



PRIVATE SECTOR HOUSING
Enforcement Policy

ENFORCEMENT POLICY FOR HOUSING

1.0 GENERAL

- 1.1 The purpose of this Policy is to ensure that decisions taken by officers are transparent, fair and consistent and that any action taken is proportionate to the risk posed by noncompliance. The Council's approach to making such decisions will also be informed by the need to protect the public.
- 1.2 This Policy applies to enforcement of Housing legislation and related activities. The Policy complies with the provisions of the Regulatory Compliance Code and takes into account the guidance set out in the Code for Crown Prosecutors.
- 1.3 All relevant officers of Malvern Hills District Council including those working in areas other than Housing (such as Development Control and Legal Services) will work together to ensure the best possible outcome is achieved within the terms of this Policy.
- 1.4 All action taken by officers will be within the parameters specifically authorised under the Council's scheme of delegation.
- 1.5 There are many situations where the Council has a shared or complementary role with other agencies. This will require actively seeking collaboration with agencies such as the Police, Fire Authority, Magistrates' Courts, Health and Safety Executive, Worcestershire Regulatory Services and the Building Control Shared Service. (This list of agencies is indicative but is by no means exhaustive).
- 1.6 This Policy is available to the public on request and will also be available on the Council's website www.malvern hills.gov.uk
- 1.7 The Council has published details of its Corporate Complaints Procedure and all staff have been trained in its application. The Procedure applies to all Council services, not just to the Housing Team. The Council aims to deal effectively with complaints of poor, inappropriate or non-existent service, and the Procedure is accessible to all service users including those regulated. The Procedure forms part of the Council's performance monitoring system to assist in continuous improvement of the services which the Council provides. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

2.0 DECIDING WHAT ACTION MAY BE APPROPRIATE

- 2.1 In reaching a decision on what action by the Council may be appropriate to address non-compliance with the requirements of legislation or regulation, officers will consider the following key factors:
 - a) The seriousness of the non-compliance, including its potential effect on occupiers, potential occupiers or others
 - b) The likely results of continuing non-compliance

- c) Whether informal action to resolve the issue would be appropriate, and if so, whether it is likely to be effective.
- d) The attitude of the landlord towards their responsibilities and the degree of co-operation received
- e) The landlord's previous history of compliance with legal requirements
- f) Whether there is confidence in a landlord's ability to meet legal requirements and restore the harm caused by non-compliance (where appropriate)
- g) The likelihood of recurrence
- h) The benefit to public health and safety (including the risk of pollution of the environment or harm to health) of taking action; and whether the offence causes public alarm, harm etc and it is necessary to act to reassure the public and deter other potential offenders

3.0 PRINCIPLES

- a) **Transparency - how the Council operates in its regulatory role and what those regulated may expect**
 Transparency means that the Council undertakes to help those regulated to understand what is expected of them and what they in turn can expect from the Council. It also means making clear to those regulated not only what they have to do but (where this is relevant) what they don't have to do. In other words, the Council will distinguish clearly between statutory requirements and advice or guidance as to what is desirable but not compulsory. General information and advice will be provided in clear and concise language using a range of appropriate formats and media.
- b) **Fairness and consistency**
 This does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar aims. The Council will work closely with other enforcement agencies in its efforts to achieve fairness and consistency.
- c) **Proportionality.**
 Proportionality in applying the law and securing compliance requires that the Council relate enforcement action to the risks of non-compliance. Those whom the law protects and those on whom it places duties can expect that action taken by the Council to achieve compliance will be proportionate to any risks to public health or the environment and to the seriousness of that risk.
- d) **Targeting**
 By using risk assessment to channel resources into high risk areas, the Council will ensure that inspections are targeted primarily towards those activities where they would be most effective. Assessing the risks to regulatory outcomes precedes and informs all aspects of the Council's approach and regulatory activity, including:
 - Data collection and other information requirements
 - Inspection programmes
 - Advice and support programmes
 - Enforcement and sanctions.

Risk assessments will be carried out according to the principles contained within 'The Regulators Compliance Code' issued by the Department of Business, Enterprise and Regulatory Reform which is available at: www.bis.gov.uk

- e) **Helpfulness**
The Council accepts that prevention is better than cure and will attempt to alter the behaviour of offenders. Part of the Council's role is to work actively with any person affected by its services to advise on and assist with compliance. The Council will provide a courteous, easily contactable, effective service which will deal promptly with service requests whilst minimising unnecessary overlaps and time delays.
- f) **The public interest**
When formal action is necessary the person responsible for creating the risk must be held to account for it. However, it must still be in the wider public interest that enforcement action be taken.

4.0 OPTIONS FOR ENFORCEMENT ACTION

4.1 The principal options available are:

- a) Advice & assistance
Offering information, advice and support, either face to face, or in writing;
- b) Informal action
Verbal warnings, requests for action and the issue of letters warning of non-compliance. By these measures the Council will ensure that responsible persons do not, through lack of information or understanding, unnecessarily expose themselves to the possibility of more formal action.
- c) Statutory notices
Requiring compliance with the law, or the provision of information. The statutory right of appeal against any notice served will be brought to the attention of the person served with the notice at the time of service.
- d) Emergency action
Taken only where necessary for the health or safety of persons being affected or likely to be affected
- e) Simple cautions
Issued to deal quickly and simply with less serious offences (where appropriate), keeping them away from the courts and reducing the likelihood of a repeat offence.
- f) Prosecution
Any decision to prosecute an offender will be taken by the Head of Planning, Economy and Housing or his/her nominated deputy in conjunction with the Legal Services Manager or his/her nominated

deputy. The decision to prosecute will only be made in more serious cases.

4.2 **Advice and Assistance**

Advice from an Enforcement Officer will be clear, readily understandable and confirmed in writing on request. Before formal action is taken, an opportunity will be given to discuss the circumstances of the case unless there is need for immediate action due to the severity of the situation or to prevent evidence being destroyed. Where immediate action is considered necessary an explanation will be given as soon as possible and, confirmed in writing. Any written documentation issued will contain all the information needed to understand what work is required and why it is needed, stating the legislation contravened and measures to enable compliance with the legal requirements. Financial assistance is available in certain circumstances under the Council's Private Sector Housing Assistance Policy. Details will be given of all rights of appeal, whether to Malvern Hills District Council or to external bodies.

When conducting formal investigations, Officers will adhere to Police and Criminal Evidence (P.A.C.E.) Codes of Practice and will comply with the Criminal Procedures and Investigation Act (C.P.I.A.) Code of Practice on Disclosure of Information.

4.3 **Informal Action**

Informal action to secure compliance with legislation includes advice, verbal warnings and requests for action, the use of letters and inspection reports. Circumstances when it is appropriate to consider using informal action include:

- The non-compliance was not sufficiently serious to require formal action
- It can be reasonably expected that informal action will achieve compliance, taking into account relevant factors such as past history and the degree of co-operation extended by the landlord
- The result of non-compliance will not cause a significant risk to the health, safety, and/or wellbeing of any person or the environment
- Informal action is considered to be more effective than formal action

4.4 **Statutory notices**

Enforcement Officers may consider the use of statutory notices, where one or more of the following apply:

- Informal action could not ensure compliance
- There is/are significant contravention(s) of legislation or legislation requires the issue of a statutory notice There is a lack of confidence in a response to an informal approach
- There is a history of non-compliance with informal action
- There is evidence of little knowledge of statutory requirements
- The result of non-compliance could be potentially serious to the health, safety, and/or wellbeing of any person or the environment

Statutory Notices will only be issued by Officers who have been authorised by Malvern Hills District Council and whom it considers competent

The failure to comply with a Statutory Notice served under e.g. the Housing Act 2004 is likely to result in prosecution where the circumstances fulfil the criteria in the Enforcement Policy.

If a right of appeal exists, details will be included with the Notice.

It should be noted that some Notices are served in order to obtain specific information and, as such, do not constitute enforcement action.

The carrying out of emergency remedial action does not prevent the consideration of other formal action such as Formal Caution or Prosecution.

4.5 **Simple Cautions**

Simple Cautions, where appropriate, will be issued in accordance with government guidelines. The Council may use a Simple Caution to deal quickly and simply with a less serious offence where the offender has admitted his or her guilt and agreed to accept a caution.

A Simple Caution may be issued where there is sufficient evidence to provide a realistic prospect of conviction but because of the attitude, history and willingness to co-operate of the offender, and the degree of severity of the offence, it is considered inappropriate to prosecute.

To issue a Simple Caution, the Council must be satisfied that the offender has admitted to the offence and has agreed to be cautioned.

4.6 **Prosecution**

The Council will consider prosecuting an offence where in its judgement one or more of the following factors makes prosecution the most appropriate action to take:

- Where the alleged offence involves a significant breach of the law such that the health, safety or wellbeing of any person or the environment is or has been put at risk
- Where the alleged offence involves a failure by the alleged offender to correct an identified potential risk having been given the opportunity to remedy this following formal notification from an authorised Officer or the service of a Statutory Notice
- Where the offence involves a failure to comply in full or in part with the requirements of a Statutory Notice
- Where there is a history of similar offences or of non-compliance with the offender's legal responsibilities

Before a prosecution goes ahead, the officer responsible for deciding on the enforcement action and the Legal Services Manager will be satisfied that there is relevant, substantial and reliable evidence that an offence has been committed.

The alleged offender will be given the opportunity to state their case and circumstances around any alleged offence prior to formal decision to prosecute.

The Council reserves the right to prosecute in other circumstances beyond those set out in this section where the Council feels the situation, taken as a whole, warrants this level of response from the Council.

5.0 ACCOUNTABILITY

The Housing Team will regularly consult those affected by the service it provides and comments received will be used to improve procedures where appropriate.

6.0 COSTS OF ENFORCEMENT

The reasonable costs associated with enforcement will be charged to the responsible persons. For example, the costs of inspection and notice being served under the Housing Act 2004 and the cost of officer time associated with any emergency remedial action or works in default which may be carried out.

7.0 ACTION AGAINST OWNER OCCUPIERS

Although technically available as an option, enforcement action will only be taken against owner occupiers when there is a clear existent or imminent threat to public health safety or the environment.