

# **Housing Services**

## **Enforcement & Licensing Policy**

### **June 2012**

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## **1. Introduction**

Bath and North East Somerset Council is responsible for the enforcement of various areas of housing law including parts of the Housing Act 2004, the Protection from Eviction Act 1977, the Environmental Protection Act 1990, the Housing Act 1985 and the Building Act 1984. Other legislation may also apply. The primary aim of this legislation is to protect the health, safety and welfare of tenants, home owners and the general public. Housing Services regard prevention as better than cure and therefore offer free information and advice to landlords, tenants and others. However, the Service is concerned with the maintenance of minimum housing standards and the fair treatment of tenants. For this reason the Council will take enforcement action where it is considered appropriate to promote compliance with the law.

This document sets out how Housing Services aim to deal with individuals and organisations who do not comply with housing law. It also states the standards of service that can be expected.

Bath and North East Somerset Council Housing Services will aim to be open, act proportionately, and be consistent and helpful in its approach to enforcement. These principles of good enforcement are in accordance with the Government's Enforcement Concordat which the Council has signed up to. Enforcement action includes the service of notices, the issue of formal cautions, prosecution in the Magistrate's Court and carrying out works in default with recovery of costs.

In accordance with the Government's Enforcement Concordat, Bath and North East Somerset Council will apply the following six principles of good enforcement when making its enforcement decisions. When there is an imminent risk to health and safety we will take action immediately as appropriate.

- **Written Standards and Openness** - Where possible we will produce accessible information on minimum housing standards and good landlord practice. In addition, we will be open about our work including how standards are set, any risk rating systems in place and any enforcement charges that we make.
- **Proportionality** - We will aim to ensure that any works required are appropriate to meet the legal standards, are considered in accordance with National Guidance and that any action we take is proportionate to risk. As far as the law allows, consideration will also be given to the circumstances of the case and the attitude of persons involved.
- **Consistency** - We will seek to carry out our duties in a fair, equitable and consistent manner. Housing Services have adopted internal procedures and review systems to promote consistency. Where possible we also adopt risk based rating systems to guide the proactive enforcement of Housing Standards.

- Helpfulness - Unless immediate action is necessary, for example to ensure the health and safety of tenants, we will offer the opportunity to discuss the case before formal action is taken. If a landlord has a history of non-compliance we may go straight to service of a formal notice. Where immediate action is considered necessary an explanation of why such action was required will be given. Advice from officers will be confirmed in writing explaining why remedial action is necessary, over what time scale and making sure legal requirements are clearly distinguished from best practice advice. We will help where we can with explaining works to contractors. In addition, any rights of appeal will be clearly set out when enforcement action is taken.
- Service Complaints Procedure - We have a clear complaints procedure to enable our customers to give feedback.

In accordance with the Regulators' Compliance code we will consider the impact that any regulatory intervention may have on businesses and the business community.

## **2. Housing Conditions and Standards**

The Housing Act 2004 Part 1 is concerned with assessing housing conditions and enforcing housing standards. Bath and North East Somerset Council is under a general duty to take appropriate action in relation to the most dangerous health and safety hazards referred to as Category 1 Hazards (bands A, B or C Hazard rating). The Council has the power to deal with less dangerous Category 2 Hazards (bands D to J).

Following a Housing Health and Safety Rating inspection and assessment of a dwelling, Bath and North East Somerset Council will take enforcement action in relation to Category 1 Hazards (bands A, B and C) that are identified. The Council will normally also take action in relation to Category 2 band D Hazards unless there are any mitigating factors which will be considered before action is taken. The Council may also take enforcement action in relation to Category 2 bands E to J where it makes the judgement that it would be appropriate in the particular circumstances of the case.

In determining what type of enforcement action will be taken, factors that will be considered include:

- the specific characteristics of the residential premises concerned;
- the type and severity of the hazard;
- the likely exposure of vulnerable individuals to the hazard;
- the impact of the action on the occupier of the premises concerned;

- the landlords or agents previous history of compliance;
- any adverse health and safety and environmental impact of the action; and
- relevant guidance and protocols that are in place.

Following the identification of a significant Housing Health and Safety Rating Hazard, Bath and North East Somerset Council will seek the views of occupiers, landlords, owners and persons in control, including views on the hazards present and how to deal with them. These views will be taken into account when deciding the most appropriate course of enforcement action. In determining the most appropriate action, regard will also be given to the Listed Building status and the impact any course of action would have on the local environment.

Urgent action without consultation can be taken where health and safety hazards pose an imminent risk to the occupants of premises or other members of the public.

Where an HHSRS hazard for crowding and space is assessed as a Category 1 hazard the appropriate option for enforcement action will usually be a Hazard Awareness Notice in cases where the hazard is created by the actions of the occupier. The full range of options for enforcement action will be considered in cases where the hazard is the result of action by a landlord or where any of the current occupants are considered to be at increased risk of harm.

Housing Act 2004 Part 1 enforcement action includes the following: Emergency Remedial Action; Emergency Prohibition Order; Demolition; Improvement Notice (including Suspended Notice); Prohibition Order (including Suspended Order); and Hazard Awareness Notice.

There is a right of appeal to the Residential Property Tribunal against formal Notices or Orders. Details of how to appeal will always be included with formal Notices or Orders served.

Bath and North East Somerset Council do not currently charge for the service of Notices or Orders although reserve the right to do so.

### **3. Licensing**

The Housing Act 2004 Part 2 is concerned with licensing of Houses in Multiple Occupation (HMOs). This legislation states that certain properties must be licensed with the Council and Housing Services will endeavour to ensure this is the case. Under the legislation certain properties require a mandatory licence to operate. The Council also has the right to designate additional licensing areas and require all HMOs in that area to apply for a licence in

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order to operate legally. A designation can last for a maximum of 5 years. Failure to comply with this legislation is an offence.

Part 3 of the Housing Act 2004 is concerned with selective licensing of other residential accommodation. The Council has the right to designate a selective licensing area and require all privately rented properties in that area to apply for a licence in order to operate legally. A designation can last for a maximum of 5 years.

Housing Services will charge a fee for all licence applications as detailed in our Licensing Fees document.

When issuing a licence, opportunity will be given for interested parties to make representation to Housing Services against all conditions stated on the licence. If agreement cannot be reached there is a right of appeal to the Residential Property Tribunal. Details of how to appeal will always be sent with a final licence.

Under the Housing Act 2004, licences may be issued for up to a maximum of 5 years and this will usually be the case. However, licences may be issued for shorter periods appropriate to the circumstances of the case.

All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person. The Council may also require a Disclosure Scotland check in addition to its fit and proper person checks as considered appropriate. There is a right of appeal to the Residential Property Tribunal against a fit and proper person decision.

The duration of the licence issued may be shortened where the Council has reasonable evidence that the property should have already been licensed. The licence will be shortened with consideration given to the point at which the Council became aware of the property or to where there is sufficient evidence of when the property became licensable. The licence fee will be appropriate to the length of the licence except where there may have been financial or any other gain by not complying with housing legislation, for example, failure to apply for a licence as soon as required to do so. In this case, the fee will not be reduced.

A person's fit and proper person status may be reviewed if they are prosecuted for an offence, if they consistently breach licensing conditions, if there is evidence of poor management or for any other factors deemed relevant by this Authority.

Where Housing Services become aware of a property that requires licensing under Parts 2 and 3 of the Housing Act 2004 but is not so licensed, we will seek to prosecute all persons managing, owning and in control of the property, as appropriate to the circumstances of the case.

## **4. Protection from Eviction and Harassment**

The Protection from Eviction Act 1977 and the Protection from Harassment Act 1977 state the specific legal remedies for illegal eviction and harassment for most types of tenancies.

Illegal eviction and harassment are criminal acts and carry potential penalties of imprisonment and fines. The Housing Act 1988 sets out the liability of landlords who have evicted illegally to pay damages to tenants for the loss of the right to occupy.

## **5. Powers to Require Documents**

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;
- any person with an interest in a property to provide details about its ownership or occupation.

It is an offence not to produce the required information. Where information is not provided formal action will be considered such as a simple caution or prosecution if appropriate.

## **6. Prosecution Policy**

Enforcement action includes prosecution in the Magistrates Court for non-compliance with legal requirements, for example, compliance with a legal notice. The Court will then decide on a penalty if the defendant is found guilty. The type of penalty available to the Court is determined by the particular legislation concerned.

The decision to prosecute will be a judgement based on the circumstances of the case and will take account of the Code for Crown Prosecutors.

The circumstances under which Housing Services will consider prosecution include:

- A breach of a formal legal Notice or Order without reasonable justification;
- Failure to licence a property which is required to be licenced under Part 2 or 3 of the Housing Act 2004;

- Failure to comply with licensing conditions;
- A direct offence under housing law for a breach of a set of regulations;
- Illegal eviction or harassment by the landlord or any other person responsible

and Housing Services consider that:

- the offender has a history of non-compliance or is resistant to improving standards or following good practice; or
- it is necessary to draw attention to the need for compliance with the law.

The following factors will be taken into consideration to inform the decision on prosecution in relation to licensing:

- The degree to which the property is being effectively managed;
- Any previous history of compliance with housing legislation;
- The length of time a licensable HMO has remained unlicensed prior to a valid application being received;
- The condition of the property taking into account Part 1 of the Housing Act 2004 and relevant management regulations;
- Financial or other gain by not complying with housing legislation, for example, failure to apply for a licence as soon as required to do so.

## **7. Formal Caution**

A Formal Caution is an alternative to prosecution. It may be used where it is appropriate to the offence and likely to be effective in preventing further non-compliance with the law. A formal caution may be appropriate for minor offences or where there is a practical expression of regret by the offender. However, a caution will only be given where the offender admits the offence, understands the significance of the caution and gives their informed consent to the caution. A formal caution will be recorded and be used to inform future decisions on prosecution and may be cited in any subsequent court proceedings.



## **8. Works in Default**

Works in Default will be considered in addition to prosecution in the Magistrates Court. This option is available in two circumstances:

- Emergency Remedial action;
- Where works of repair or improvement have been required by a Notice (under any legislation) and have not been completed within the agreed timescale, or, reasonable progress is not being made towards their completion.

Housing Services may organise and carry out the work themselves and recover the cost of works plus all additional costs and administration fees. These costs will be charged to the property owner but can also be placed as a land charge on the property for payment when the property is sold or if money is raised against it.

## **9. Powers of Entry to a Property**

Entry to a property is usually required to enable Housing Services to carry out its statutory functions. We will normally make an appointment to visit in the first instance and will give 24 hours' notice to the occupants and owners of our intention to enter properties to inspect them.

Powers of entry 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 appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The Council will exercise its statutory powers to gain entry without giving prior notice to investigate an alleged offence or to carry out a statutory duty where it is necessary to:

- protect the health and safety of any person or to protect the environment without avoidable delay;
- prevent the obstruction of officers where this is anticipated

Housing Services will apply to the Magistrates Court for a Warrant to Enter Premises if entry has been consistently refused.

## **10. Owner Occupiers**

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. However, action will not be taken where a more appropriate contractual remedy exists. Where a Housing Health and Safety Rating inspection identifies a significant hazard, a Hazard Awareness notice may be served unless the Council is confident that the hazard will be removed or reduced to an acceptable level by other means. Where a significant hazard is identified which requires attention, and the person responsible for the property is unable to carry out the recommended works because of financial hardship, they will be made aware of any appropriate financial assistance options available to them from the Council. Where the conditions at one property causes a health and safety hazard or statutory nuisance to the occupants of another property, or the general public, enforcement action will be considered regardless of property tenure.

## **11. Interim and Final Management Orders**

These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers has failed. Interim management orders (IMOs) can be made where there is no realistic prospect of a licence being granted. In making an IMO the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses, any remainder will be returned to the owner. Following an IMO the Council can apply for a Final Management Order (FMO) to be approved that can last for up to five years. Once a Management Order is made the Council may allocate a private company to manage the property.

In exceptional circumstances and where the health, safety and welfare of occupiers needs to be protected, the council may apply to the Residential Property Tribunal for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme.

## **12. Empty Properties**

The Empty Property Policy sets out how Housing Services will work to bring empty properties back into use, including the use of enforcement action. In addition it may also be necessary to take enforcement action under this Enforcement Policy where a property is in such a condition it is creating a health and safety hazard, such as water penetration, to neighbouring properties.

### **13. How to Make a Complaint**

Bath and North East Somerset Council is committed to providing a quality service. To help us we welcome comments, suggestions, feedback, complaints and compliments from anyone to whom we provide a service.

You can make a complaint, or submit a comment or compliment either in person, by telephone, email, letter, online or by using the form within our 'Speak out' leaflet. You can find more details about our Corporate Complaints procedure through our website; [www.bathnes.gov.uk](http://www.bathnes.gov.uk) or alternatively please contact Housing Services on 01225 396444.

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