

Housing Enforcement Policy

February 2018

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1. Introduction

One of the primary roles of the Council's Environmental Health Service is to maintain and improve the housing conditions of privately owned property across Rossendale as well as dealing with housing matters arising from privately owned and rented land. Functions of the service include the:-

- Licensing and inspection of Houses in Multiple Occupation.
- Enforcement of the Housing Health and Safety Rating System.
- Investigating overcrowding of properties.
- Nuisance caused by adjacent property.
- Filthy and verminous property.
- Defective and/or blocked residential sewers or drains.
- Mobile home and park home sites licensing (see associated Strategy and Standards).
- Immigration inspections.
- Illegal eviction and harassment associated with privately rented accommodation.
- Dealing with Empty Properties (see Rossendale Borough Council's Vacant Property Strategy 2010).
- Dealing with property detrimental to the amenity of the area
- Public health matters.
- Localised environmental quality issues (including contaminated land).
- Inspections of bond scheme properties.

In order to achieve this priority the Council:-

- Will seek to ensure properties achieve the appropriate standards in co-operation with the owners / agents and tenants by the provision of clear advice, guidance, encouragement and planning of improvements.
- Will utilise all appropriate enforcement action to achieve the appropriate standards in properties found to be jeopardising the health, safety or welfare of individuals and will, where legislation allows, make an appropriate charge for doing so.
- Will regularly review its policy, standards, schemes and methods of assessing risk and will in doing so, consider the views of interested parties and individuals. All policies and standards will be made freely available.
- Will seek to carry out its responsibilities efficiently and effectively in a way, which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.
- Will ensure that provision is made for interpreting information where individuals have difficulty in understanding English; to also reflect consideration and provision for people with mental health disabilities and or visual / sensory impairments.
- Will make arrangements to carry out visits outside of normal office hours where appropriate.

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It is the Council's policy that enforcement action in relation to private sector housing and housing owned by Housing Associations will be related to risk. This policy will be implemented through visits and inspections and all enforcement decisions will be based on the risk to health and safety of the vulnerable group. Assessment of risk will be based on current research, legislation and specific guidance.

The Council's initial approach is to give informal advice, assistance and information when at all possible. However, where this approach fails or it is necessary to act to protect the health, safety and welfare of persons or the environment, then the Council will take enforcement action.

This policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens and in accordance with the Government's compliance and enforcement guidance

The policy sets out the service's transparent approach to enforcement so that customers can better understand how they will be dealt with by the Council in stated circumstances and what guidance and procedures will be followed by Environmental Health professionals.

The policy states how the Council will use its powers to raise the profile of enforcement thus leading to increased public confidence, ensuring timely enforcement is carried out, while encouraging joint working across departments and agencies while addressing the issues raised through Central Government guidance on enforcement issues.

Rossendale Borough Council works closely with its partners across Pennine Lancashire and Lancashire to provide a safe environment; good quality housing; and to reduce health and well-being inequalities. This is undertaken through targeted enforcement activity; joint commissioning of activities; awareness raising projects and through shared data gathering and intelligence. Where there are shared enforcement roles e.g. with Lancashire Fire and Rescue Service, Health & Safety Executive, Lancashire Police etc., officers will take advice from the partner organisation, where appropriate, and/or will advise such agencies of any contraventions for which that agency is responsible for they will also provide supporting evidence and information to allow enforcement to proceed.

The main body of this document sets out Environmental Health's policy on these issues.

2. Aim of the Policy

The aims of the policy are to:-

- Secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.

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- Set out the legal responsibilities, policies principles and priorities that the Health, Housing and Regeneration Service will follow when enforcing legislation around private housing.
- Help provide safer and healthier Private Housing and Social Housing Sectors through improved standards.
- Increase public confidence in the quality of rented accommodation contributing to a vibrant Private Rented sector in both Rossendale and Pennine Lancashire.
- Raise the profile and increased transparency and consistency around enforcement in the Housing Sector.

The policy is based on the following principles:-

- Consistency - ensuring similar issues are dealt with in the same way across all tenures.
- Fairness - ensuring a fair and even handed approach.
- Transparency - ensuring that the enforcement action taken by the Council is easily understood by individuals, organisation and businesses.
- Objectivity - ensuring that decisions are not influenced by the gender, race, disability, culture, religious or political beliefs, age, sexuality, financial status, tenure or any disadvantage of the offender, victim or witness.

3. Enforcement

3.1 What is Enforcement Action?

Enforcement means an action carried out in exercise of, or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or service of legal notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation, to give advice to help comply with the law, when educating or gathering information.

3.2 Enforcement Objectives

The Environmental Health Service primarily covers all privately owned residential accommodation and privately owned or rented land in the borough. In general, enforcement action will be carried out with the objective of ensuring that:-

- Empty homes are not left empty where there is a housing need.
- Tenants of a private landlord or a Registered Provider live in homes free of significant risks to their health and safety.
- Owners or occupiers (including tenants), who are vulnerable and unable to support independent living, live in accommodation which is free from unacceptable risks to their health and safety.
- HMO licence conditions are met.

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- Privately owned land or property does not present a statutory nuisance to other land owners, or does not directly or indirectly present an unacceptable risk to public health, safety or the environment.
- Persons are held responsible for their actions which are detrimental to local environmental quality or to the health safety and welfare of other residents.
- Persons are held responsible for their actions which affects the health safety and welfare of other persons in private rented accommodation or residents in the immediate vicinity of their house.
- We meet our statutory duties as a public authority.

4. Service Users

All of the following groups will both use the Health, Housing and Regeneration service and potentially be subject to enforcement action.

Group who may be subject to enforcement action	Example scenario
Private Rented Sector Landlords Registered Providers	Improvement notice served under the Housing Act 2004 to improve insulation or heating measures such as providing new central heating.
Private Rented sector <i>Tenants</i> Registered Providers or Housing Association <i>Tenants</i>	
Managing Agents of rented properties or HMOs.	Prosecution for failure to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 because the Fire Alarm in the common parts of a property is not working and no action has been taken to repair it.
Homeowners	Notice served under the Building Act 1984 requiring defective drainage serving their property to be repaired.
Owners of Empty Properties	Notices served in respect of properties causing nuisance and in disrepair.

This is not a definitive or exhaustive list.

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5. Links with other Council Strategies and Policies

5.1 Rossendale Borough Council Key Strategies and Policies

There are a number of key Rossendale and Pennine Lancashire Strategies and Policies that this policy will contribute to. The main priorities within the Council's Corporate Plan that this policy focuses on are:-

- A clean green Rossendale
- A connected and successful Rossendale that welcomes growth
- A proud, healthy and vibrant Rossendale

5.2 Providing Assistance, Information and Educating

As a basic principal the Council wants to work with service users to meet our objectives rather than having to take enforcement action. This will range from advice and information provided by case officers on site, over the telephone and in writing. Rossendale Borough Council's website provides a wide range of advice and information

6. Targeting Enforcement Action

To ensure that we meet our policy and enforcement objectives effectively we will need to target our enforcement activity from time to time.

These are some examples of how we will target action.

By types of property and/or the way a property is occupied:-

- Empty properties – Door to door surveys, Vacant Property Group, Council Tax information or, by the Council's priority pointing system.
- Private landlord properties whose Tenants who are on Housing Benefit as they tend to be more vulnerable and the standards in those properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers compared to housing association properties.
- Unlicensed HMOs - using Council Tax and Housing Benefit information; GIS mapping and on street inspections.
- Construction type – Where there is a problem with a particular method of construction which creates hazards and deficiencies.

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By Areas:-

- Where there are particular problems in a specific locality. This can be on a street-by-street basis or an area of Rossendale.
- Where an area of Rossendale is identified as having adverse health or socio economic indicators.
- Through shared intelligence with partner agencies where they are looking at area based enforcement due to problems in a specific location.

By Individual(s):-

- Where a particular individual or organisation is persistently committing offences or where their activities result in the need for us to work proactively to meet our enforcement objectives such as Letting / Management Agencies.

Please note that the above is not an exhaustive list of all the ways we will target action.

6.1 Checks and balances

To ensure that there are checks and balances in our enforcement approach any targeted action will need to be agreed with a manager before it is undertaken. Our consultation on this policy identified that the checks should include:-

- A check to assess if there is a risk that equality groups are being adversely affected by the targeted action and if so what steps will be taken to mitigate those effects.
- Consideration of any support and assistance that should and can be provided alongside the targeted action.
- Whether there are groups that should be consulted before targeting action.
- That the targeted action will not damage the Private Rented Sector market disproportionately.
- Whether informal action is more appropriate.
- The general approach of a lighter enforcement touch to those seeking to comply with legislation is taken whilst a stronger enforcement approach is taken where there is a history of non-compliance, refusal to carry out the necessary works informally or significant health and safety risks are found.

7. Specific Enforcement Issues

7.1 Mandatory HMO licensing

The 2004 Housing Act provided specific guidance around HMOs. A licence is required in HMOs of 3 or more storeys with 5 or more persons in 2 or more households sharing the facilities. Properties inspected will be assessed in accordance with the Council's currently approved standards for HMOs. These standards are available on the Council's website.

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On application for a licence the Council will assess each property as per the Council's standards (based on the 2004 Housing Act). It will endeavour to re-assess properties annually and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements.

The Council will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. However, properties inspected which fail to meet the relevant standards will be subject to appropriate enforcement action to remedy all deficiencies.

7.2 Operating an unlicensed HMO

Rossendale Borough Council's focus of enforcing the HMO licensing provisions will be on detecting unlicensed HMOs and requiring landlords of those HMOs to apply for licences. At the same time consideration will be given to whether or not formal action is appropriate.

Systematic surveys using all relevant information held by the Council will be used to find unlicensed HMOs. Where unlicensed HMOs are found an additional charge will be added onto the licence fee, as per the Council's published fees and charges, to reflect the additional work carried out to licence the HMO.

If a landlord has approached the Council for a licence an informal approach will be adopted so long as the application is subsequently duly made within 14 days. There also may be exceptional circumstances that have resulted in application not being made, these will be considered. In other circumstances the Council will consider taking formal action in the form of a Simple Caution or a prosecution.

Where landlords have been prosecuted for operating an unlicensed HMO the Council will use Rent Repayment Orders to claim back any Housing Benefit paid whilst the HMO was unlicensed as well as providing tenants with information and advice on how they can claim back the rent they paid whilst the HMO was unlicensed for up to a period of 12 months.

7.3 Breach of HMO licence conditions

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities.

Informal action will be taken in relation to minor breaches of the licence conditions, for example not producing certificates on time as long as the breaches have not significantly affected a person's health safety or welfare.

Formal action will be considered where there have been serious and or persistent breaches of licence conditions.

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Each case will be judged on its own merits and regard will be had for Code for Crown Prosecutors and Home Office Guidance on Simple Cautions.

7.4 Interim Management Orders

These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers or residents is at risk. Interim Management Orders (IMOs) can be made where there is no realistic prospect of an HMO licence being granted. Effectively the management and rental income from a property is taken away from the current landlord for up to a year. The Council can apply for a Final Management Order to be approved that can last for up to five years.

The Council will consider the advantages of establishing a protocol with a Registered Provider to manage any properties where an IMO is made.

7.5 Empty Properties

Empty properties can look undesirable, cause damage to adjoining properties and attract anti-social behaviour as well as impact on the long-term sustainability of a neighbourhood. The Council systematically identifies long-term empty properties and will work with owners to bring them back into use.

7.6 Overcrowding

The 2009 Stock Condition Survey highlights pockets of overcrowding in Rossendale centred on the west of the Valley.

We will investigate complaints from tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where the overcrowding conditions are legitimately impacting on neighbours health safety or well- being.

Officers from the Council's Housing Options Team will be involved where it is elected to take enforcement action that is likely to lead to a family moving out of their accommodation. The nature of the situation will depend on the action taken, and each case will be judged on its own merits, we may:-

- Consider taking action to improve the health and safety of vulnerable adults and children's living conditions whilst taking into account their views (where appropriate) as well as the views of parents, guardians or carers.
- Consider taking action where the overcrowding has a significant detrimental effect on neighbours of the overcrowded property.
- Only advise adults living in overcrowded living conditions that their health is at risk but will not require them to move out if they do not wish to do so. Where we suspect

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that the occupants are being exploited we will take this into account when deciding what action to take.

- Not take action where we believe that the complaint is motivated by prejudice or intended to harass the occupiers concerned.

7.7 Harassment and Unlawful Eviction

Rossendale Borough Council is the enforcing authority with regard to dealing with issues around harassment and unlawful evictions. Requests for service in connection with alleged harassment and/or unlawful eviction will be dealt with in accordance with the Council's agreed prioritised response policy.

8. Enforcement Action

This policy covers all types of enforcement action carried out by the Health, Housing and Regeneration Service. In order to achieve and maintain consistency in private sector housing enforcement the Council will use the following range of enforcement options as appropriate:-

- No action
- Informal Action
- Formal Action i.e. Statutory Notices
- Emergency Action
- Simple Caution
- Penalty Charges
- Prosecution
- Banning Orders
- Rent repayment orders
- Works in Default

8.1 Informal Action

There is a presumption that in the first instance officers will seek the desired improvements or protection of the public's health and safety in relation to private housing by working informally with those involved. We will also work with landlords to help them improve and manage their properties by directing them to the National Landlord support networks and local forums across Pennine Lancashire.

Informal action will include verbal requests and general advice to take action to comply with legislative requirements. Informal action will be considered appropriate in the following circumstances:-

- In instances where the Council have discretion to take action to remedy breaches of housing legislation.
- The act or omission is not serious enough to warrant informal action.

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- From the individual or company's past history it can be reasonably expected that informal action will achieve compliance.
- The consequences of non-compliance will not pose a significant risk to the health and safety of the public.

The above is not intended to be an exhaustive list and each case will be considered on its individual merits.

Any correspondence sent to individuals or companies will:-

- Indicate the legislation contravened (if appropriate) and the measures to be taken to ensure compliance with any legal requirements.
- Contain all the information necessary to understand what work is required and why it is necessary.
- Include an advisory warning that should it be necessary for the Council to take informal action in respect of the said matter that an enforcement charge may be incurred as determined by the 2004 Housing Act and /or costs associated with default work and officer time will be charged at a level within the Council's agreed charges, and that the Authority will take steps to recover debt incurred in this way. This warning will also indicate methods by which the debt may be recovered, including the use of rent sequestration.
- Give individuals or companies the opportunity to contact the appropriate officer to discuss the matter further.

All verbal advice and requests will be confirmed in writing.

8.2 Formal Action

Where the circumstances of the case justify it, officers will be expected to take a formal approach, i.e. use their legislative powers where:-

- There is a serious risk to health and safety. For example:-
 - No heating in cold weather.
 - No hot water to wash and prepare food safely.
 - Exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres.
 - Exposed live electrical wiring which people are likely to make contact with.
 - Raw sewerage surcharging in someone's home.
 - Or any other hazard identified through a HHSRS Inspection that would impact on the vulnerable group and require urgent remediation through emergency action.
- A person refuses or fails to carry out the works informally.
- There is a recent history of failure to meet requests to carry out legally required works.
- There is a recent history of non-compliance with informal action.
- There is a recent history of a failure to manage a property in line with legal requirements.

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- Standards are generally poor with little management awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to the public health.
- There are significant contraventions of legislation but prosecution is not appropriate.
- There is a lack of confidence that the individual or company will respond to an informal approach.
- That they are considered to be a persistent offender to the Council or Partner Authorities on a Pennine Lancashire footprint in failing to manage or undertake legally required works to Private Rented Properties in their ownership or trust.
- There is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years or a simple caution has been issued in the last 2 years.
- It is necessary to safeguard and protect health and safety in the future.
- It is necessary to bring an empty property back into use when informal requests to do so have failed.

The above is not intended to be an exhaustive list and each case will be considered on its individual merits.

Officers serving statutory notices will be prepared to discuss the works specified with individuals or company representatives and will fully consider the availability and suitability of alternative solutions.

Where a formal notice is served, the method of appealing against the notice will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate) and what will happen if the notice is not complied with.

Failure to comply with a statutory notice will normally be documented and an assessment made on further action to be taken.

8.3 Emergency Action

The Council will take Emergency Action where the legislation allows it to do so, taking into account the following criteria:-

- The risk of harm to any occupier or visitor is significant and imminent.
- In the case of Remedial Action the works are easily achievable in a short period of time.
- In the case of Prohibition, the hazards are so extensive in nature that they are not easily removable.

The above is not intended to be an exhaustive list and each case will be considered on its individual merits and where this deviates from the legislation reasoning will be documented to evidence action.

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8.4 Simple Cautions

Non-compliance with legislation in Private Housing can make people liable to be convicted of criminal offences. e.g.:-

Operating a licensable HMO without a licence can carry a fine of up to £20,000 or

Not complying with the requirements of an Improvement Notice under the Housing Act a fine of up to £5,000 plus costs.

Officers may use Simple Cautions where someone has committed a less serious crime. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences. A Simple Caution is a serious matter. It is recorded on the Central Register of Convictions and may be used to influence any decision whether or not to institute proceedings if the person should offend again. Simple Cautions may also be referred to in subsequent court proceedings.

Simple cautions are quick to process without the need to go to court and are aimed at preventing offenders re-offending.

Simple cautions can only be issued where:-

- there is evidence an offender is guilty; or
- the offender is eighteen years of age or over; or
- the use of a Simple Caution is considered to be in the public interest; or
- the offender admits they committed an offence; and
- the offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead.

Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate. Simple cautions will not be used as a substitute for prosecutions, which would otherwise be defective.

Simple Cautions may not be appropriate where it would prevent a Compensation Order from being made through the Courts.

8.5 Penalty charge and civil penalties.

The Smoke and Carbon Monoxide (Alarm) Regulations 2015 allows for remedial notices to be served where landlords are in breach of the regulations. Remedial Notices can be

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served requiring those responsible to carry out work to install detection. A penalty charge notice can be issued of up to £5,000 where a landlord fails to comply with a remedial notice. A statement of principles in respect of the level of financial penalty has been published by the Council.

The Housing and Planning Act 2016 allows for civil penalties to be charged of up to £30,000 as an alternative to prosecution for certain housing related offences.

These are:

- **Section 30 (failure to comply with an Improvement Notice)**
- **Section 72 (offences in relation to licensing of HMOs)**
- **Section 95 (offences in relation to licensing of houses under Part 3 (Selective Licensing))**
- **Section 139(7) (failure to comply with an overcrowding notice)**
- **Section 234 (breach of Management Regulations in respect of an HMO)**

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

In determining the use of Civil Penalties the Council will publish a Housing Civil Penalty Protocol.

8.6 Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequence upon the alleged offender therefore cases will be considered on a case by case basis. The Council will only instigate legal proceeding where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

The case will be presented to the Council's legal department who will decide if the prosecution should be pursued.

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

- a simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution; or
- there is a risk to public health and safety or of environmental damage as a consequence of the breach; or
- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law ; or
- the breach was as a result of a deliberate act or following recklessness or neglect; or

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- the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
- a legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or
- obstruction of an officer in the course of their duty; or
- the provision of false information.

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

Officers will generally warn the person accused that their actions or lack of action has made them liable before considering a prosecution against them. However, officers may pursue prosecution without prior warning where, for example:-

- There is a serious risk to health and safety or the environment.
- There is a recent history of failure to meet requests to carry out legally required works or meet legal standards.
- That they are considered to be a persistent offender to the Council or Partner Authorities on a Pennine Lancashire footprint in failing to manage or undertake legally required works to Private Rented Properties in their ownership or trust.
- There is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years or a simple caution has been issued in the last 2 years.
- It is necessary to safeguard health and safety in the future.

Where prosecution is likely, the person or company committing the offence may be invited to attend a taped interview in order to have the opportunity to express their reasons for the offence.

Before undertaking a prosecution officers must satisfy a senior officer that the case meets the requirements of The Code for Crown Prosecutors. Prosecutions will need to meet the Full Code Test that has two stages; “The Evidential Stage” and then the “Public Interest” test. https://www.cps.gov.uk/publications/code_for_crown_prosecutors/

The Evidential Stage must be passed before proceeding to the Public Interest Stage however, important the case is.

Legal proceedings will only be instigated subject to the final approval of Legal Services.

8.7 Rent Repayment Orders

In addition to the provisions for rent repayment orders under the Housing Act 2004, in respect of Houses in Multiple Occupation the Housing and Planning Act 2016 enables Local Authorities to apply for rent repayments orders to the First Tier Tribunal Service where a landlord has committed certain offence. Where appropriate rent repayment orders will be utilised.

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These offences include:

Act	section	general description of offence
Criminal Law Act 1977	section 6(1)	violence for securing entry
Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
Housing Act 2004	section 30(1)	failure to comply with improvement notice
	section 32(1)	failure to comply with prohibition order etc
	section 72(1)	control or management of unlicensed HMO
	section 95(1)	control or management of unlicensed house
Housing and Planning Act 2016	section 21	breach of banning order

8.8 Banning Orders and Rogue Landlord database

The Housing and Planning Act 2016 allows for the council to apply for banning orders against individuals and corporate bodies if they are convicted of certain offences. In addition there are plans for a national database rogue landlords to be maintained. When these provisions are enacted the Council will look to make use of them as appropriate.

8.9 Work in Default

The Council is given powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case where:-

- there is an imminent risk to health/safety, such that the consequences of not taking immediate and decisive action
- statute does not permit prosecution for non-compliance with a statutory notice, e.g. Local Government (Miscellaneous Provisions) Act 1982 section 29, Public Health Act 1936 section 79; or
- in relation to any other relevant legislation, where a Senior Council Officer is satisfied that circumstances are such that default is the best course of action.

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In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once the Council has started works it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works.

The cost of the works will be recovered in accordance with the relevant statutory provisions as detailed through the Council's fees and charges which are reviewed annually and approved by Cabinet.

The Council will consider prosecution proceedings in addition to works in default.

8.10 Charging for Enforcement Action

The Housing Act 2004 allows councils to recover certain costs associated with enforcement action. Rossendale Borough Council will therefore recover all applicable costs in respect of taking the following formal action:-

- Improvement Notice;
- Prohibition Order;
- Emergency Remedial Action Notice; and
- Emergency Prohibition Orders.
- Default work
- Penalty charges

The cost of taking this action will be charged “as per the Services fees and charges” reviewed annually. However, there may be certain circumstances where the charge is waived and each case will be judged on its own merits.

8.11 Recovery of Debts

Certain legislation allows for the costs associated with enforcement action, default work and penalties to be levied as a local land charge against the owner's property. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

Environmental Health will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). To recover debts the Council will use some of the following means:-

- Use tracing services to track down debtors and secure judgments to pay up debts.
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts. (Where the legislation allows and it is appropriate to do so).
- Where applicable the Private Housing service will recover debts using the enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs. (This power will only normally be used where there is no other realistic likelihood of recovering debts owed to the Council.)

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8.12 Powers of Entry

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation under which we operate.

In general the powers will allow an officer at any reasonable time to:-

- enter a property to carry out an inspection and gather evidence;
- take someone with them;
- take equipment or materials with them;
- take measurements, photographs or make recordings;
- leave recording equipment for later collection;
- take samples of articles or substances; and
- in some cases to carry out works.

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days.

Notice that powers of entry need to be carried out will normally be in writing or by email but can in some circumstances be given verbally, depending on the relevant statutory provision.

Powers of Entry can be enforced in the first instance where it is necessary to:-

- Protect and health safety of any person or to protect the environment without avoidable delay.
- Investigate an offence.
- Prevent the obstruction of officers.
- Carry out a statutory duty or power.

The Powers of entry can be enforced with a warrant. The Police will accompany officers where that is appropriate. It is an offence to obstruct an officer in the course of their duty.

Officers exercising their Power of Entry will carry identification and details of their authorisation to carry out their action.

8.13 Powers to Require Documents

Currently authorised officers have the power to require:-

- Documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004.
- Electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation or Private Rented Properties.
- Any person with an interest in a property to provide details about its ownership or occupation.

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It is an offence not to produce the required information, where information is not provided formal action will be considered e.g. simple caution if appropriate or prosecution where there is sufficient evidence and it is in the public interest to do so.

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9. Guidance

There is a wide range of legislation as well as other sources of guidance that cover our enforcement activities from Central Government and its partner agencies. We will consider this guidance when formulating our policies and procedures. Officers will follow the Council's own policies and procedures and where appropriate will take the relevant government guidance into account on a case-by-case basis.

10. Partners and consultation

The service works with a wide range of partners including stakeholders such as private sector landlords, other Council departments, Agencies such as Fire and Rescue Services, the Police and neighbouring local authorities across Pennine Lancashire and Lancashire. We will also look at sharing intelligence data and evidence where it can support and supplement other department and agency work around clients, premises and owners.

We value the partners we work with and will engage with them in relation to Enforcement Policies and procedures where the subject area is relevant and appropriate to them.

11. Enforcement Tools and Techniques

In order to achieve our enforcement objectives we will use the full range of tools and techniques available that are appropriate in the circumstance of the case, taking into account the overall priorities and objectives of the Council particularly the policies and guidance referred to in this policy.

Please see Appendix A for some examples of the tools and techniques used.

12. Authorisation of Officers

Any officer carrying out enforcement work should be authorised to do so by the Council. Each Authorised officer in the Environmental Health Service will carry an identity card and a paper copy of their authorisations. You are entitled to ask to see this card and paper authorisation at the time of their visit.

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Please note once an officer has made it clear that they are authorised to carry out an enforcement activity it is normally an offence to obstruct them in their duties for which a person is liable to formal action such as prosecution.

13. Appeals and Complaints Procedures

Details of the complaints procedure to follow are detailed in Appendix B.

Where a formal notice is served, the method of appealing against the notice will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate) and what will happen if the notice is not complied with.

14. Scenarios of enforcement action

Appendix C provides examples of scenarios of cases that may be encountered (they do not relate to actual cases) but do reflect how such cases could be dealt with. The scenarios are included to give some context to the actions set out in this policy.

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Appendix A – Enforcement Tools and Techniques

The following are an example of some of the means available to the Health, Housing and Regeneration Service:-

Tools or technique	Objective
Details of Housing Benefits	To find out who owns a property, who is claiming benefit
Details from Council Tax	To find out who owns a property, whether it is occupied and who is liable for Council tax payments
Land Registry Search	To find out who is the registered owner of a property or piece of land.
Interviews under caution	To record where an offence is suspected further evidence and to give the suspect the opportunity to formally explain the circumstances around the suspected offence.
Company's House Search	To identify the details of a registered company, who the directors and company secretary are and their registered address.
Notice Requesting for Information about a property	To legally require a person to provide details about ownership and occupation of a property or piece of land
Warrant to Enter a property by force if necessary	To identify if a house is being occupied contrary to a Prohibition Order, if it is and unlicensed HMO or to carry out works in default or if any action is required under the Housing Act.
Testing of Fire Alarms, Electrical Installations, and Gas installations; or A structural survey	To determine if any action is required under the Housing Act.
Require Gas Safety Certificate or Electrical Installation Inspection certificates to be produced.	To confirm that the document is in existence and whether any further action under the Housing Act is required
Require documents to be produced – such as tenancy agreements or management contracts.	To identify who are the tenants of a property, who has management responsibility to identify whether any action under the Housing Act is required.

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The requirements of the Data Protection Act 1984 will be followed in relation to use of personal data.

Please note this not a definitive or exhaustive list of tools, techniques and objectives.

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Appendix B - Appeals and Complaints Procedures

Informal Action

Where informal action has been taken at which a person wants a review of the action then representations should be made to the named officer who has been the main correspondent about the matter as soon as possible or within the time limits stated.

Where it is possible to resolve the issue informally the Council will endeavour to do so. Where that is not possible you will be informed of what will happen if the informal request to do something is not followed such as the service of a formal legal notice.

Formal Legal Action

In most cases where formal legal action is taken there will be a statutory framework for appealing any decision made by an officer. Where this is the case the relevant appeals procedure should be followed. Where formal action is taken by the Council such as serving a formal notice the details of where to appeal will be provided as well as the time limits for any appeal.

Anyone considering an appeal is encouraged to immediately discuss the matter with the officer concerned to see if the points of issue can be resolved without the need for a formal appeal where that is possible. This **must be carried** out before any time limits for an appeal expire otherwise the right to appeal may be lost.

Complaints about action taken or an Enforcement Officer

If a person is unhappy about the way action the Council has dealt with an issue or the way an officer has acted you can make a complaint under the Complaints Procedure which can be found on the Council's website. In summary the complaint procedure has two stages.

Stage 1 – Complaint reviewed by the officer concerned, line manager or supervisor and written response given within 10 days.

Stage 2 – If you are unsatisfied with a response you can make a Stage 2 complaint. A stage 2 complaint is reviewed by a Head of Service Manager or Director and a written response provided.

Please note that the subject of a complaint should not include any aspect that it would be more appropriate to make representations on or which a formal appeal should be made.

Ombudsman Complaints

If you are unhappy with the Council's response to your complaints you can complain to the [Local Government Ombudsman](#). The Ombudsman will normally only accept a

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complaint when you have exhausted the Councils own internal complaints procedure.

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Appendix C - Scenarios of enforcement action.

Please note not all cases are the same and may not necessarily follow the same procedure as indicated below. Each case is judged on its own merits.

Scenario	Complaint from tenant that their roof is leaking.
Action	A tenant telephones and says that there is a leak in their roof. When asked it's apparent that the tenants have not talked to their landlord about it. We would advise them to contact their landlord to ask them to carry out the necessary repairs but to ring if the repairs are not carried out promptly.

Scenario	Complaints about lack of heating, damp and mould in a property.
Action	<p>The tenant of a house emails the Council and complains that their home is cold as there is only a gas fire in the lounge and electric panel heater in the hallway of their Victorian two bedroom house. The tenants have asked the landlord several time to provide better heating as there is black mould forming on the walls even though they have the heating on as much as possible and are ventilating rooms to prevent the build up of moisture.</p> <p>An officer inspects the property and confirms what the tenant has said as well as finding that there is no loft insulation, that there are solid walls and that there are metal framed single glazed windows which are badly warped and letting in draughts and water sometimes when it rains. The officer carries out an assessment and identifies that action is required under the Housing Act. The landlord had previously complied with informal requests to carry out work by Environmental Health and as such a letter and schedule of works was sent to the landlord asking for the provision of central heating to the flat, insulation to the roof and that the windows were replaced with new double glazed units. The landlord was given a month to start the works and 3 months to complete the works. After, 9 weeks the landlord had not started the works and when contacted said that they hadn't organised for any contractors to carry out the works and intended to leave the works until the New Year. As winter was approaching and there was no reasonable prospect of the works being carried out in time a formal improvement notice was served requiring all the works to be carried out and a charge of £300 was made as the works had not been carried out after an informal request to do so. The Landlord then carried out the works within the timescales required in the Improvement Notice.</p>

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Scenario	Tenants complain about a dangerous spiral staircase.
Action	<p>Tenants contacted us about a spiral staircase in the property they were renting. The landlord had installed the staircase to access the loft room he had built. The tenant was concerned because the staircase moved around as you walked up it, had no hand rail and there was no balustrade at the top to stop someone falling off. The tenant was over 60 and his 4 year old grandson regularly came to stay.</p> <p>An officer visited the same day and found the staircase was so dangerous that there was an imminent risk of personal injury from the staircase collapsing as well as the risk of someone falling down the unguarded edge in the loft room. The officer tried to contact the landlord but he denied there was a problem so the officer carried out Emergency Remedial Action under the Housing Act. They employed a contractor to come out the same morning and remove the dangerous staircase. A Prohibition Order was then made which prohibited the use of the loft room for sleeping or living accommodation until the conversion was brought up to current Building Regulations. The landlord was recharged for the works carried out by the contractor, and for the service of the Prohibition Order.</p>

Scenario	Complaint about sewage backing up into someone's house.
Action	<p>A complaint about sewage overflowing from someone's toilet identified that there is a blockage in a private sewer which three house's waste drains into. As there is a public health risk a legal notice is served on all three house owners requiring them to clear the blockage within 48 hours. The 3 homeowners were unable to agree on appointing a contractor so the works were carried out in their default by the Council. The cost of jetting the drains and the Councils time for organising the work was recharged equally between the 3 occupiers. A couple of weeks later the toilet blocked again. The same procedure was followed and at the time the sewer was unblocked a camera survey was carried out which identified that part of the sewer had collapsed and needed relining. The owners were informed and a legal notice was served requiring them to get the sewer relined within 6 weeks. The owners</p>

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	then organised for the repair works to be carried out and split the costs between them They repaid the cost of the CCT survey and the notice was cancelled.
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Scenario	Complaint that a HMO property was unlicensed and that the fire alarm and electrical installation had been vandalised and not repaired.
Action	<p>A tenant living in a large 3 storey HMO complained that other tenants had vandalised the fire alarm and smashed electrical sockets leaving live wires exposed in the hallway. They had told the landlord and the landlord had seen the damage but that was 2 weeks before hand and nothing had been done about it. From checking our records we were aware that the landlord had signed a simple caution for not licensing an HMO 2 years ago. An inspection was carried out and it confirmed that the property should have an HMO license and that the damage to the Fire Alarm and the Electrical installation in the common parts contravened the regulations in relation to the management of HMOs.</p> <p>The landlord was then prosecuted in the magistrates' court for operating an HMO without a licence and for contraventions of the management regulations. A Formal Improvement Notice was served requiring the works to make the property safe. As the landlord had committed offences in relation to renting houses he was found not to be fit and proper and the licence his licence application for this house and the other he held on another HMO was revoked and the application fees retained. The landlord then had to pay managing agents to run his licensed HMOs.</p>

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