if considering whether the landlord is a fit and proper person to be the licence holder for a House in Multiple Occupation (HMO) or any other property subject to licensing.

Where a landlord receives two or more civil penalties over a 12 month period, the Council will include that person's details in the database of rogue landlords and property agents. While it is not a compulsory requirement, under the MHCLG guidance, Councils are strongly encouraged to do so. This will help ensure that other Councils are made aware that formal action has been taken against the landlord.

6. Proposed Civil Penalties

In setting a civil penalty level the Council should consider the following factors:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Proportionate punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence
- Assessment of assets and income

Determining the offence category – Harm

In determining the level of harm the Council will have regard to:

- The person i.e. physical injury, damage to health, psychological distress
- To the community i.e. economic loss, harm to public health
- Other types of harm i.e. public concern/feeling over the impact of poor housing conditions on the local neighbourhood

The nature of harm will depend on the personal characteristics and circumstances of the victim e.g. tenant.

Where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

Examples of Harm Categories

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; e.g danger of electrocution, carbon monoxide poisoning or serious fire safety risk
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; e.g falls between levels, excess cold, asbestos exposure
Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; e.g localised damp and mould, entry by intruders

Determining the offence category – Culpability

In determining culpability the Council will have regard to 4 levels of culpability. Where the offender –

- Has the **intention** to cause harm, the highest culpability where an offence is planned.
- Is **reckless** as to whether harm is caused i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
- Has **knowledge** of the specific risks entailed by their actions even though they do not intend to cause the harm that results.
- Is **negligent** in their actions.

Examples of culpability

High (Deliberate Act)	An intentional breach by a landlord or property agent or flagrant disregard for the law. For example, by failing to comply with a notice or regulations.
High (Reckless Act)	An actual foresight of, or wilful blindness to the risk of offending, but decides to take the risk nevertheless. For example, failing to comply with a strict liability in the HMO regulations.
Medium (Negligent Act)	The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence. For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.
Low (Low or no culpability)	The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

Determining the Civil Penalty Amount

The table below provides an indication of the level of fine that is likely to be appropriate taking into account both culpability and harm.

Level	Culpability	Harm	Maximum Civil Penalty
1	Low or more	Low	£2,500
2	Low	Medium	£5,000
3	Low	High	£10,000
4	Medium or High	Medium	£20,000
5	Medium	High	£25,000
6	High	High	£30,000

Mitigating Factors

Landlords will be notified of the intended civil penalty and given the opportunity to explain any mitigating circumstances. The penalty may then be decreased by up to fifty percent, if a similar offence has not been committed by the same landlord in the last 3 years.

7. Civil Penalties - Multiple Offences

Where the Council is satisfied that more than one offence is being committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices, (for example, where there are multiple breaches of the HMO management regulations).

However, where satisfied on the merits of the case and/or where the Council consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the Council to do that. The Council may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

8. Rent Repayment Orders

Section 40 of the Housing and Planning Act 2016 came into force on the 6 April 2017. This confers a power on the First Tier Tribunal to make a rent repayment order where a landlord has committed one of a number of offences.

The Housing Act 2004 initially introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs. The Housing and Planning Act 2016 extended this to include Rent repayment Orders for a much wider range of offences including:

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (due to be enacted in November 2017)

- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977).

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.