



Allerdale
borough council

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Private Sector Housing Enforcement Policy

April 2018

“Allerdale – a great place to live, work and visit”

Private Sector Housing Enforcement Policy

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Introduction

The Allerdale Housing Strategy 2016-2021 documents those steps that Allerdale Borough Council intends to take in order to realise its vision for private sector housing: “Improving Housing – Improving Lives”. The aim of the Private Sector Housing team is to improve the standard of private sector housing through inspecting properties, processing licence applications, bringing empty properties back into use, providing advice to owners and landlords, signposting to grant assistance, encouraging and promoting good practice, investigating possible offences and, where appropriate, taking enforcement action.

A key factor which will enable the Council to achieve this lies in its ability to regulate conditions within the private rented sector. Whilst the size of this sector in Allerdale is below the national average, it has grown in the last decade. At the time of the 2001 census there were 3,900 households living in the private rented sector in Allerdale (9.8% of housing stock), by 2011 the census showed that this had risen to 4,850 households (11.4%) and most recently the Stock Condition Survey 2016 has estimated that this sector now equates for 16% of housing within the borough.

We expect landlords to comply with the law and proactively manage their properties to ensure that they provide a safe environment for any potential occupier and their visitors. Where individuals or companies are failing in their responsibilities and duties, the Council will take enforcement action that will achieve measurable improvements to housing standards.

The Council will provide advice and guidance to assist landlords in complying with their legal requirements. The Council will seek to help with opportunities for landlords to develop their knowledge and understanding, which should reduce the risk of enforcement action being taken. The Council will provide this support through regular newsletters, landlord forums and landlord training sessions.

Although our work is primarily focused upon the private rented sector, there are circumstances in which we deal with complaints relating to properties let by Registered Providers and owner occupied properties.

Summary of the Enforcement Policy

The aim of this policy is to set out clearly the way in which the Council intends to secure effective compliance with legislation. It is intended to provide an overview of the principles and processes that will apply when officers decide whether to take enforcement action with respect to any given case. It sets out what owners, landlords, agents and tenants can expect from officers within the Private Sector Housing Team.

Our objectives are to ensure that:

- Private tenants and tenants of Registered Providers live in homes that are free of unacceptable hazards;
- All Houses in Multiple Occupation (HMOs) are safe, well managed and all relevant Management Regulations are adhered to;
- All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met;
- Private housing is not left empty for an unreasonable amount of time and/or becomes a nuisance to neighbouring properties;
- Privately owned property does not present a statutory nuisance to other land owners and does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
- The Council meets its statutory obligations in relation to private housing.

Where enquiries are beyond the remit of the Private Sector Housing Team, advice and signposting will be offered. Any areas that are not included within this policy will be determined on a case-by-case basis, having regard to the relevant legislation and available guidance.

Principles of Good Enforcement

This policy has been developed in line with the principles of good enforcement set out in the Regulators' Compliance Code and the Enforcement Concordat.

The Private Sector Housing Team will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers. In doing so, it will have regard to the role of inspections, compliance visits, advice and guidance, and the principles underpinning enforcement activity.

- **Benefits to the Local Economy** – Allerdale Borough Council aims to create areas where people want to live, bring up their children and work. Maintaining healthy housing and attractive neighbourhoods will benefit the local economy.

- **Property Inspections and Compliance Visits** – The Private Sector Housing Team will undertake proactive property inspections, based on risk and intelligence, and ensure that its resources are targeted at the worst properties first. Officers will target empty properties in order to improve neighbourhoods and increase the supply of housing. We will respond to residents' complaints about substandard, unsafe and problematic private housing and adopt an escalating regulatory approach to enforcement.
- **Advice and Guidance** – The Council will provide general information, advice and guidance to make it easier for landlords and agents to understand and meet their responsibilities. This will normally be provided through the Council's website: www.allerdale.gov.uk. The Council will also provide support through regular newsletters, landlord forums, the provision of landlord training sessions and the promotion of the Cumbria Landlord Accreditation Scheme (CLAS).

Principles underpinning Enforcement Action

The Council's Private Sector Housing Enforcement Policy is based on the following principles:

- **Openness** – We will provide clear information in plain English about the rules and regulations that we have a duty to enforce. We will discuss these and aim to explain straightforwardly how legislation can be complied with. Officers will clearly distinguish between legal requirements and recommendations, both in terms of their own work, and what is expected of stakeholders.
- **Proportionality** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
- **Fairness and objectivity** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
- **Transparency** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- **Consistency** – Whilst the team will apply judgement and discretion to individual circumstances, we will have clear procedures in place to ensure the approach to enforcement is consistent throughout the team. We will work with other regulatory agencies and share and develop good practice.

- **Accountability** – We will provide you with information on how you can make complaints or appeal against the enforcement action that we take.

Working in Partnership

Cases will often arise where the Private Sector Housing team and another partner organisation both have or share an enforcement role. We will liaise with that body to ensure effective co-ordination, to avoid inconsistencies and to ensure that enforcement action is appropriate to the circumstances of the incident. Where it is appropriate, the team shall share and receive information with organisations including, but not limited to:

- Police
- Fire Service
- Adult Social Care
- HMRC
- Revenues and Benefits
- Health Service

Regard will always be had to the requirement of the Data Protection Act 1998 (the General Data Protection Regulation as of 25 May 2018).

Powers of Entry

Where a complaint of housing disrepair is received and an inspection is required, a notice of entry is required to be served under section 239 of the Housing Act 2004. This informs all relevant interested parties of the Council's intended inspection.

Before entering any premises in exercise of their powers, the authorised officer must have given at least 24 hours notice of their intention to do so to both the owner of the premises (if known) and the occupier (if any). The exception to this is where the premises need to be entered for the purposes of ascertaining whether an offence has been committed under section 72, section 95 or section 234(3) of The Act.

If the complaint is of an urgent nature and the Council intends to use its emergency powers, this will negate the need for the service of a section 239 notice.

Where the Council is unable to gain access using a notice of entry, or such notice would defeat the object of entry, the Council are able to apply to the Magistrates Court for a warrant to enter.

What is expected of tenants?

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problem first. This applies to all tenants. Landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Tenants will be offered advice on how to write to their landlord detailing their complaint. Standard letter templates will be provided as required and will be available on the Council's website.

Situations where a service to tenants is not provided

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's contractor, to arrange or carry out works;
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property that they are complaining about, and there are no other items of disrepair;
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers;
- Where there is found to be no justification for the complaint on visiting the property;
- Where the service has determined that the complaint is vexatious.

What types of enforcement action will the Council use?

In ensuring that the main objective of enforcement action is achieved, the Council will consider all appropriate enforcement actions available to it. Appropriate enforcement action that can be taken includes, but is not limited to:

- Written warnings;
- Statutory notices or orders under part 1 of the Housing Act 2004 and other relevant legislation;
- Works in default;
- Revoking or varying licences;
- Civil penalty notice;
- Rent repayment orders;
- Simple cautions;
- Criminal proceedings (e.g. prosecution);

- Interim or final management orders;
- Banning Orders;
- Selective and/or Additional Licensing;
- Clearance Areas.

One or more of the above actions may be taken simultaneously depending on the circumstances of the case.

Legislation

The Housing Act 2004, (“the Act”), together with Regulations made under it, prescribes the Housing Health and Safety Rating System (HHSRS) as the means by which local authorities assess housing conditions and decide on action to deal with poor housing. It is an evidence based risk assessment system, which looks at the likely effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. Any defect in a property may give rise to one or more of these hazards.

The score resulting from an assessment will place the hazard in a hazard banding between A and J. Hazards in bands A to C are classed as Category 1 hazards and those in bands D to J are classed as Category 2 hazards. The Council must take appropriate action in respect of a Category 1 hazard and may do so in respect of a Category 2 hazard.

For the purposes of assessing the hazard, it is assumed that the dwelling is occupied by the class of occupier who is most vulnerable to that hazard, as determined by the HHSRS Operating Guidance. However, in determining the most appropriate course of action to take, regard is had to the current and likely occupiers and visitors, the views of the occupiers and whether multiple hazards are present.

Enforcement Action

It is for the Council to determine what the most appropriate course of action is in relation to a hazard. Consideration is given to all relevant factors of the case, to published guidance from central government and professional organisations, and to the views of owners and tenants.

The forms of appropriate enforcement action set out in the Housing Act 2004 are as follows:

Hazard Awareness Notice (HAN)

- Hazard Awareness Notice relating to Category 1 Hazards; section 28
- Hazard Awareness Notice relating to Category 2 Hazards; section 29

A Hazard Awareness Notice is used where a more serious form of action is not considered appropriate. It does however act as a formal way of drawing attention to the need for remedial action. The notice is not registered as a land charge and there is no appeal procedure.

Improvement Notice (IN)

- Improvement Notice relating to Category 1 hazards; section 11
- Improvement Notice relating to Category 2 hazards; section 12

An Improvement Notice requires the specified remedial works to be carried out within a timescale set out in the notice. This must give the person on whom the notice is served a reasonable opportunity to do the work. The notice cannot require work to start earlier than 28 days after the service of the notice. There is a 21 day appeal period.

Prohibition Order (PO)

- Prohibition Order relating to Category 1 Hazards; section 20
- Prohibition Order relating to Category 2 Hazards; section 21

A Prohibition Order may prohibit the occupation or use for a specified purpose of part or all of the premises. A Prohibition Order may be appropriate where serious hazards exist, but remedial action is impossible or impractical. It may also limit the use of part or all of the premises by specific groups of people or to a specified number of people. Normally, a prohibition order becomes operative 28 days after service.

Suspension of notices

Improvement Notices or Prohibition Orders may be suspended where action can be postponed for a specific time or until a specified event, for example where there is a change in occupation of a property.

Emergency Remedial Action; section 40

The Council has the discretion to take emergency remedial action against Category 1 hazards which present an imminent risk of serious harm to the occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk of serious harm.

The Council must serve a notice of emergency remedial action within 7 days of taking action. The notice must specify the nature of the hazard, the deficiency giving rise to the hazard and the date when the action was or is to be started. The notice must also contain information about the right to appeal.

Emergency Prohibition Order; section 43

The Council has the discretion to make an emergency prohibition order in respect of category 1 hazards which present an imminent risk of serious harm to the occupiers. The order may prohibit the use of all or any part of a premise with immediate effect. The order must specify the nature of the hazard and any remedial action which would result in the order being revoked. The order must also contain information about the right to appeal.

Demolition Orders to deal with premises affected by Category 1 hazards.

Demolition Orders are available under Part 9 of the Housing Act 1985 as amended, as a possible response to a Category 1 hazard. A demolition order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied once a demolition order has come into effect. Should the building not be demolished, the Council can demolish it and recharge the person upon whom the notice was served.

Clearance Areas to deal with premises affected by Category 1 hazards

A clearance area is an area to be cleared of all buildings. A clearance area under Part 9 of the Housing Act 1985 can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets) and any other buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions.

Rights of Appeal

There is a right of appeal against most notices, orders or decisions made by the Council. Where there is an appeal, the appropriate authority may confirm, quash, vary or suspend any notice, order or decision.

Vacated Properties with Statutory Notice

In cases where properties are subject to statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether they may be varied, suspended or revoked. The Council will seek to deter landlords from undertaking retaliatory eviction and will not consider that removal of a tenant achieves compliance with any notice served, except in overcrowding situations where it was a specific requirement of the notice.

Works in Default

Where the person(s) responsible has failed to comply with an enforcement notice which requires works to be completed, the Council may carry out those works instead; these are known as works in default. This may be done either with or without the agreement of the person(s) on whom the notice was served. Once the Council has started the work, it is an offence for that person to obstruct us or any of the contractors that have been employed to carry out the works. The Council will seek to recover the costs incurred in undertaking works. It should be noted that carrying out works in default does not prevent the Council from taking additional forms of enforcement action which may be appropriate.

Revoking / Varying a Licence

Where a property is licenced under Part 2 or Part 3 of the Housing Act 2004, the Council has the power to revoke or vary the licence.

Licences can be revoked where any term of the licence has been breached or where other offences have been committed which mean that the persons involved are no longer fit and proper persons for the purposes of housing licensing.

A licence can also be revoked by the agreement of the licence holder, for example where the property is sold or where the licence holder wishes to relinquish the licence.

Licences can be varied where there has been a change of circumstances at the property and this includes the discovery of breaches or offences committed by persons involved with the licence or management of the property.

Where a licence holder is made the subject of a Banning Order under Section 16 of the Housing and Planning Act 2016, the Council is under a duty to revoke any licences they hold.

Civil Penalties

The power to impose civil penalties as an alternative to prosecution for specific offences under the Housing act 2004 was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016. The offences for which a civil penalty can be imposed are as follows:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to the licensing of HMOs (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 HMOs (section 234).

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. A civil penalty can be imposed for up to £30,000 per offence. Each individual breach of the management regulations (section 234) is treated as a separate offence. The exact amount of any civil penalty will be calculated in accordance with the Council's Private Sector Housing Civil Penalties policy.

The Council will consider its enforcement options on a case by case basis and may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution is the most appropriate and effective sanction.

Where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction, but that it is not considered in the public interest to seek to remove the landlord from the market by way of a banning order, the Council will always consider a civil penalty in the first instance.

Prosecution may however be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.

Prior to imposing a civil penalty, the Council will serve a notice of intent and this will give the recipient an opportunity to make representations against the proposed civil penalty.

Rent Repayment Orders

A Rent Repayment Order (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months rent, either to a tenant for rent paid or the Council for housing benefit or universal credit paid in relation to the rent of the property. Where a landlord is convicted of one of the relevant offences, the Council must consider applying for an RRO. The specific offences for which an order can be sought are as follows:

- Failure to comply with an Improvement Notice (Housing Act 2004, section 30);
- Failure to comply with a Prohibition Order (Housing Act 2004, section 32);
- Offences in relation to licensing of HMOs (Housing Act 2004, section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (Housing Act 2004, section 95);
- Breach of a Banning Order (Housing and Planning Act 2016, section 21);

- Using violence to secure entry to a property (Criminal Law Act 1977, section 6);
- Illegal eviction or harassment of the occupiers (Protection from Eviction Act 1977, section 1).

The Council will usually apply for the full amount that can be recovered and lesser amounts will only be sought in exceptional circumstances. The Council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same offence. When deciding whether or not to apply for an RRO, the Council will have regard to the relevant statutory guidance.

Simple Cautions

A simple caution may be offered as an alternative to prosecution where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the offence(s) and that the public interest test would be better satisfied by offering a simple caution rather than proceeding with a prosecution.

A simple caution must not be offered to a person who has not made a clear and reliable admission to committing the offence(s). Before the simple caution is administered, officers shall ensure that the Landlord has made an admission of guilt, understands the implications of accepting a simple caution and consents to accept it.

Prosecutions

Prosecution will be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction and where a prosecution would be in the public interest. When deciding whether to prosecute, the Council has regard to this enforcement policy and the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Banning Orders

A Banning Order is an order made by the First Tier Property Tribunal, banning a person from letting a house in England and/or engaging in English letting agency or property management work.

The Council may apply for a banning order against a person who has been convicted of a banning order offence. There are 41 different banning order offences under 14 different statutes. The length of a banning order must be at least 12 months and there is no upper limit.

Rogue Landlord Database

The Council will enter a landlord's details onto the database if they receive a banning order, if they are convicted of a banning order offence or if they receive two or more

civil penalties over a 12 month period. The Council is responsible for maintaining the content of the database.

How will the Council choose which type of enforcement action to take?

Where an inspection shows a Category 1 hazard to be present, the Council will take one of the appropriate courses of action specified in The Act. If the hazard(s) do not present an imminent risk to health, the Council will normally try to address offences or hazards by first asking the landlord to comply with their duties and responsibilities and warning them about the consequences of failing to comply. This would usually be achieved through the service of a Hazard Awareness Notice. This will give the property owner a reasonable amount of time to rectify the defects and remove or reduce the hazard to an acceptable level.

If the owner fails to take this action in the specified time, an Improvement Notice will be served. If the owner has a significant record of non-compliance with the Act, then an Improvement Notice will be served immediately without the intermediate stage of service of a Hazard Awareness Notice. An Improvement Notice may also be served immediately if the hazard is considered to be of a serious nature or if there are a number of Category 1 hazards.

Where an inspection identifies Category 2 hazards and these hazards fall into Band D or E of the HHSRS, the same procedure will be followed as when a Category 1 hazard is present.

Where an inspection finds Category 2 hazards in Band F or below, the council will not normally take any further action unless there are exceptional circumstances. For example – where multiple hazards at Band D or below combine to create a more serious situation, where a property appears to be in a dilapidated condition or where the conditions are such as to be affecting the material comfort of an occupying tenant.

If there is a serious risk to the health and safety of the occupiers, then consideration will be given to the service of a Prohibition Order. If this serious risk is imminent, consideration will be given to the service of an Emergency Prohibition Order, or to undertaking Emergency Remedial Action.

Where an offence is serious enough or where the landlord has failed to respond to initial enforcement action, the Council may determine that it is in the public interest to take the highest level of enforcement action available. This can include civil penalties, prosecution, simple caution, banning orders (when they come into force) and interim/final management orders.

To reduce the likelihood of retaliatory eviction, enforcement action will continue until the property is brought up to a satisfactory condition, whether or not the original tenant remains in the property.

Level to which hazards are to be improved

The Housing Act 2004 requires only that the works specified when taking the most appropriate course of action, reduce a Category 1 hazard to a Category 2 hazard. For example, Band A to C hazards need only be reduced to Band D. The Council will generally seek to specify works which achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further intervention should be required for a minimum period of 3 years.

Retaliatory Eviction

The Deregulation Act 2015 provides tenants with protection from eviction in retaliation for making a complaint in relation to hazards in their home. The protection only applies in certain circumstances. The circumstances require that a relevant formal legal notice has been served under the Housing Act 2004. Following a period of consultation, the Private Sector Housing team will only serve the relevant formal legal notices in line with this policy.

Charging for enforcement activity

There will be a charge for Notices served and Orders made under Part 1 of the Housing Act 2004 (see Fees and Charges Policy). The charge will not be applied until the end of any appeal period contained within the notice. If there is an appeal, then the charge will not be applied until the appeal is resolved and subject to the notice being confirmed by the tribunal.

Where works in default are carried out, an administrative charge of 12% of the cost of the works will be added to the total amount to be recovered.

Land Charges

Certain legal notices served will be registered as a part 1 land charge which will not be removed from the register until it is complied with.

Where works are completed by the Council (as emergency or in default) or a charge is made for the service of notice these notices will be registered as a part 2 land charge, which will not be removed from the register until payment is received.

Land charges will show up on a general land search (for example when searches are made by a purchaser's solicitor if a property is being sold).

Requesting Information

Section 235 of the Housing Act 2004

The Private Sector Housing team is able to use powers under section 235 of the Housing Act 2004 to require documentation from any relevant person, to assist the Council with any investigation or function under Parts 1-4 of the Housing Act 2004.

Failure to comply with a notice under this section is a criminal offence with a maximum fine of £5,000.

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Council the power to issue 'Requisition for Information' notices. When the Council needs to obtain information about a property in respect of which it is proposing to take enforcement action, it will serve a requisition for information notice upon the owner and/or any other person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or arrange for its letting. Failure to comply with a notice under this section is a criminal offence with a maximum fine of £5,000.

Additional Enforcement Powers

Although housing issues will primarily be dealt with under the Housing Act 2004, there may be circumstances where the use of other legislation is more appropriate.

- Environmental Protection Act 1990 – we will use this to tackle premises that are considered prejudicial to health or a nuisance.
- Building Act 1984, Section 59 – used to deal with defective drainage issues in existing buildings.
- Public Health Acts 1936 and 1961 – we will use these to tackle drainage issues and filthy and verminous premises.
- Prevention of Damage by Pests Act 1949, Section 4 – we will use this to require works necessary where there is potential for an infestation of pests.
- Local Government (Miscellaneous Provisions) Act 1982, Section 29 – This gives the council the power to require the owner to board up a dwelling to prevent unauthorised access, and to carry out the work in default, if the owner fails to comply or cannot be found.
- Housing Act 1985 (As Amended) – Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available and may be used where the 2004 Act is not sufficient.
- The Redress Schemes for Lettings Agency Work (Requirement to belong to a scheme etc.) (England) Order 2014 – This order requires a person who engages in property management work to be a member of a redress scheme for dealing with complaints in connection with that work. Government

guidance states that the expectation is that for this contravention, a £5,000 penalty should be considered the norm.

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 – This can be used where there is not at least one smoke alarm on each storey of a rented property and/or where there is no carbon monoxide detector in a room with a solid fuel burning appliance.
- Energy Efficiency (Private Rented Property) Regulations 2015 (Energy Act 2011) – These regulations make it unlawful for landlords to grant a new tenancy or renew an existing tenancy of a private rented property with an energy performance certificate (EPC) rating of F or G from 1 April 2018 (unless an exemption applies and is registered). From 1 April 2020 it will be unlawful to let any domestic private rented property with an EPC rating of F or G (unless an exemption applies and is registered). Landlords who do not comply with the regulations face a fine of up to £5,000.

Tenure

Registered Providers

Registered Providers (RPs) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by the Homes and Communities Agency. RPs employ staff to manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and detailing the process for registering any complaints about service failure.

On this basis, the Council will seek to deal with RPs in a proportionate manner, classing complaints against RPs as low risk. These complaints will initially be dealt with in writing, without a formal inspection being undertaken.

In exceptional circumstances we may prioritise urgent or serious complaints concerning RP properties. However, the Council must be satisfied that:

- The problem in question has been properly reported to the RP; and
- The RP has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets;

Then the Council will inspect and take enforcement action in line with this policy.

Owner Occupied Properties

The council expects that owner-occupiers will take their own action to maintain their homes the requirement to take the most appropriate course of action will be satisfied by the service of a Hazard Awareness Notice.

In some exceptional cases, in line with the HHSRS Enforcement Guidance, it will be necessary to take formal enforcement action. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household.

Part 2 of the Housing Act 2004 – Mandatory Licensing of Houses in Multiple Occupation (HMOs)

In addition to the previously mentioned enforcement options, the Council has further powers to ensure adequate standards in HMOs are met and maintained.

The Housing Act 2004 introduced a mandatory scheme to licence HMOs. Mandatory licensing currently applies only to larger high risk HMOs of three or more storeys, occupied by five or more people, comprising two or more households.

The HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property.

It is a criminal offence if a person controlling or managing such a HMO does not have the required licence. Breaking any condition of a licence is also an offence.

The Government has advised that it intends to proceed with secondary legislation to increase the extent of mandatory licensing of HMOs. From 1 October 2018, the three storey requirement will be dropped, so that any HMO occupied by five or more people, comprising two or more households will require a licence.

This policy will be updated to reflect these changes once the regulations have been enacted.

Discretionary Licensing

Additional Licensing

The Council has the power to designate additional licensing schemes covering smaller HMOs or Section 257 converted flats, across the whole or part of the borough. The Council will consider the introduction of such a scheme where it believes that there are a large number of HMOs in an area which are being poorly managed and causing problems for the tenants or members of the public.

When considering whether to make an additional licensing designation, the Council must first identify the objective or objectives that a designation will help it achieve. Secondly, it must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made.

The Council must consult local residents, landlords and tenants prior to the introduction of such a scheme.

If the problems of anti-social behaviour are only associated with a small number of properties, the Council will consider making a Special Interim Management Order rather than an additional licensing designation.

Selective Licensing

The Council has the power to introduce selective licensing schemes in relation to privately rented housing that is not a HMO, across the whole or part of the borough. Landlords who rent out properties in an area that is subject to selective licensing will be required to obtain a licence from the Council for each of their properties. Selective licensing is available only where the Council believes that it would reduce or eliminate specific housing problems.

A selective licensing designation may be made if the area to which it relates satisfies one or more of the following conditions. The area is one experiencing:

- Low housing demand (or is likely to become such an area);
- A significant and persistent problem caused by anti-social behaviour;
- Poor property conditions;
- High levels of migration;
- High levels of deprivation;
- High levels of crime.

When considering whether to make a selective licensing designation the Council must first identify the objective or objectives that a designation will help it achieve.

Secondly, it must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made.

The Council must consult local residents, landlords and tenants prior to the introduction of such a scheme.

If the problems of anti-social behaviour are only associated with a small number of properties, the Council will consider making a Special Interim Management Order, rather than a selective licensing designation.

Management Orders

Interim or Final Management Orders

The Council is under a duty to apply for an interim management order where a property requires a licence, or will after the current one is revoked, but there is no reasonable prospect of it becoming licenced or there are significant health and safety concerns at the property. An interim management order can be made for up to 12 months.

Where an interim management order is coming to an end and the criteria for applying for the order still apply, the Council can apply for a final management order, which can be made for up to 5 years.

Whilst a management order is in place, the Council, or an agent appointed by the Council, will be responsible for managing the property and carrying out any works that are required. The Council will receive the rental income and deduct any relevant expenditure from this amount before transferring the excess, if any remains, to the landlord.

Special Interim Management Orders

Where the Council is satisfied that a significant and persistent problem of antisocial behaviour in an area is attributable, in full or in part, to the antisocial behaviour of an occupier of a HMO or other dwelling and that the landlord is failing to take action to combat the problem, it can make a Special Interim Management Order. A Special Interim Management Order operates in the same way as an Interim Management Order.

Empty Homes

Interim Empty Dwelling Management Order

An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to the First Tier Tribunal. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the Council to take steps to ensure, with the consent of the owner, that an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

Final Empty Dwelling Management Order

A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the Council feels that unless a Final EDMO is in place, the dwelling will become or remain empty. Where the dwelling is already unoccupied, the Council must have taken all appropriate steps under the interim EDMO with a view to ensuring that the dwelling becomes occupied. A final EDMO lasts for 7 years. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.

Compulsory Purchase

The Council may consider the use of a Compulsory Purchase Order where:

- The owner of an empty home cannot be found or refuses to take action to secure re-occupation of the dwelling;
- The dwelling is giving rise to problems in the neighbourhood;
- Other circumstances where a Compulsory Purchase Order is deemed to be the most appropriate course of action.

When deciding on the use of a Compulsory Purchase Order, each case will be judged on its own merits.

Enforced Sale

Where a significant debt has been registered as a Local Land Charge against a property, and remains unpaid for a lengthy period of time, the Council may, where appropriate, commence proceedings to enforce the sale of the property. The proceeds of the sale will be given to the owner less the amount of debt and less the costs incurred by the Council.

Other aspects of Private Sector Housing work

Hoarding

Hoarding situations may be brought to our attention in both the rented and owner occupied sector. The Council's priority would always be to protect the interests of any vulnerable occupants and work with them, engaging other agencies where appropriate to avoid the need for enforcement action. However, there may be circumstances where nuisance is being caused to neighbouring properties and we are under a duty to take enforcement action.

Overcrowding and Immigration

Where residents believe that their property is overcrowded then the Council will assess the property and the current occupation based on information provided to

determine if it is statutorily overcrowded. Where this is found to be the case, an inspection will be completed to confirm this.

We will liaise with the Council's Housing Options team where we are taking enforcement action that is likely to lead to occupiers moving out of their accommodation.

Where a resident requests the overcrowding inspection because they require it for immigration or UK Visa purposes, then an inspection will be completed to determine if the property is suitable for the total number of potential occupants. This is a chargeable service.

Complaints

In the event that an individual or company is not satisfied with the service or does not agree with the action taken by the investigating officer, they should first contact the Private Sector Housing Manager. A response to the complaint would be expected within 10 working days; if we are unable to respond within 10 working days we will respond and let you know when you can expect a response.

If this does not resolve the complaint the Council also has a formal complaints system. Visit www.allerdale.gov.uk for more details or use any of the following contact methods:

By telephone: 0303 123 1702 - Customer Contact Centre
01900 702570 - Housing and Health

By email: housing.services@allerdale.gov.uk

By post or in person: Allerdale Borough Council
Allerdale House
Workington
Cumbria
CA14 3YJ

NB: This does not have any bearing on any right of appeal that may exist in relation to the various legal enforcement actions taken by the Council.

Monitoring and Review

The Council's Private Sector Housing Manager is responsible for ensuring that officers implement the service in accordance with this policy. Procedures are in place which include details of how checks are made to ensure compliance with this policy.

In accordance with the Regulators' Compliance Code, the council will keep its regulatory activities and interventions under review. This document will be reviewed

at a minimum every 12 months to take into consideration relevant changes to legislation or other guidance that may affect it.

Appendix One

Housing disrepair procedure

We offer advice and guidance on housing conditions to private tenants, owners, agents, trustees and landlords in Allerdale. We endeavour to improve standards, using legal powers where appropriate, in line with our Enforcement Policy and procedures. If we can't help directly, we'll try and signpost you to another organisation who can.

Each case will be assessed on risk. This allows us to prioritise the worst housing conditions for those people who require help the most. If there is an imminent risk to health then the Council must act immediately and cases will aim to be contacted and inspected within 24 hours.

In all other instances, tenants will be encouraged to approach their landlord directly about their complaint. In most circumstances the tenant will be advised to put their complaint in writing and request a reply within 14 days. The tenant will be advised to ensure they put the date on their letter and keep a copy of it. After the 14 day period has expired, and if the landlord has not agreed to carry out any work, the tenant will be advised to contact us again, providing a copy of the letter they sent to their landlord. Standard letter templates will be provided as required.

If the tenant has not received a satisfactory outcome, arrangements will be made to inspect and rate the property using the Housing Health and Safety Rating System. A letter providing notice of entry will be sent to the tenant and landlord. We aim to carry out an inspection within 15 working days.

Complaints against Registered Providers will generally be classed as low risk as they are expected to have their own effective procedures for dealing with disrepair. Such complaints will initially be dealt with without a formal inspection being undertaken.

However, where the Council is satisfied that:

- The problem in question has been properly reported to the RP; and
- The RP has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets;

Then the Council will inspect and take enforcement action in line with this Policy.

Tenants should be advised that the Council are unable to protect them from eviction should they complain, however officers will provide support and advice should this occur.

Following an inspection, a copy of the inspection report will be provided to the landlord and tenant within 10 working days. If immediate enforcement action is required, then this will be discussed at the time of the inspection.

Any works that are required to be undertaken will be detailed within the inspection report along with timescales for this to be completed. Both tenant and landlord will be contacted within one month of any deadline set in the inspection report, in order to arrange access to carry out an inspection of the work that has been undertaken.

Appendix 2

Calculating Fixed Penalty Charges - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The regulations require a statement of principles to be followed in order to determine the amount of a penalty charge.

The following principles were considered:

1. That the Regulations would not have allowed a maximum fine of £5000 had it not been envisaged that this is the amount considered fair for Councils to levy.
2. That the cost of the remedy will be relatively low in most cases and that the amount of the penalty charge should reflect a disregard of the duty to remove the risk to life arising from a domestic fire.
3. In calculating the amount of the penalty charge it would be fair to work on the perceived average costs involved within the District.
4. It is necessary to fix and publish the charge that could be expected to be paid so that there is forewarning of the consequences of committing an offence.
5. A reduction to the amount of the penalty charge will be made where the amount is paid before remedial works have to be undertaken and/or where a Court Order does not have to be applied for to recover payment.

The amount of a penalty charge will comprise the following elements:

1. An amount for the average length of time it will take officers of the Council to:-
 - Determine that the standard of the Regulations have been contravened.
 - Prepare and send a remedial notice to the landlord.
 - Arrange for remedial action if the landlord has not complied with the remedial notice.
 - Serve a penalty charge notice if the landlord has not complied with the remedial notice.
 - Facilitate an appeal against the penalty charge notice.
 - Process the payment of the penalty charge amount.
 - Recover the penalty charge via a Court Order if the landlord does not pay voluntarily.

2. A level of fine that the offence might attract as though the case had gone before the Magistrate.

The costs have been determined as follows:

Determine that the standard of the regulations have been contravened:

	Officer	Rate per hr	Time	Cost
Average travel time to visit house	EHO	£24.66	30 mins	£12.33
Average time to verify breach of Regulations	EHO	£24.66	10 mins	£4.11
Average time to record notes to computer system	EHO	£24.66	15 mins	£6.17
Total				£22.61

Prepare and send a remedial notice to the landlord

	Officer	Rate per hr	Time	Cost
Verify landlord's details	EHO	£24.66	10 mins	£4.11
Administer Notice	EHO	£24.66	1 hour	£24.66
Total				£28.77

Arrange for remedial action if the landlord has not complied with the remedial notice.

	Officer	Rate per hr	Time	Cost
Confirm tenant wishes remediation	EHO	24.66	10 mins	£4.11
Instruct authorised person remediate	EHO	24.66	20 mins	£8.22
Verify work has been done	EHO	24.66	40 mins	£16.44
Process payment to Finance	Admin	19.98	30 mins	£9.99
Administration by Finance Department	Admin	19.98	30 mins	£9.99

Total				£48.75
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Serve a penalty charge notice if the landlord has not complied with the remedial notice.

	Officer	Rate per hr	Time	Cost
Confirm notice's non-compliance	EHO	£24.66	40 mins	£16.44
Issue Notice and cover letter	EHO	£24.66	3 hours	£73.98
Total				£90.42

Facilitate an appeal against the penalty charge notice

	Officer	Rate per hr	Time	Cost
Correspond with appellant	EHO	£24.66	1hr	£24.66
Prepare papers	EHO	£24.66	3hrs	£73.98
Hear the appeal	Head of Service	£41.23	1hr	£41.23
Total				£139.87

Total Cost = £330.42

Private Sector Housing Research – Prosecuting Landlords for Poor Property Conditions – Research findings on the resources and timescales for councils in prosecuting private landlords in cases of poor property conditions, and the level of fines awarded in court - Local Government Association 2014

	Fine	Council's stated costs	Costs Awarded	Was this amount	PSH team costs	Legal team costs	Council's stated costs	Shortfall
Eleven contraventions of HMO management regulations	£2,600	£6,438	£1,995	Yes	£1,995	£5,443	£1995	£5443
Failure to comply with an improvement notice regarding nine health hazards:	£3,000	£2,190	£2,190	Yes	£1,765	£425	£2,190	
Three breaches of HMO management regulations	£5,000	£1,363	£1,363	Yes	£1,038	£325	£1,363	
Five contraventions of HMO management regulations	£1,210	£3238	£3238	Yes	£1,090	£2,148	£3,238	
Failure to comply with improvement notice	£100	£787	£787	Yes	£451	£336	£787	

Failure to comply with an improvement notice	£1,000	£3,000	£1,000	33%	£1,376	£1,624	£3,000	£2000
Average	£2151.25		£1 893		£1094	£1158	£2252	

Outcome of research

Suggest first offence fine of £1330.42 (based on costs plus £1000 fine)
 Second offence fine of £2330.42 (based on costs plus £2000 fine)

Fines increasing by £1000 for each subsequent offence up to the maximum allowed of £5000.



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PSH Enforcement Policy
Version 2

Please phone (0303 123 1702) if you would like a copy of this document in a different format