

APPENDIX 1



POLICY ON ENFORCING STANDARDS IN PRIVATE SECTOR HOUSING 2021.



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1. PURPOSE

This policy is intended to provide guidance for officers, businesses and members of the public on the principles and processes, which will apply when enforcement action is considered or taken in cases being investigated in the Private Sector. It also provides a background to the legislation and guidance on which it is based.

It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed against.

Our aim is to raise standards in Private Sector Housing throughout Coventry, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

2. INTRODUCTION

The Council has a responsibility to deal with unsatisfactory housing in its area and nationally, conditions in the Private Rented Sector (PRS) tend to be less satisfactory than in owner-occupied homes.¹

It is for this reason that enforcement forms the core function of the Council and whilst the teams work hard to develop a professional and constructive relationship with responsible landlords, the need to ensure that all properties meet minimum standards is paramount.

A firm but fair policy on enforcement in accordance with our published procedures is adopted with regular service of statutory notices in cases where informal action has proved ineffective or is inappropriate.

When conducting any investigations each case is judged on its own merits and in accordance with Coventry City Council's [Enforcement Policy](#), and the [CPS evidential and public interest tests](#).

Duties fall under three main headings as follows:

- 1) Undertaking inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards. Taking formal action as necessary to secure compliance with statutory requirements;

¹ English Housing Survey 2016-17

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705821/2016-17_EHS_Headline_Report.pdf



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- 2) The administration and enforcement of the mandatory licensing of prescribed HMOs;
- 3) The administration and enforcement of the discretionary additional licensing of prescribed HMOs;

This policy sets out the Council's principles for enforcing and exercising its duties as a Housing Authority under the following Acts and Regulations made there under:

- The Housing Act 1985
- The Housing Act 2004
- The Building Act 1984
- The Environmental Protection Act 1990
- The Public Health Act 1936
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982
- The Equality Act 2010
- The De-regulation Act 2015
- The Housing and Planning Act 2016
- The Tenant Fees Act 2019

3. Policy Statement

The Council considers the protection of public health paramount and when enforcing the law all assistance will be given to landlords to comply with legal requirements.

All enforcement action will be proportional to the risk any situation presents and will always be in accordance with statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.

Reasonable effort will be made to ensure compliance with the law by a process of advice and education. Formal action will however be considered in the following circumstances:

- Where there is a strict liability to comply and a risk to public health exists
- Where there is a blatant or deliberate contravention of the law
- Where there is a history of non-compliance, or cooperation for an informal approach is not forthcoming
- Where action agreed as part of an informal process is not being progressed within agreed timescales

In safeguarding housing conditions and wider environmental issues arising from rented homes in Coventry, the Council will aim to work with responsible landlords to help them to reduce issues and raise housing standards. However, where appropriate and necessary, the Council will instigate appropriate enforcement action against landlords who fail to comply with their legal requirements.



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The Council will expect landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation; it would expect landlords to refer to the Council's guide to minimum property standards and to liaise with Council officers or other professionals to confirm the extent to which additional requirements apply to any addresses let out as HMOs.

4. HOARDING AND DILAPIDATED PROPERTIES

These are properties often occupied by vulnerable persons, sometimes with mental health issues or elderly people struggling to cope. There has been an increased awareness of the issue brought about by publicity and media exposure and a corresponding rise in the number of reports from neighbours and health visitors regarding issues of disrepair, lack of hygiene or accumulations within properties. While these properties are usually owner occupied, the Council has powers under legislation to take action where the situation is likely to cause harm or ill health to the occupier or where there is a wider health issue or where statutory nuisance may exist.

The cases that come to light are prioritised and referred to other agencies as necessary, particularly when there are safeguarding issues. Known cases are kept under review.

Enforcement action will be taken when necessary to protect public health, but the Council will primarily seek to provide signposting to assistance and engage with the relevant agencies to help them deal with any underlying issues.

5. ENFORCEMENT OPTIONS

Coventry City Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action, including prosecution.

To achieve and maintain consistency, relevant guidance and policy is always considered and followed unless inappropriate in the circumstances.

In deciding upon enforcement options, the Council will have due regard to its overarching enforcement policy - Public Safety and Housing Enforcement November 2017 as well as having due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

Generally, it is the Council's preference that landlords are first given the opportunity, wherever possible, to investigate any reported problems at their properties. The Council expects responsible owners to undertake necessary repairs and improvements without the need for the Council to instigate formal action.



There are a number of options available to the Council and it will depend on the circumstances of the case:

No Action – Where premises are found to be satisfactory

Informal Action – Informal action will be taken in relation to minor Category 2 hazards or where the Landlord is accredited by the Council through the Coventry Landlord Accreditation Scheme (CLAS)

In most cases, in receipt of a complaint regarding housing conditions at an address, the Council would expect the tenant to put the complaint in writing to the landlord to highlight the alleged deficiencies and request that the complaint be investigated, and remedial action taken as necessary.

Where the tenant has not received a satisfactory response then a visit may be made and an assessment carried out to determine which course of action is appropriate.

If, at the outset the initial complaint indicates that an immediate investigation by a Council officer is warranted then a visit will be made.

Where written advice is deemed necessary and is provided, suggested timescales will normally be included to undertake any specified works or actions. For defects that relate to moderate or minor Category 2 hazards, a Hazard Awareness Notice may be issued.

Formal Action – This action will normally be the first course of action following the inspection unless the landlord has provided the tenant with a satisfactory response or is accredited.

In cases where officers visit an address, whether this is a result of a landlord's failure to adequately resolve a highlighted issue or as part of an audit or other investigation, written or verbal advice may be deemed sufficient should the inspection highlight only minor deficiencies.

With regard to assessments made under the Housing Health and Safety Rating System [HHSRS] made under Part 1 of the Housing Act 2004, the Council would not normally take formal action if the identified defects equated only to minor or moderate Category 2 hazards.

The Council has a statutory duty to act in cases of Category 1 hazards and will exercise this duty where it is clear that the landlord has failed to provide the tenant with a satisfactory response or to address the concerns raised.

In deciding on the appropriate enforcement approach the Council will have regard to the Housing health and safety rating system (HHSRS) enforcement guidance: housing conditions

Guidance for local housing authorities about their duties and powers under part 1 of the Housing Act 2004.



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<https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>

The enforcement options available to the Council under the Housing Act 2004 are set out in Appendix 1 to this Policy.

These are notices used when a landlord is failing to comply with housing or other health and environmental legislation. They normally require that necessary remedial action be taken at a specified property by the owner within a specified time period, which will vary depending on the nature and scale of the works.

For defects that give rise to Category 1 HHSRS hazards under Part 1 Housing Act 2004, the Council has a duty to take appropriate enforcement action to deal with that hazard. The Council will also normally seek to deal with any significant Category 2 hazards identified at an address, whether or not Category 1 hazards are also present.

In situations where a landlord fails to comply with a formal notice requiring remedial works, the Council may undertake these works in default of the owner and take steps to recover any costs incurred. This power may be exercised in addition to any prosecution proceedings taken for non-compliance with this notice.

Where there is a Category 1 HHSRS hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of a dwelling, the Council may serve an Emergency Prohibition Order or take Emergency remedial action. Such emergency actions would involve either the removal of certain defects giving rise to the immediate risk or the closure of all or part of a dwelling.

Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default. As the Council relies heavily upon statutory notices to ensure compliance, it will view a breach of a notice as a serious matter.

The Council will normally charge where legislation permits the recovery of costs for serving statutory notices.

Civil Penalties

Coventry City Council has powers to issue civil penalties as an alternative to prosecution in respect of the following breaches.

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004);



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- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- Failure to comply with Regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Failure to comply with the requirement of the Tenant Fees Act 2019
- Failure to comply with the requirements of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations (as amended) and the Energy Performance of Buildings (England and Wales) Regulations 2012

If a civil penalty is paid in respect of a breach Coventry City Council will not take any further enforcement action in respect of that breach. If a penalty is not paid, Coventry City Council may commence proceedings or take other enforcement action in respect of the breach.

Where there is a legislative option for the Council to choose the amount payable for a civil penalty, the Council's policy will be to charge the maximum permitted level. The charges will be available on the Council's website.

Where appropriate the Council will apply for RRO and support tenants who wish to apply for a RRO.

The Council's approach to determine appropriate penalty levels is set out in Appendix 2 for penalties issued in relation to Housing Act, Housing and Planning Act and The Electrical Safety Standards Regulations and Appendix 3 for penalties issued in relation to Tenant Fees Act offences, Appendix 4 for penalties issued in relation to the Electrical Safety Standards and Appendix 5 in relation to MEES and the requirements regarding EPC's.

Simple Caution

Coventry City Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Coventry City Council is likely to consider prosecution.

A simple caution will influence how Coventry City Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence.

Simple cautions will be used in accordance with Ministry of Justice Guidance and any other relevant guidance.



Prosecution

When deciding whether to prosecute Coventry City Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Coventry City Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, Coventry City Council will have particular regard to the following public interest criteria:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is prosecution a proportionate response?
- Do sources of information require protecting?

The Council expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- a breach of the legislation resulted in a death
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of legislative requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- the breach has been carried out without or in serious non-compliance with an appropriate licence or permission;
- a duty holder's standard of compliance is found to be far below what is required by law and to be giving rise to significant risk;
- there has been a failure to comply with a statutory notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- officers have been intentionally obstructed in the lawful course of their duties.

In deciding on the public interest the Council will make an overall assessment based on the circumstances of each case and will consider all relevant circumstances carefully, including local and corporate priorities.

6. DECISION MAKING

Ultimately, it is for Coventry City Council to decide which option it wishes to pursue but as a general principle, local authorities should normally prosecute where an offence is particularly serious or where the offender has committed similar offences in the past.

Prosecution in serious cases demonstrates that the Local Authority will not hesitate to take formal action where needed and is likely to act as a strong deterrent both to the offender and other rogue landlords. A prosecution also enables the Local Authority to apply for a banning order following a successful conviction.

Coventry City Council has an enforcement matrix which is used to determine the most appropriate course of action in enforcement cases. The principle of the enforcement matrix is to provide a score based on a number of factors, both negative and positive. Bands are provided to reflect the score produced and the appropriate courses of action for dealing with the identified situation.

Bands	Score	Recommend Action
1	Positive to minus 10	Informal action Requirement to attend training Higher fees for licences
2	Minus 11 to minus 30	Revoke accreditation Reduce licence length
3	Minus 31 to minus 40	Formal investigation PACE interview Revocation of licence Revocation of accreditation Formal caution Civil penalty
4	Greater than minus 41	Prosecution or civil penalty

The enforcement matrix provides guidance to officers carrying out investigations and ensures that enforcement is being carried out in a fair, proportionate and consistent way.

Charging for Enforcement

If there is a statutory charging mechanism the Council will seek to recover the full costs of providing its services wherever that is possible in accordance with guidance provided by Government and its policies.

Charges are made for the serving of formal notices under the Housing Act 2004. If properties are rented in a condition that requires statutory intervention the City Council will endeavour to recover the costs incurred. Similarly the Council will adopt the highest penalties in the case of Civil Penalties in accordance with the guidance provided by Government and its policies.



Proceeds of Crime

Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.

7. MONITORING AND REVIEW

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

The satisfaction of service users i.e. landlords, tenants and residents will be assessed through regular random sample customer questionnaires.

Application of the Policy

All officers must have regard to this policy and make decisions in accordance with the Council procedures when making enforcement decisions.

Maximum Levels

Coventry City Council takes the enforcement of housing conditions in the Private Rented Sector extremely seriously and proactively pursues enforcement action where it is considered to be necessary and appropriate.

There may be circumstances when the Council is dealing with offences that it considers will warrant a maximum penalty. This will be carried out in accordance with guidance provided by Government and the Council's policy.

Recording of the decision

A record of each decision and the reasons for the financial penalty will be made together with how the amount of the penalty was set and the reasons for imposing it.