

**Environmental Health & Public Protection
Service
Housing Standards Enforcement
Policy 2023**



1 Introduction

1.1 Cannock Chase Council are committed to ensuring our residents live in safe homes. Through fair and effective enforcement, we aim to protect both the health and safety and interests of tenants, landlords, the wider public and businesses. At the time of writing, the Council estimates its private rented sector accounts for 15.8% of housing in the District.

1.2 The main objective of enforcement action is to ensure that non-compliance with relevant housing requirements in the local housing market is addressed in the most effective way to ensure that compliance delivers a better, safer private rented housing sector. This document sets out the enforcement policy for the Council's Private Sector Housing function, which is part of the wider Environmental Health and Public Protection (EHPP) service. This policy is to be read in conjunction with the EHPP Enforcement Policy 2023 which is the principal policy.

1.3 The content of this Enforcement Policy has also been written having regard to current statutory guidance and codes of practice, particularly the [Regulators' Code](#) the [Code for Crown Prosecutors](#). For more detail on this please see the Environmental Health Enforcement Policy 2023. Enforcing officers will have regard to this policy when making enforcement decisions.

2 Purpose of Enforcement

2.1 The Council expects full voluntary compliance with housing law. We will help owners and landlords meet their legal obligations by providing clear and concise information about what they need to do to comply. However, we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, where appropriate having regard to the individual circumstances of each case and the risks presented.

3 Methods of Enforcement

3.1 Enforcement includes any action aimed at ensuring compliance with housing law. The range of actions that will be considered include;

- 3.2 **Informal Action** – will be considered where one or more of the following circumstances apply:
- a) there is no legislative requirement to serve formal notice or an order and the circumstances are not serious enough to warrant formal action;
 - b) past history suggests informal action will achieve compliance;
 - c) there is confidence in the management or the individual in control;
 - d) the consequences of non-compliance will not pose a significant risk to occupiers or others.
 - e) owner/occupier requests informal action only (subject to risk)

- 3.3 **Serve a Statutory Notice / Order** – This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice or order.

In relation to disrepair or health and safety risk cases, service of statutory notices/orders will be based on the hazards found and how serious they are deemed to be. This is primarily assessed using the Housing Health Safety Rating System. The Council has a legal duty to take the most appropriate course of action available in relation to category 1 hazards. This is where the risk to health and/or safety is high.

There is a power for the Council to deal with category 2 hazards. The Council will take statutory action in respect of category 2 hazards where there is a significant threat to health, safety or wellbeing. The Council will not be restricted in serving notices for Category 2 hazards if justified.

Notices/Orders will include reasonable time limits having regard to the seriousness of the defects and/or contraventions.. All appropriate persons will be notified of the formal action, e.g. tenants, mortgagees etc.

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 Council will endeavour to recover the costs incurred.

- 3.4 The types of notice/order that can be issued by the Council under the Housing Act 2004 include;
- Hazard Awareness Notice – notice advising the person on whom it is served of category 1 and/or category 2 hazard(s) at the property.

- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the hazards found.
- Prohibition Order – an order imposing restriction on the use of the whole or part of the property and/or who can use the property.
- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately.
- Emergency Remedial Action – see 3.5 below

Other legislation is available to the Council, for example the Environmental Protection Act 1990 which allows to the service of an Abatement Notice. Regardless of the legislation used, the principles of this policy will be followed.

3.5 Emergency Remedial Action – this will be considered where there is an imminent risk of serious harm. The Private Sector Housing Team will take the action necessary to mitigate and/or remove this risk and formal action will be taken by the Private Sector Housing Team to recover the full costs incurred. In circumstances where there is non-compliance with statutory provisions the Council has powers to take further actions to both ensure that housing conditions are improved and to take other actions to act as a deterrent for further failures to comply.

3.6 Suspend, revoke or refuse to renew or grant a licence or authorisation – e.g. under the Licensing of Houses in Multiple Occupation (HMO) provisions. This will be considered where licensing conditions are not being met.

Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence for HMO licence and inclusion on the mobile home sites fit and proper person register. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities. The Council may reduce HMO licence periods if they deem it appropriate.

3.7 Simple Caution – used to deal quickly and simply with less serious offences and to divert these away from the courts. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be issued in accordance with the [Ministry of Justice – Simple Cautions for Adult Offenders \(April 2015\)](#) in consultation with the Council's Legal Services.

Other forms of caution may be used when introduced or Simple Cautions are no longer available.

- 3.8 **Civil Penalty Notices** - Section 249A of the Housing Act 2004 introduced the option to impose a civil penalty, as alternative to prosecution, on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence. The burden of proof needed to issue a civil penalty is the same as is necessary for a prosecution. The Housing Standards Team will complete a case file where civil penalties are being recommended which will follow the same final approval process as other legal proceedings.

The decision as to whether a prosecution is taken rather than issuing a civil penalty depends on factors such as the seriousness of the offence, historical offences, culpability, likelihood of continuing, repeated or escalating offences taking place, vulnerability of the tenant and the potential impact to the wider community.

The maximum charge per offence is £30,000, but the level of charge in the civil penalty notice will be determined by reference to the Council's Housing Civil Penalty Policy and charging matrix (Appendix 1). A decision by the Head of Service, or other suitably authorised officer, after receiving appropriate legal advice, is necessary to determine the most appropriate course of action.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 also allow a financial penalty not exceeding £30,000 to be imposed. In determining the Civil Penalty amount, the Council will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and the developed Penalty Matrix (Appendix 2).

- 3.9 **Banning Orders and Rogue Landlord Database for Housing Offences**

The Council may seek banning orders where landlords or property agents have been convicted of a banning order offence. Where a breach of a banning order occurs, the Council may seek to issue a civil penalty - the amount would be no less than £10,000 to reflect the seriousness of the offender having received a banning order in the first place and be reserved for the worst offenders.

The Council must make an entry on the national Rogue Landlord Database where a banning order has been issued and must revoke any licence held by a person subject to such as order or reduce their licence term as they see fit.

- 3.10 **Civil Sanctions/remedies** – The Council may decide to use a civil sanctions or remedies in conjunction with or instead of the principal legislation it enforces.

This may be considered where persons/businesses have saved costs or gained an unfair advantage through non-compliance with the law. It may also be where injunctive applications through the civil court are required such as in illegal eviction or harassment cases.

3.11 **Penalty Charge Notices** - Under various legislation the Council enforces, such as The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 there is the ability to issue penalty charge notices to address non-compliance. Cannock Chase Council's Statement of Principles 2023 (contained in Appendix 3) will take effect and deal with breaches of these Regulations including the issuing of penalty charge notices of up to £5000.

3.12 **Prosecution** - this may be considered for more serious offences. It aims to punish wrong doing, to avoid a reoccurrence of the offence and to act as a deterrent to others.

The factors outlined in the Environmental Health Enforcement Policy 2023 will be considered in deciding whether or not to prosecute and those that apply will depend on the circumstances of each case. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment together with a decision to instigate legal proceedings.

3.13 **Rent Repayment Orders** - If a landlord has been convicted of an offence under The Housing Act 2004 for failing to comply with an improvement notice, failing to comply with a prohibition order, being in control or managing an unlicensed HMO or house the Council has a duty to consider an application to the First Tier Tribunal for a rent repayment order. This is also applicable for convictions under Section 6(1) of The Criminal Law Act 1971 concerning violence for securing entry, section 1(2), (3) or (3A) of The Protection from Eviction Act 1977 concerning eviction or harassment of occupiers and section 21 of The Housing and Planning Act 2016 concerning a breach of a banning order.

Where the Council is satisfied beyond reasonable doubt that a relevant housing offence has been committed, they may consider an application to the First Tier Tribunal for a rent repayment order irrespective of whether landlord has been convicted of an offence. In either case a notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations. The Council may seek an order (as an alternative or in addition to other enforcements options) where the perpetrator has obtained significant income whilst breaking the law or operating illegally or unsafely. The Council may also seek an order where a rent repayment order is likely to be more punitive than other actions and will be decided on a case by case basis.

The Council, where it has evidence which may support tenant applications for their own Rent Repayment Orders, disclose allowable information to support applications. This support will only extend to the provision of information, Council officer will not attend hearings on a tenant's behalf.

- 3.14 **Works in Default** - This may be considered (where allowed by the governing legislation) as an alternative to, or in addition to the issuing of, a Penalty Charge Notice, Civil Penalty or prosecution. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the Courts. The Council may also require a private tenant to pay rent direct to the Council instead of their landlord where the Council is recovering costs incurred in undertaking work in default.

This will include where applicable, administration costs and officer time. The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to. Where appropriate the costs will be placed against the property as a charge. The Council may seek to use its powers to enforce the sale of the property to recover the costs.

- 3.15 **Management & Compulsory Purchase Orders** - The Council may choose to make Management Order applications including interim/final management orders and empty dwelling management orders where the circumstances and risk warrants this action. It will generally seek to make them as a last resort where other options to obtain compliance or safeguard the public have been tried and have failed.

The Council have the power to make an Interim Management Order (IMO) in respect of residential property. A LA can exercise this power where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO a LA can make an application to the First Tier Tribunal to make a Final Management Order and take over the management of the property for a period of up to five years. This removes a landlord's ability to manage the property and can also have a significant financial impact on its operation.

The Council can also apply for Empty Dwelling Management Orders (EDMOs) for problematic empty properties. These will be approved on a case-by-case basis by a Head of Service or equivalent and may be considered along with other options such as compulsory purchase.

4 Proceeds of Crime

- 4.1 The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their

criminal activity. The District Council will use this legislation where appropriate and in consultation with Legal Services.

5. Delegation & Decision Making

- 5.1 Decisions about the most appropriate enforcement action to be taken will be made in-line with this policy and based on professional judgement, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government.
- 5.2 The relevant Head of Service has delegated authority, in accordance with the Scheme of Delegation in the Council's constitution, to take the steps necessary to enforce all legislation which falls under their remit.
- 5.3 A decision to issue a Civil Penalty or instigate a prosecution will be taken by the appropriate Manager (as delegated by Cabinet and the relevant Head of Service) in consultation with the Council's Legal Services

6. Costs of Enforcement

- 6.1 The Council is able in certain circumstances to charge for enforcement action, e.g. the service of an improvement notice. What can be charged for will depend on the type of action taken. Examples include costs associated with determining whether to serve a notice, costs involved in identifying any action required and costs associated with serving a notice. When costs are to be charged an invoice will be sent to the relevant party outlining the amount to be paid, what it covers and the payment terms. The charge levied will only cover the cost of the enforcement action to the authority.
- 6.2 This is a separate payment and is not the same as a civil penalty which is issued as an enforcement mechanism to address non-compliance.
- 6.3 The Council will seek to issue enforcement charges in all cases where it is legally entitled to recover the costs unless there are exceptional circumstances.

7. Appeals

- 7.1 Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate.

- 7.2 Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.
- 7.3 All other appeals regarding enforcement action taken should be directed either to the Magistrates' Court or as directed on the notice/order served.
- 7.4 The Council will rigorously defend any appeals where the notice/order has been correctly served.

8. Complaints

- 8.1 The Council provides a well-publicised, effective and timely complaints procedure. The procedure is accessible on the Council's website at <https://www.cannockchasedc.gov.uk/content-z-tags/complaints>

Alternatively a complaint can be made via the following contact methods;

- in person by visiting the Civic Centre
- by telephone on 01543 462621
- in writing to Civic Centre, Beecroft Road, Cannock, Staffordshire, WS11 1BG

- 8.2 The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal.

This policy is available on the Council's website at <https://www.cannockchasedc.gov.uk/residents/environmental-health/environmental-health-enforcement-policy>

If you would like a paper copy of the policy and/or you would like to comment on the policy, or if you have a complaint about the way in which the policy has been applied, please contact us at the following address:

Environmental Health & Public Protection Service,
Cannock Chase Council,
Civic Centre,
Beecroft Road,
Cannock,
Staffordshire
WS11 1BG.

Tel: 01543 462621
E-mail: environmentalhealth@cannockchasedc.gov.uk

9. Public Registers

- 9.1 Public Registers of licensed HMOs, dwellings with interim/final/empty dwelling management orders, mobile home fit and proper persons and HMOs with temporary exemption Notices in force will be available upon request in line with the requirements of the legislation and guidance. Copies may be requested by email to privatesectorhousing@cannockchasedc.gov.uk
- 9.2 If a copy of the register, in full or part is requested by a member of the public, this may be subject to a reasonable fee to cover administration costs.

10. Review & Version Control

- 10.1 This Enforcement Policy will be subject to review in line with the wider Environmental Health Enforcement Policy and amended to reflect any change in legislation, corporate policy or official guidance. Minor amendments and revisions can be authorised by Head of Service level or equivalent.

Version Table:

Edition Title	New or revision number	Author	Date
Private Sector Housing Enforcement Policy 2023	New	Jennifer Sheffield/David Prosser/Davies	April 2023

Related Documents:

Environmental Health and Public Protection Service Enforcement Policy 2023
[Private Sector Housing Strategy 2022-27](#)