

Thurrock Council

Private Sector Housing Enforcement Policy

Introduction

The Private Housing team is responsible for enforcing private tenants' rights, and ensuring housing conditions and standards are maintained in private owned properties. It endeavours to achieve this through advice, information and financial assistance with grants and loans, subject to funding availability.

Where this approach fails or is not appropriate and it is necessary to protect the health and safety of persons then the service will take the appropriate enforcement action.

This enforcement policy is intended to provide guidance of our approach to non-compliance is addressed in the most effective way to ensure compliance is achieved for the benefit of all.

Enforcement principles

The content of the enforcement policy works within the statutory framework set and it follows best practice and procedure.

The council is committed to acting in a fair and consistent and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the council will act in way that is:

- proportionate
- consistent
- targeted only at cases where action is needed
- transparent
- accountable

Decisions on enforcement actions

Enforcement includes any action aimed at ensuring compliance with the law. The range of actions that will be considered shall be in line with our enforcement principles:

- no action
- informal action
- formal action
- statutory notice
- simple caution
- prosecution
- works in default
- Penalty Charge Notice
- civil penalties
- Community Protection Notice

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider:

- the seriousness of any offence
- the owner/landlord's past history
- the consequences of non-compliance
- the known or likely public benefit of the chosen enforcement action
- the willingness of the owner/landlord to carry out works and the confidence in them
- the likely ability of any witnesses to give evidence and their willingness to co-operate
- the Crown Prosecution Service's Code of Practice for Crown Prosecutors
- the risk of any hazard to health (see details below)
- any relevant guidance or case law
- COVID-19 restrictions put in place by government and the ability of the landlord to comply with the requested works

Enforcement guidance

The main Act used by the Private Housing team is the **Housing Act 2004**. Part 1 is used to remove hazards in a property that puts occupiers at risk of injury or ill health.

Hazards are subject to a statutory risk assessment that determines whether the hazards are classified as a Category 1 or 2.

The council are under a legal duty to take formal action in the case of a category 1 hazard. The council does not have a duty to take action with category 2 hazards but it does have the discretion to take action.

The Private Housing team also uses Part 2 of the Housing Act 2004. This allows the council power to deal with substandard dwellings, license certain types of houses in multiple accommodation (HMO) and take over management of HMO rented accommodation in certain cases.

The council has a legal duty to enforce the mandatory HMO licensing scheme and regulate Management Regulations for all HMOs licensable or not. Non-compliance of either offence can result in criminal prosecution or service of a civil penalty notice by the PHS.

The Private Housing team has delegated authority to use other powers to effectively deal with non-compliance. This is contained in the enforcement policy.

Informal action

Wherever possible, the council will try to enforce in an informal manner. It is appropriate where:

- the act or omission is trivial in nature and it can be simply remedied
- confidence in the individual/businesses management is high
- any hazards pose a minimal risk to health
- there is insufficient evidence for formal action at the time (although formal action may follow at a later date)
- the views or circumstances of the occupiers or owners provide compelling reasons why formal action should not be taken
- there are no concerns that the tenant may be subject to retaliatory eviction

The council will bring the nature of the complaint to the landlord or managing agent so that they can address the matters. A notice of entry shall then be sent arranging an inspection under the housing health and safety rating system (HHSRS).

Following the inspection the hazards are scored and a list of works are produced to mitigate them. These are sent to the landlord and tenant for consultation. The tenant will not receive a copy of the landlord's home address unless consent is given. A period of 21 working days are given for proposals and comments to be considered.

If this informal approach does not result in works or action being completed or insufficient progress is made or information requested is not supplied then the council may choose to treat the matter in a formal way.

Situations where a service may not be provided

Consideration will be given to either not providing a service or ceasing to provide a service, where:

- the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
- the tenant(s) have, in the opinion of the council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
- the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card
- the tenant(s) have been aggressive, threatening, verbally or physically abusive towards officers
- there is found to be no justification for the complaint, on visiting the property
- the tenant unreasonably refuses to provide the council with relevant documentation
- the tenant is following COVID-19 guidance and is either shelf-shielding or self-isolating and the matters reported are trivial – that is, non-category 1 related hazards

Formal action

This will be taken when:

- informal action has not resulted in compliance or progress
- there is an imminent risk to an occupier or member of the public, this would require Emergency Remedial Action
- an owner or landlord is known to have a history of non-compliance with statutory requirements
- there is a belief that the tenant may be subject to retaliatory eviction
- a serious offence has been committed
- the consequences of non-compliance are significant
- the likely ability of any witnesses to give evidence and their willingness to co-operate
- it is felt necessary or it is a statutory requirement to inform the owner formally that there are recommended works that ideally should be carried out – this will normally be in the form of a Hazard Awareness Notice
- suspend, revoke or refuse to renew or grant a HMO licence where licensing conditions are not being met
- banning order will be considered where the person has committed serious housing offences such as fraud, illegally evicting a tenant, used violence or threatened violence against a tenant, knowingly rent out unsafe and substandard accommodation

Damp and mould

The council will work with landlords, owners and residents to provide and maintain dry, healthy homes for our residents.

We shall investigate complaints to determine the cause of damp, mould and condensation and notify the landlord and tenant of the findings to make sure their property is safe and free from hazards.

Each case will be treated individually with no assumptions being made on the cause, even where similar cases have been seen before.

If, after 21 days from issuing an informal schedule of works, there is no reasonable progress by the landlord to carry out the works within a reasonable period, formal enforcement action will be taken straightaway.

In the instance where Category 1 hazards are identified, the local authority shall take a course of part 1 action under the Housing Act 2004. Discretionary action may be taken for Category 2 hazards. Other legislation may be used such as the Environmental Protection Act 1990 or the Building Act 1984.

If the landlord fails to comply with an enforcement notice, we shall consider works in default, including obtaining quotes, carrying out the necessary works and recovering the fees from the owner.

The tenant is expected to give the landlord reasonable access to obtain quotes and carry out the works.

HMO licensing

The council will vet prospective applicants for a license they will be vetted whether they are a 'Fit and Proper' person to hold a license. Where a person is found not to be a 'fit and proper' person to hold a licence, their application will be declined and a notice of decision to refuse to grant a licence served. This information will be stored on the council's own records and shared as necessary with others in a national database.

The council can serve a civil penalty on the letting agent and landlord for failing to license for a licensable property as alternative to prosecution, refer to the Civil Penalty section.

Statutory notices

This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice or order to deal with serious hazards. The council has a legal duty to take a course of action under Part 1 of the Act when there are category 1 hazards. The possible courses of part 1 action are:

- Improvement Notice (sections 11 and 12)
- Prohibition Order (sections 20 and 21)
- Emergency Remedial Action (sections 40 and 41)
- Emergency Prohibition Order (sections 43)
- Hazard Awareness Notice (sections 28 and 29)
- Suspended Improvement or Prohibition notice/order

The notices/orders will include reasonable time limits having regard to the seriousness of the defects and/or contraventions. The notice will contain all required information as specified by the relevant Act or Regulation.

All appropriate persons will be notified of the formal action – for example, tenants, mortgage lenders. If the council considers it appropriate, some actions can be suspended until a certain time or event. The council will seek its associated costs preparing and serving the notice. Please refer to its Charging Policy.

This table provides a guide to the likely action the Council will take under the Housing Act 2004.

Housing Act Notice

Notice type	Category 1 Hazard	Category 2 Hazard
Improvement Notice	Most common notice that will be used for Category 1 hazards. Although it's mainly used for rented accommodation, it may also be used for properties with owner-occupiers where there is a concern for the health of the occupants. An example would be in the case of a fire hazard in a multiple occupied property (flats).	This notice will often be used to require works to deal with category 2 hazards as part of a notice to remedy category 1 hazards. May also be used where there are high scoring category 2 hazards that may affect the health of the occupants or are likely to be a cat 1 hazard in the future if the works are not carried out.
Suspended Improvement Notice	This may be used occasionally. For example where the occupier refuses to have works carried out or the work is not practical with the current occupiers.	This may be used occasionally. For example where the occupier refuses to have works carried out.
Hazard Awareness Notice	Not normally used for serious hazards except where the owner occupies the property. In this situation the owner is in full control whether to remedy the hazard and simply notifying the owner of the hazard is believed to be sufficient.	This notice is often used where there are recommended works to be carried out but they are not serious enough to warrant an Improvement Notice. May also be used for a high scoring hazard if an owner occupies the property.
Prohibition Order	Used very occasionally. Mainly used where improvements are not practical or where it's more practical to prohibit certain age groups. Main use is for dealing with overcrowding. It may also be used to prohibit the use of unsuitable parts of a property such as cellars and basements.	This order is not normally used for Category 2 hazards.
Suspended Prohibition Order	A Suspended Prohibition Order may commonly be used where an owner occupies the property or in cases of overcrowding.	This order is not normally used for Category 2 hazards.

Notice type	Category 1 Hazard	Category 2 Hazard
Emergency Prohibition Order	Only used in very exceptional cases. An Emergency Prohibition order will be served where there is an imminent risk to health or injury and prohibiting the use of the property is believed to be the only solution.	This order is not normally used for Category 2 hazards.
Emergency Remedial Action	This will only be used in exceptional cases. There has to be an imminent risk to health or injury. The Council can carry out Works immediately and recover their costs from the owner.	This action is not normally used for Category 2 hazards.

A land charge is placed on the premises when demand for payment of the charge becomes operative and no appeal is brought against the notice or order at the end of the appeal period.

Powers of entry and power to require information

The council will exercise its power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- the officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- the officer has given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

The council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- any purpose connected with the exercise of its functions under parts 1-4 of the housing act 2004
- investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and housing benefit and council tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

Other Acts enforced by Private Housing service

Environmental Protection Act 1990

Where there are premises that are prejudicial to health but not considered to present an imminent risk of serious harm (so that emergency remedial action cannot be taken) the use of Section 80 of the above Act may be appropriate – for example, where a property lacks hot water or disrepair to the property is not a risk to its occupants but is causing a statutory nuisance to a neighbouring property, a Notice will be served under the Environmental Protection Act 1990.

The Notice will be served following failure to agree informally to the works being carried out

Building Act 1984

Where a property has a defective or insufficient drainage system, a notice may be served under Section 59 of this Act to require necessary works. This may be appropriate where the draining system is defective but does not warrant action using the housing health and safety rating system.

Public Health Act 1961

The council can deal with public health matters related to buildings to protect the health and safety of persons. These powers allow the council to remedy the situation by issuing a notice requiring specified remedial action to be taken. See below. If the required work is not completed, the council has the right to carry out the work, and then recover the expenses reasonably incurred by then in doing so. Please refer to the works in default section:

- blocked or defective drainage or private sewers [section 17]
- unsightly land and property affecting the amenity of an area [section 83]
- filthy or verminous premises [section 34 and public health act 1963 section 83]
- power to require vacation of premises during fumigation [section 36],

Management of Houses in Multiple Occupation [England] Regulations 2006

The council will ensure the duties on the individuals managing and having control of the property are complied with.

If the person fails to comply with the regulations it can be dealt with as a criminal offence by the council. They could be tried in a magistrates' court or receive a civil penalty from the council.

Protection from Eviction Act 1977

The council can help the illegal evicted tenant to gain re-entry and be reinstated into their home with a civil injunction if the tenant did not voluntarily end their tenancy by leaving their home. This upholds the tenant's rights. Please refer to Business Rules Harassment and Illegal Evictions.

The authority has a discretionary power to investigate and consider cases for prosecution where there is alleged harassment or illegal eviction of a private tenant. Each case will be considered individually dependent on the evidence provided and individual circumstances of the case on whether to prosecute the owner/landlord including looking at a Banning Order.

Please refer to Rent Payment Order (RRO) section in regards to our decision on seeking a RRO for this offence against the landlord.

Court action on housing possession cases during the coronavirus outbreak

There is a suspension for 90 days from 27 March 2020 to all housing possession proceedings in the rented, leasehold and homeownership sectors. The Private Sector Housing shall enforce this message with tenants and landlords to prevent illegal evictions from occurring.

Failure to comply with notices

if a warning/notice is complied with, no further action will be taken. however if the notice is not complied with, the council will consider the following options:

- prosecution
- carrying out the works in default
- carrying out the works in default and prosecution
- serve Civil Penalty
- serve Community Protection Notice
- whether a simple caution is appropriate

Works in default

The council will secure evidence and witness statements of non-compliance. This will be considered if all other methods to try to remedy the necessary works have been unsuccessful. The works will bring the property back to a safe minimum standard.

The council is empowered to carry out works in default and recover the costs. This will be done in the most cost effective way. Works in default may be carried out where:

- a notice has not been complied with within the specified time
- there is no prospect of the person responsible carrying out the work – for example, the person is absent or infirm
- speedy abatement is required – for example, where there is an imminent risk of injury or ill health – for example, Public Health Act
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- the problem persists after prosecution
- a landlord has not complied with a 28 days remedial notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 – the council must carry out works in default, please refer to this section

A land charge is placed on the premises when demand for payment of the charge becomes operative and no appeal is brought against the notice or order at the end of the appeal period.

Coronavirus update

Any works in default being carried out during government restrictions shall be deferred until it is safe. New cases shall progress depending on the nature of the work required, vulnerability of the occupiers the level of harm posed to the occupiers

Revocation and variation of notices

The council shall revoke an Improvement Notice once the Notice has been complied with.

If part of the work required within the Notice is carried out, then the Notice can be varied.

Coronavirus update

The timescale for compliance for any part 1 notice or order shall be reviewed in light of the COVID-19 restrictions and the landlord's ability to complete the works. The landlord must show that reasonable attempts have been made to arrange contractors and to obtain access.

Formal (Simple) Caution

This can be used by the council to deal quickly and simply with less serious offences and to divert them away from the courts. There must be sufficient evidence of guilt to give a prospect of convictions and the offender must formally admit to the offence.

The council will charge its costs associated with the enforcement action only if the owner/landlord formally admits to the offence and accepts the council costs as an alternative to prosecution. Please refer to the Charging Policy section.

Penalty Charge Notice

The Council can serve a Penalty Charge Notice under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 where the owner/landlord fails to have a working smoke alarm installed on every storey of their rented home properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance.

Under these regulations, a penalty charge of up to £5,000 can be made. Regulation 13 requires a local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge.

www.thurrock.gov.uk contains the council's statement of principles in this matter.

The landlord can request the local authority to review the penalty charge, refer to the Rights to make Representation section. It is recommended that any representations that are made should be considered jointly by the Housing Enforcement Manager and ASB Manager. A final appeal can be made by the landlord to the First Tier Tribunal.

Civil penalties

Civil penalties are used as deterrent to cause certain housing offences in the private rented sector. The Council have the ability to issue a civil penalty notice under the Housing and Planning Act 2016 to address non-compliance for the following housing offences if it is satisfied beyond reasonable doubt that the persons conduct amounts to a relevant housing offence.

The Private Housing team will consult with the Crown Prosecution Service Code for Crown Prosecutors for this purpose. Please see the Prosecution section. This may be used against persons/businesses as alternative to prosecution.

The amount of the financial penalty is determined by Thurrock Council but it must not be more than £30,000.

www.thurrock.gov.uk contains the council's statement of principles in this matter:

- failure 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 [Section 95]
- offences of contravention of an overcrowding notice [section 139]
- failure to comply with management regulations in respect of Houses in Multiple Occupation [section 234]

Community Protection Warnings/Notice

This will be considered to stop a person aged 16 years or over, owner or landlord committing anti-social behaviour (ASB) which spoils the community's quality of life. This can include offences such as noise nuisance, eyesore rubbish on private (and unsightly) gardens and anti-social behaviour in the private sector.

Grounds for issuing a Community Protection Notice (CPN) include instances in which an individual's behaviour:

- has a detrimental effect on the quality of life of those in the locality
- is unreasonable and
- is of a persistent nature

Failure to comply with a CPN is a criminal offence. The council will refer to its prosecution section. If the person is convicted in the Magistrates court they may receive a fine up to £2,500 or for a business/organisation up to £20k or the following sanctions

- Fixed Penalty Notice (FPN)
- remedial action
- remedial orders
- forfeiture orders
- seizure

For more details, please refer to the CPN policy guidance.

Rent Repayment Order (RRO)

This allows the council to seek a RRO against landlords for a range of offences at the First Tier Tribunal, requiring them to repay a specified amount of rent either to the tenant or the council.

If the tenant paid rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or Universal Credit then it should be repaid to the Council. The tenant has the choice to apply for this with independent help or assistance from the Council.

A RRO can be applied for when the landlord has committed an offence whether or not a landlord has been convicted of one of the offences listed below. The council will need to be satisfied beyond reasonable doubt that the landlord has committed the offence:

- failure to comply with an Improvement Notice [Section 30 Housing Act 2004]
- failure to comply with a Prohibition Order [Section 32 Housing Act 2004]
- breach of Banning Order [Section 21 Housing Planning Act 2016]
- using violence to secure entry to re-enter to a property [section 6 Criminal Law Act 1977]
- illegal eviction or harassment of the occupiers of a property [Section 1 Protection from Eviction Act 1977]

- failure to obtain a licence for a property that was required to be licensed eg HMO [Section 72 and 95 Housing Act 2004]

Banning Order

The council has the power to deal with the most serious and prolific offenders who have received multiple civil penalties or committed serious offences against their tenants.

The list of housing offences related to a landlord or agent can be found at <https://publications.parliament.uk/pa/bills/lbill/2015-2016/0087/16087.pdf>

The council can apply to a First-tier Tribunal for an order banning a landlord or property agent from being involved in the letting and or management of property if the council is satisfied that the person conduct amounts to a relevant housing offence.

Interim and Final Management Orders

Where there is no prospect of an HMO being licensed, the council will apply to the First Tier Tribunal to grant an Interim Management Order. This allows the council to take over the management of an HMO and become responsible for running the property and collecting the rent. This lasts up to a year.

In exceptional circumstances, the council can also apply for Final Management Order. This lasts up to 5 years

Prosecution

Prosecuting someone is a serious matter and will be considered carefully on a case- by-case basis. When considering prosecution officers must follow the guidance in the Code of Practice for Crown Prosecutors.

Where criminal offences have been committed officers may consider prosecution is an appropriate way of dealing with the offence when either:

- a simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution
- there is a risk to public health and safety or of environmental damage as a consequence of the breach
- the breach was as a result of a deliberate act or following recklessness or neglect
- the approach of the offender warrants it – for example, repeated breaches, persistent poor standards
- a legal notice or order has not been complied with or no reasonable progress made in relation to its requirements
- obstruction of an officer in the course of their duty
- when a person continues to commit offences despite being informed by the Council of these
- the refusal or provision of false information

Please note, this is not an exhaustive list and each case will be considered on its individual merits.

The initial decision to prosecute will normally be taken by the Private Sector Housing Manager in consultation with the solicitor of the council with the final decision being taken by Head of Legal Services.

Proceeds of crime

The team will use this legislation where appropriate and in consultation with the Council's Corporate Fraud Team and Legal Service. The proceeds of Crime Act 2002 allows the court to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity.

Charging policy

The council will recover our costs when statutory action is taken including the full costs of an officer's time, overheads and any relevant expenses such as specialist reports.

The team has discretion to waive its notice charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken – that is, where it is very clear that the owner is not at fault or that the reason for serving the notice was outside the control of the owner.

Any other costs such as the obtaining of specialist reports will be fully recovered by the council. Where a charge for enforcement action is levied, it will be registered as a local land charge.

Also, the council will seek to recover its administrative costs at the Simple Caution stage as alternative to court prosecution. This is a separate payment and is not the same as a penalty charge which is issued as an enforcement charge to address non-compliance.

Rights to make representation

The recipient of a penalty charge notice has the right to make a written representation regarding the notice. Full details of this process and timescales are detailed on the notice. All representations including mitigating factors will be considered on their own merit.

Appeals

Any person served 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 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.

Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber).

All other appeals regarding enforcement action should be directed to the magistrates' court or as directed on the notice/order served.

The council will defend rigorously any appeals where the notice/order has been correctly served.

Complaints

Thurrock Council provides a well-published complaint procedure. This is accessible on the council's website at www.thurrock.gov.uk/complaints

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

Information sharing

The council is signed-up to the Information Sharing Protocol with the Police, and Responsible Authorities to share and exchange personal and depersonalised information under section 115 of Crime and Disorder Act 1998.

This helps the partnership on tackling local crime and anti-social behaviour priorities in the borough. It ensures all agencies are working together so that enforcement/compliance is effective in the borough.

Authorisation of officers

Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The council's Scheme of Delegation sets out the delegated powers given to Officers.

Officers who undertake criminal investigations will be conversant with the provisions of all relevant criminal investigation law.

Equality impact assessment

This policy aims to promote the council's objectives of improving environmental quality, promoting prosperous communities, health and well-being.

Care has been taken to ensure that application of these policies will not result in discrimination against any of the equalities groups. This document is covered by the Equalities Impact Assessment (EIA) for the overarching Corporate Enforcement Strategy.

Review

The Enforcement Policy shall be reviewed annually and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest.

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