

Housing Services Enforcement Policy



Objective

South Ribble Borough Council Housing Services is committed to protecting the health of people that live in or visit the district.

This policy promotes an efficient and effective approach to regulatory inspection, licensing and enforcement, which improves outcomes without imposing unnecessary burdens on business and residents.

This is in accordance with the Regulator's Compliance Code as issued by the Department for Business Enterprise and Regulatory Reform further to powers set out in section 22 of the Legislative and Regulatory Reform Act 2006.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

This policy sets out the general principles which we intend to follow in relation to enforcement to demonstrate our commitment and clearly set out our approach in maintaining and improving housing throughout the district.

This policy compliments the Corporate Prosecutions Policy.

Circumstances for Action

The service operates on three levels pro-active, reactive and educational to ensure legislation is abided by and where deemed necessary enforcement options are applied to secure compliance.

Aim

By following this policy we aim to:

- ensure a consistent approach related to enforcement within the district
- provide officers with guidelines so that they can make decisions in the field consistent with current government advice
- inform the public, businesses and duty holders of the principles by which enforcement action is taken.

Purpose of Enforcement

The council will always seek to help individuals and organisations meet their legal obligations without unnecessary expense, while taking firm enforcement action including prosecution where appropriate, against those who blatantly disobey the law or act irresponsibly. The Council has a number of approaches in terms of enforcement that include informal verbal or written advice, advisory visits, routine inspections and investigation of complaints.

Principles of Enforcement

The council will have due regard to the advice given in appropriate statutory codes of practice, strategic plans and guidance. The council has adopted the principles of the Regulators Compliance Code issued by the Department for Business Enterprise and Regulatory Reform and the Enforcement Concordat.

The code focuses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging businesses to understand and meet regulatory requirements
- not imposing unnecessary burdens or stifle enterprise and undermine economic progress
- responding proportionately to regulatory breaches, but does not relieve businesses of their responsibility to comply with their obligations under law.

Consistency – to ensure that similar issues are dealt with in the same way whilst taking into account:

the scale of risk to health

the attitude and actions of persons responsible

the history of previous incidents or breaches

the likely effectiveness of action taken

Fairness – to ensure a fair and even handed approach that promotes decisions which are not influenced by gender, ethnic, origin, or religious, political or any other beliefs or preferences that make up the social identity of any potential offender or customer.

Transparency - for us to maintain public confidence, our decision making process has to be as open as possible. This helps everyone to understand what is expected of them and what they should expect from the council. It also means explaining clearly the reasons for taking any enforcement action by making sure;

- if action is required the reasons why are clearly explained, in writing if required
- if action is required, time scales, for works to be completed, are clearly stated
- a distinction is made between advice and legal requirements
- an opportunity is given to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required
- where urgent action is required a written explanation of the reasons is provided as soon as possible after the event
- a written explanation of any rights of appeal against formal action is given at the time the action is taken or as soon as possible afterwards.

Targeted – to ensure that enforcement action is focused primarily on those activities which give rise to the most serious risk;

where the risks are not adequately controlled; and/or

we find deliberate breaches of the law and/or attempts to mislead our officers.

- Within these activities, action will be focused on those who are directly responsible and who

are best placed to control the risk.

- there may be appropriate grants that could be used to assist.

Proportionality – action taken with regard to any breach of legislation is in proportion to the actual or potential risk to health.

Helpfulness – Officers will be courteous and identify themselves by name, and if requested will provide a contact telephone number. We will help and encourage businesses and owners to meet statutory requirements.

Accountable – we accept that we have a responsibility to the public for our actions, providing clear, accessible policies and fair and efficient complaints procedures.

Authorisation

All officers undertaking enforcement work will be authorised by the relevant Head of Service after they have shown their competence in each area of enforcement activity.

Policy Awareness

We will ensure that all authorised officers are fully acquainted with the requirements of this policy and appropriate training will be provided where required.

Enforcement Options

Officers will take into account the following when deciding what action to take, if any:

The seriousness of the offence

The consequence of non compliance

The past history of the offender

The attitude of the offender, the likelihood of re-offending and any explanation given for the offence

The quality of the available evidence

The likely effectiveness of various enforcement options

To ensure compliance with legislation we can apply the following methods of enforcement:

Promotion of legal standards and good practice

Informal verbal advice given at the time of the visit or over the telephone

A formal letter listing actions that are required to comply with the legislation

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Statutory notice

- Works in Default of a Notice or in case of Emergency
- Formal Caution
- Revocation
- Prosecution

Promotion of legal standards and good practice

We will promote legal standards and good practice using our website with appropriate links, meetings, road shows, training and leafleting.

Verbal advice & warnings

In most cases action taken by officers will be informal consisting of advice and guidance given at the time of the visit or shortly afterwards. This action is only likely to be used where the offence has taken place on the first occasion and is a minor contravention of the legislation. The officer will give clear advice on what the individual must do to remedy the offence and within what timescale it must be completed. Failure to respond to informal warning may lead to formal enforcement procedures being taken.

Formal letter

Where contraventions of the legislation exist but the consequences are not so serious as to warrant the issue of a statutory notice, a letter will be sent and where the officer feels that a verbal warning would be inappropriate. The letter will clearly state what the contraventions are and how to remedy them. The individual will be given a reasonable time within which to complete the necessary works. Failure to respond to the requirements in the letter may lead to formal enforcement actions.

Statutory Notices

The legislation enforced by Housing Services provides for the service of statutory notices. The notice requires that the organisation or individual complies with specific aspects of legislation and provides a more immediate remedy than prosecution. The course of action that would be taken will depend on the procedures laid down in the legislation and guidance being enforced. This method of enforcement will be used for more serious matters where;

- a breach of legislation has been identified;
- where there is a risk to health; or
- where the history of the individual suggests that the work will not be completed without the need for formal action.

Where a statutory 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 works are required to put it right
- when the work should be completed
- what will happen if the notice is not complied with

Time limits given will be related to statutory time limits and the amount of works required

Extension of times for starting or completing works will only be given where there are legitimate reasons for doing so.

In certain circumstances it maybe appropriate to issue a statutory notice and prosecute the offender.

Works in Default

The Council may carry out works in default where it has been required by a statutory notice and the work has not been satisfactorily started or completed, within the specified timescale.

A recipient of a notice will normally be advised of the Council's intention to carry out works in default. There are situations however, where the Council may take immediate action without service of a notice where such action is considered necessary. Such action will only be taken where there is considered to be an imminent risk to health.

Work in default of a notice will usually result in a land charge on the property but can also result in action to recover the costs directly or by enforced sale through the Courts.

Formal Caution

The service of a formal caution will be considered when the circumstances of the offence satisfy the criteria detailed in Home Office Circular 18/1994:

- The offence is sufficiently serious to warrant prosecution
- It is a first offence
- The offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in future
- The officer believes that a formal caution will prevent repeat offences

A formal caution may only be issued if the following criteria are satisfied:

- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction
- The offender admits that they are guilty

- The offender will accept the formal caution and understands its significance
- It is in the public interest to issue a formal caution rather than instigate prosecution proceedings

Formal cautions may be cited in prosecution proceedings in relation to a similar offence committed within three years of the caution's issue. A central register of formal cautions issued will be maintained. A copy of the caution will be sent to the Office of Fair Trading and the Offender will be notified of this.

The offender will normally be required to receive a caution in person, once it has been explained to him. Should a suspected offender decline the offer of a simple caution, we will consider taking alternative enforcement action, which would usually be a prosecution

Revocation

In relation to licenses the relevant legislation or the licensing process may give the power of suspension or revocation to the council, this option will be considered in proportion to an offence and only applied where deemed appropriate. Where powers of suspension or revocation are delegated to officers, the Head of Service will consider whether the contravention is serious enough to warrant immediate suspension or revocation. The reasons for such revocation will be fully documented and explained.

Prosecution

The Council will only prosecute at the last resort where the offender has had reasonable opportunity to comply with the law or where there has been a serious breach then prosecution procedures can start immediately.

The instigation of legal proceedings will be considered in the following cases:

- Where the offence involves a blatant breach of the law such that health has been placed at serious risk
- Where the offence involves a failure to comply with a statutory notice
- Where there is a history of similar offences involving serious risk to health
- Where an individual/business is unwilling to prevent a recurrence of, or resolve the offence
- Where an authorised officer has been intentionally obstructed in the course of their duties
- Carrying out operations without a relevant license

Housing Services
March 2012.

SOUTH RIBBLE

BOROUGH COUNCIL

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South Ribble*

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