

Introduction

The Council's Private Sector Housing Unit (PSHU) Environmental health team is responsible for enforcing a wide range of statutory provisions relating to housing fitness and environmental conditions affecting health and safety. The principal Acts that we enforce are:

- Housing Act 1985
- Housing Act 2004
- Environmental Protection Act 1990
- Public Health Act 1936 (as amended)
- Building Act 1984

In exercising the duties and other functions of the PSHU, officers will seek to do so in a firm but fair, open, 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.

Scope

This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

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 purposes of checking compliance with legislation and the provision of advice.

It is recognised that there may be circumstances where shared or complimentary enforcement action may be taken with other agencies. In these cases, the decision on enforcement will have regard to the relevant policies and procedures of other departments or agencies. All relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.



This policy seeks to support the Council's corporate aims, objectives and strategies with respect to Private Sector Housing, such as improving housing services, providing value for money and increasing the supply of affordable housing.

Aim of the Policy

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.

The aim of the policy is to ensure that all enforcement actions comply with the following 3 principles:

Consistency

Proportionality

Openness

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 the attitude and actions of those involved.

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.

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)



Enforcement standards

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

The Human Rights Act 1998

The Regulation of Investigatory Powers Act 2000

The Police and Criminal Evidence Act 1984 – Codes of Practice

The Criminal Procedures & Investigations Act

The Code for Crown Prosecution

Additional guidance and service specific procedures will supplement this policy where necessary and may change in response to changes in legislation and relevant guidance.

Officers will investigate non-compliance with statutory requirements and take firm action including prosecution where appropriate against those who openly fail to fulfil their legal obligations. The decision taken in the case will have regard to health and safety and will be recorded by the investigating officer in accordance with this policy and any other service specific guidance.

Enforcement Options

The Council regards enforcement as encompassing all the actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement (stage 1). Where this is not successful there will be cases where formal action will be necessary (stage 2), which may ultimately lead to prosecution or other summary action (stage 3).

The following range of actions may be taken

Actions	Stage 1
a. No action	Where: <ul style="list-style-type: none"> • Complaints or allegations of breaches of housing legislation or statutory nuisances are unsubstantiated • Formal action is inappropriate in the circumstances
b. Verbal advice	Where: <ul style="list-style-type: none"> • There is insufficient evidence of breaches or nuisance. • Immediate action is taken to comply with failures
c. Informal letters	Where: <ul style="list-style-type: none"> • Past history of dealing with the relevant parties allows confidence that informal action will achieve compliance • Conditions are not serious enough to justify formal action or there are extenuating circumstances. • The consequences of non-compliance will not impose a significant risk to health and safety
d. Formal letters	Where: <ul style="list-style-type: none"> • Informal action has not achieved the desired effect
e. Advisory notices*	Where: <ul style="list-style-type: none"> • The conditions are serious to justify formal action.

Enforcement decisions for stage 1

In making decisions about enforcement Officers will comply with all procedures and policies relevant to each situation and the legislation involved. Decisions to take these actions will rest with the investigating officers

Actions	Stage 2
f. Formal Notices	Where: <ul style="list-style-type: none"> • There are significant failures of statutory requirements • There is lack of confidence in the individual or management i.e. the willingness will rectify or improve or respond to an informal approach • There is obstruction or assault • There is a history of non-compliance • The consequences of non-compliance • Although there is an intention to prosecute, effective action needs to be taken quickly. • The Council is required to serve a statutory notice
g. Prosecution	Where: <ul style="list-style-type: none"> • There is sufficient and reliable evidence that an offence has been committed • There is a realistic prospect of conviction • There are Public interest factors
h. Works in default or emergency remedial action	Where: <ul style="list-style-type: none"> • There is an imminent risk to health and safety to the public • Prosecution would not adequately protect public interest. • Legislation does not permit prosecution for non-compliance with the notice in question

Enforcement decisions for stage 2

Officers serving statutory notices will be prepared to discuss the works required and fully consider any representations made by the recipient of the notice.

Actions following failure to comply with statutory notices will be taken in consultation with the Environmental Health Manager or Head of service

Action must be approved by either of the above following a documented case discussion. In cases where agreement on action cannot be reached they shall be referred to the Head of service.

Actions	Stage 3
i. Formal Caution	To: <ul style="list-style-type: none"> • Deal quickly and simply with less serious offences • Divert less serious offences from the Courts • Reduce the chances of repeat offences
j. Revocation of Licenses and approvals	Where: <ul style="list-style-type: none"> • There is provision of false information or intent to deceive
k. Prosecution	Where: <ul style="list-style-type: none"> • There is sufficient and reliable evidence that an offence has been committed • Recklessness, obstruction or assault involved • There is a realistic prospect of conviction • There are Public interest factors

Enforcement decisions for stage 3

Any decision on whether or not to prosecute will be based on consideration of the following factors:

- Any explanation given by the individual or company.
- The seriousness of the offence
- The circumstances of the offender.
- The history of previous conduct.
 - previous history of similar offences
 - failure to respond positively to previous warnings
 - failure to comply with statutory notices



- Whether other action such as serving a statutory notice or issuing a formal caution, would be more effective.
- Evidence that the individual or company is willing to prevent a recurrence of the problem

Deciding on what action to take

The investigating officer will consider each case on its own merits. The decision on what level of enforcement action is necessary will take into account of:

- The risks or potential risks arising from any contravention.
- Confidence in the management or individual i.e. their willingness to rectify or improve the situation
- The consequence of non-compliance
- Any significant local factors – Officers will, where practicable, take account of those circumstances to minimise any adverse effects of enforcement activity on legitimate businesses and individuals.

Where action is needed we will Officers will:

- Provide clear advice and information to the relevant parties (in writing, if requested and in a language that is readily understood) why it is necessary and when it should be carried out.
- Ensure an opportunity is given to discuss what is required before formal enforcement action is taken (unless urgent action is required to reduce immediate risks).
- Advise the relevant parties of the named officer responsible for dealing with their case.
- Give written explanation of any rights of appeal at the time the notice is served. The information will include, where appropriate, details of how to obtain assistance to enable an appeal to be made.



- Where appropriate, notify the relevant parties about any financial charge that the Council may apply and seek to recover as part of the enforcement procedure.

Any advice and guidance will be offered in line with the Council's Customer Care Charter

- The investigating officer will compile a report detailing the facts and relevant considerations in the case.
- There is a documented case discussion with the Environmental Health manager (EHM) or Head of service and Legal services before any decision is taken.

Future Developments

Housing Act 2004

Part 1 of the Housing Act 2004 contains provisions to replace the housing fitness regime set out in the Housing Act 1985. The separate Houses in Multiple Occupation (HMO) standards will also be repealed. In future Local authorities will base enforcement decisions in respect of all types of residential premises on assessments under Housing Health and Safety Rating (HHSRS). Action by local authorities will in effect be based on a three-stage consideration: (a) the hazard rating determined under HHSRS; (b) whether the local authority has a duty or power to act, determined by the presence of a hazard above or below a threshold to be prescribed in Regulations; and (c) the authority's judgement as to which is the best means of dealing with the hazard. This reform will enable local authorities to address more effectively the hazards to health and safety present in the home.

For further information see Guidance on inspections, the method of assessment and the powers and duties arising from hazard scores contained in "HHSRS Guidance (Version 2)" and the statutory "operating guidance" under section 9 of the Act.

Enforcement of housing standards will include the following actions:

- serving an improvement notice;

- making a prohibition order, which closes the whole or part of residential; accommodation or restricts the number of permitted occupants;
- taking emergency remedial action;
- serving a hazard awareness notice;
- make a demolition order – for specific category and under prescribed circumstances;
- make a clearance area – for specific category and under prescribed circumstances;
- Prosecute lack of compliance.

Recovery of charges under section 49

The Act retains the powers available to authorities to act in default and prosecute lack of compliance. It also enables them to charge and recover charges, incurred in respect of certain enforcement action exercised under Part 1 of the Act.

Part 2 and 3 of the Act introduces mandatory licensing for larger, higher-risk HMOs and discretionary powers to license smaller, multiple-occupied properties. The aim of the licensing regime is to provide greater protection to the health, safety and welfare of the occupants of this type of property. It also allows a Residential Property Tribunal to impose a **Rent Repayment Order** (RRO - a financial penalty) upon a landlord who, without reasonable excuse, manages or lets a property which ought to be licensed under Part 2 or 3 of the Act and is not licensed.

Part 4 of the Housing Act is concerned with a local authority's duties and powers to make management orders. There are two types of orders:

Interim Management Orders (IMOs) or **Final Management Orders** (FMOs). An IMO transfers the management of a residential property to the LHA for a period of up to twelve months. The FMO transfers the management of the house to the LHA for the duration of the order.

Further details on the specific requirements of these pieces of legislation are given in the appendices to this policy. These appendices may change in response to subsequent changes in the law and relevant guidance.



Review

This enforcement policy will be reviewed annually by the Private sector housing management team and approved by the Divisional Director and Chair of the Housing Committee. Any significant changes in the intervening period will be referred to the relevant housing committee.

As part of the annual review process the Private sector management team will consult with private sector landlords, business and other stakeholders including tenants. The team will also monitor the implementation and progress against performance targets, and the broader aims and objectives of the Council's performance management framework.

Publicising the policy

A copy of this policy will be issued to every Private sector landlord, managing agent we have dealings with, and the appropriate representatives of other private sector stakeholders.

A copy can be viewed on the Council's website at: www.lambeth.gov.uk

In the event that an individual or company is not satisfied with the service or if you do not agree with the action taken by the investigating officer, you should first contact the Environmental Health Manager of the Officer's Section to see if the problem can be resolved informally.

The Council has a formal procedure for registering complaints. Details of how to complain can be obtained from the officer dealing with the case or the Head of Private sector housing at:

Hambrook House,
Porden Road, London,
SW2 5RW Tel: 020 7926 4444 or 020 7926 4247
Privatesectorhousing@lambeth.gov.uk

References:

- 1. Enforcement Concordat: Good Practice Guide for England and Wales**
The Enforcement Concordat is a central government initiative that has been drawn up following consultation with business, the voluntary sector, and the enforcement community and consumer groups. It provides a basis for fair, practical and consistent enforcement.
- 2. The Human Rights Act 1998**
- 3. The Regulation of Investigatory Powers Act 2000**
- 4. The Police and Criminal Evidence Act 1984 – Codes of Practice**
- 5. The Criminal Procedures & Investigations Act**
- 6. The Code for Crown Prosecution**
- 7. Housing Act 1985**
- 8. Housing Act 2004**
- 9. Environmental Protection Act 1990**
- 10. Public Health Act 1936 (as amended)**
- 11. Building Act 1984**

Further information:

Private Sector Housing Unit Business Plan

Empty Property Strategy

Compulsory Purchase Policy

Private Sector Housing factsheets for 'Action to improve your home'

A local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the following provisions:

- (a) Part 1 (Housing Conditions) Enforcement of Housing Standards
- (b) Part 2 (licensing of HMOs),
- (c) Part 3 (selective licensing of other houses), and
- (d) Chapters 1 and 2 of Part 4 (management orders);
- (e) Part 9 of the Housing Act 1985 (c. 68) (demolition orders and slum clearance);
- (f) Part 7 of the Local Government and Housing Act 1989 (c. 42) (renewal areas);
- (g) Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (S.I. 2002/1860).