Strategic Housing Services Enforcement Policy 2013

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2 Aim of the policy

Housing should provide an environment that is as safe and healthy as possible. Poor housing conditions can be a major cause of accidents and ill health. Tackling problems of poor housing to protect the health, safety and welfare of occupants is a key health priority.

The aims of the policy are:

- to set out the legal responsibilities, policies, principles and priorities that the Strategic Housing Service will follow when enforcing relevant legislation;
- to help provide housing which is safe and provides a healthy environment;
- to increase public confidence in the quality of private rented accommodation;
- to raise the profile and increase transparency and consistency of enforcement activity carried out by the Strategic Housing Service.

3 Enforcement

3.1 What is Enforcement Action?

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

Within the Strategic Housing Service the Private Sector Housing Team primarily deals with the enforcement action described in this policy, those actions that fall within the scope of our service can cover all privately owned residential accommodation and associated land. In normal circumstances enforcement action will be carried out with the objective of ensuring that:

- tenant’s of a private landlord or a Registered Provider (RP) live in homes free from significant risks to their health and safety;
- owners or occupiers, particularly those who are vulnerable, live in accommodation which is free from unacceptable risks to their health and safety;
- HMO licensing requirements are complied with and licence conditions are met;
- privately owned property, including associated land, does not present a statutory nuisance to other land owners, or does not directly or indirectly present a unacceptable risk to public health, safety or the environment;
- caravan site licensing requirements are complied with and the licence conditions are met;
- persons are held responsible for their actions which are detrimental to the health, safety and welfare of occupants and other residents or the quality of the local environment;
- long term empty homes are not left empty where there is a housing need;
- we meet our statutory duties as a public authority.

4. Service Users

The following groups will both use our service and potentially be subject to enforcement action. This is not intended to be an exhaustive list but gives an indication of the types of enforcement action taken and scenarios where different legislation is most appropriate;

<table>
<thead>
<tr>
<th>Group who may be subject to enforcement action</th>
<th>An example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private rented sector landlords</td>
<td>Improvement notice under the Housing Act 2004 to improve living conditions within a</td>
</tr>
<tr>
<td>Registered Providers</td>
<td>rented property.</td>
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<tr>
<td>Private rented sector tenants</td>
<td>Having to comply with a Prohibition Order served under the Housing Act 2004 requiring the numbers of occupants in a property to be reduced.</td>
</tr>
<tr>
<td>Tenants of Registered Providers</td>
<td>Prosecution for failure to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 for obstructing a landlord/managing agent from carrying out their duties.</td>
</tr>
<tr>
<td>Managing agents of rented property</td>
<td>Prosecution for failure to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 because the Fire Alarm in the common parts of a property is not working and no action has been taken to repair it.</td>
</tr>
<tr>
<td>Homeowners</td>
<td>Statutory notice served under Building, Environmental Protection or Public Health Acts to carry out repairs to their property to eliminate a defect that is having a detrimental effect on neighbouring property.</td>
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</table>

5 Expectations

In recognition of the Regulators Code 2013 recommendation that regulators approach be transparent, we have set clear service standards you can expect from our officers undertaking the types of enforcement activity described in this policy.

5.1 North Somerset Council

The Strategic Housing Service will aim to be open, act proportionately, and be consistent and helpful in its approach to enforcement. We have published service standards and a customer charter which are included as Appendices B & C respectively. In relation to our regulatory activities you are also entitled to expect our staff to:

- give clear and simple advice
• have the necessary knowledge and skills to support those we regulate
• understand the principles of good regulation and the Regulators’ Code and apply them appropriately
• provide a contact point for any further dealings
• clearly distinguish between what you must do to comply with the law and what is recommended as best practice
• minimise the cost of compliance by choosing a proportionate approach based on the relevant factors of each case
• give you reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
• advise you of the procedure for making a complaint or representations in cases of dispute
• maintain confidentiality

5.2 Service Users

Our service users are entitled to expect the following:

5.2.1 Landlords

• We will advise you of the legislation and help you understand how you can comply with it.
• We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply.
• If we are satisfied with your proposal we will work with you to comply within agreed timescales.
• If we are not satisfied with your proposal or how the work is progressing we will initiate a formal enforcement action in a proportionate manner as appropriate to the circumstances.
• In making a decision to prosecute we will have regard to the seriousness of the offence, the benefit of prosecution and whether some other action would be appropriate.

• Where appropriate, a charge will be made for taking enforcement action.

5.2.2 Tenants

• We will expect you to advise your landlord of the problems in your property before contacting us.

• We will advise you as to what action we can take and advise you of the expected timescales.

• We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord.

• We will expect you to have behaved in a ‘tenant like manner’ during the course of your tenancy by not wilfully or negligently damaging the property.

5.2.3 Owners

• We believe that the prime responsibility for maintenance of a dwelling is with the homeowner but recognise that the council have an important role to provide assistance, particularly to the elderly and most vulnerable who may not have resources available.

• We will consider taking enforcement action if there is a serious or imminent risk to a person’s health, safety or wellbeing.

• We will provide information on the types of assistance that may be available to help fund essential repairs and improvements.

5.2.4 Owners of Empty homes

• We will work with owners of empty homes to help them bring them back into use.

• We will consider a full range of enforcement actions (including Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) where an owner does not co-operate and the empty property has not been brought back into use within a reasonable period.

6 Links with other council strategies and national policies

6.1 Council strategies
This document provides a framework for housing enforcement activities that may be undertaken to meet priorities set out in the Housing Strategy. It also reflects the Private Sector Housing Delivery Plan by setting out both the national frameworks and guidelines for undertaking enforcement action and reinforcing those local priorities set out in the Housing Strategy and its associated delivery plans.

Our approach to enforcement supports the North Somerset Council Corporate Plan priority aim of “enhancing health and wellbeing” by contributing to delivering the plans priorities of “working with communities to better meet local housing need” and “improving health outcomes”. This policy also sets out how this service contributes to the corporate aim of “protecting and improving the environment” by addressing local environmental concerns.

This policy also supports the delivery of the vision for housing set out in the North Somerset Partnerships Sustainable Community Strategy - by 2025 there will be “choices and access to a decent home for all residents” and the delivery of the Community Strategy’s “Health and Well Being” theme.

6.2 National policies

We support the national approach to good regulation and we are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006;

- regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

- regulatory activities should be targeted only at cases in which action is needed.

Our approach in meeting legislative requirements placed upon us whilst delivering our regulatory functions is set out below;

7 Our approach to enforcement

7.1 Targeting

We aim to prioritise and direct our regulatory effort. This policy identifies the enforcement priorities of the Strategic Housing Service so that our service users can see where we will normally focus our resources and make clear the approach we will take in dealing with these issues. The ways in which we target our resources are set out in a latter section of this policy.

7.2 Proportionality

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are appropriate.
7.3 **Accountability**

We will be accountable for the efficiency and effectiveness of our activities.

7.4 **Fairness and Consistency**

We will treat all service users, owners of property and businesses fairly. We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar ends. We will have regard to national guidelines and Codes of Practice in our decision-making processes.

We have set out how we will comply with the new Regulators Code below;

7.5 **Regulators Code**

The Legislative and Regulatory Reform Act 2006 also requires that we have regard to guidance issued under section 23 of this Act. The Regulators Code 2013 will come into force in Spring 2014 and we are committed to ensuring our regulatory activities comply with this Code.

7.5.1 **Supporting economic progress**

We recognise that a key element of our activity will be to carry out our activities in a way that supports those we regulate to comply with their legal responsibilities whilst being able to grow their business, balanced against a background of public protection. Wherever possible, we will work in partnership with individual landlords and owners, small businesses and with voluntary and community organisations to assist them with meeting their legal obligations without unnecessary regulatory burden and expense.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice but which are not compulsory.

As made clear in the aims of this policy, we are committed to improving confidence in the sector we regulate. We also recognise the importance of officers having the necessary knowledge and skills to support those we regulate and being able to apply the principles of good enforcement appropriately by including these provisions in our service standards outlined above.

7.5.2 **Engaging with Service Users**

We are committed to engaging with our service users and provide a number of mechanisms to facilitate this. We support the Private Sector Housing Forum which provides an opportunity for: dialogue, engagement on the
service direction and updating members on emerging and existing local issues within the sector.

The West of England Local Authorities work together with private organisations to bring together property professionals services and users in order to share information and best practice and develop links in this area.

We also provide customer feedback forms that are sent to service users on completion of dealing with a case.

This policy clearly outlines the directorate and corporate customer complaints procedure, our primary channel for receiving feedback is facilitated by our public website, www.n-somerset.gov.uk

7.5.3 Risk based approach

This policy sets out the local enforcement priorities based on an identification of issues that could cause significant harm in the Local Authority area or generate high levels of local concern and where the council can make a difference to outcomes. By setting these priorities we are identifying those priority risk areas where it is more likely that we will take enforcement action to achieve compliance.

We will regularly review these enforcement priorities and the effectiveness of this approach in achieving our service aims and delivery of our regulatory activities.

7.5.4 Sharing Information

If there is a shared enforcement role within the Council or external agencies, e.g. Environmental Protection Team, Avon Fire and Rescue we will coordinate with these agencies to minimise unnecessary overlaps or time delays and to maximise overall effectiveness.

Where the law allows we will follow the principle of “collect once, use many times” by agreeing to securely share information about individuals and businesses we regulate to minimise duplication.

7.5.5 Providing Information, guidance and advice

We are committed to the open provision of information and advice in a format that is accessible and easily understood. We will continue to make extensive use of the council’s website to provide information and guidance on our service user’s responsibilities and legal requirements, including the publication of this policy.

We also provide appropriate links to other sources of useful information such as the website operated by the West of England local authorities www.privatehousinginformation.co.uk, this includes access to a landlords
manual and online training courses focused around HMO licensing. We will also provide advice and information by case officers on site, over the telephone and in writing where this approach is more appropriate.

We will ensure that there is always a clear distinction between the information provided that is necessary to comply with the law and that which is guidance or been identified as good practice, but not compulsory.

7.5.6 Transparency

We aim to deliver our regulatory activities in an open and consistent way, to help achieve this we have set service standards to ensure that both those we regulate and other service users can have clear expectations of our service. We will ensure that each of the officers delivering our regulatory activities act in accordance with these service standards.

We will continue to publish reports that include details of performance against our service standards/performance indicators and any information from mystery shopping, customer satisfaction surveys or other feedback.

7.6 Compliance with Home Authority Principle

We support the Home Authority Principle, which has been developed to promote good enforcement practice and reduce burdens on business.

We will therefore:

- Provide businesses, for whom we are the ‘home authority’, with appropriate guidance and advice;
- Maintain records of our contacts with ‘home authority’ businesses to reduce the amount of information they have to provide;
- Support efficient liaison between local authorities;
- Provide a system for the resolution of problems and disputes.

8 Local enforcement priorities

This section looks at identifying priorities where the issues could cause significant harm in the Local Authority area or generate high levels of local concern and where the council can make a difference to outcomes.

Our local priorities are:-

- Tackling rogue landlords and protecting private sector tenants;
- Protecting caravan/park home site residents;
• Dealing with properties where their condition has a significant impact on the community or environment.

8.1 Tackling rogue landlords and protecting private sector tenants

The council recognises and supports the national governments commitment to tackling problems in the private rented sector caused by rogue landlords who fail to meet their basic responsibilities. We will target enforcement action against those landlords who rent out poor quality accommodation or engage in harassment and illegal eviction of tenants, particularly if the occupants are considered to be vulnerable. We have signed up to Shelter’s national campaign and reflect its aims in this enforcement policy.

There are around 1500 converted flats and houses in multiple occupation (HMO’s) in the district with a concentration in Weston-super-Mare. In recognition of the wide ranging powers given to local authorities to tackle problems associated with these types of properties, the council recognises the benefits to local communities of setting this area of concern as a high enforcement priority.

Tenants have responsibilities under the terms of their tenancies and the management regulations for houses in multiple occupation and we will support landlords when dealing with problematic tenants and take enforcement action when appropriate.

8.2 Protecting caravan/park home site residents

The council also recognises and supports the national governments commitment to protecting caravan and park home site residents. Being a coastal authority we have a high number of residential sites which are characteristically occupied by older residents.

This policy sets the protection of these residents as a high enforcement priority and will seek to take formal enforcement action against site owners who fail to meet their basic responsibilities and take advantage of this vulnerable group.

8.3 Dealing with properties where the condition has a significant impact on the community or environment

The initial approach in tackling these issues will be advice and assistance, however where environmental and public health concerns present an issue for the neighbouring community and owners fail to take reasonable action to remedy defects the council will seek to take enforcement action.

The council’s Empty Property Delivery Plan recognises the importance of bringing long term empty homes back into use and we will prioritise taking action against owners where their properties have a significant adverse impact on the local neighbourhood.
9 **Targeting enforcement action**

To ensure that we meet our policy and enforcement objectives effectively we will need to target our enforcement activity from time to time. These are some examples of how we may target action:

9.1 **By types of property and/or the way a property is occupied**

- Empty properties
- Tenants who are in receipt of Housing Benefit as they are likely to be more vulnerable and the standards in those properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers
- Unlicensed HMOs
- Construction type – Where there is a problem with a particular method of construction.

9.2 **By areas**

- Where there are particular problems in a specific locality. This can be on a street-by-street or area basis.

9.3 **By individual/organisation**

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

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

10 **Specific enforcement actions**

10.1 **Housing conditions**

The Housing Act 2004 Part 1 is concerned with assessing housing conditions and enforcing housing standards. The 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, the council must take enforcement action in relation to category 1 hazards (bands A, B and C) that are identified.

The council will normally take enforcement 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, the Council will, as far as practically possible and reasonable according to the circumstances of the case, seek the views of occupiers, landlords, owners and persons in control of the accommodation, 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.

Where the council has a high level of confidence that action will be taken to deal with the issue of concern within a reasonable time scale and subject to the circumstances of the case, an informal enforcement approach may be taken in the first instance.

The interested parties will be informed of the appropriate course of enforcement action when this decision has been made. In determining the most appropriate action, regard will also be given to the planning and/or listed building status and the impact any course of action would have on the local environment.

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

Housing Act 2004 Part 1 formal enforcement action includes the following:

- taking emergency remedial action;
- making an emergency prohibition order;
- making a demolition order;
- declaring a clearance area;
- serving an improvement notice (including a suspended notice);
- making a prohibition order (including a suspended order);
- serving a 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.

Where enforcement action is considered under other legislation such as the Environmental Protection Act 1990, Building Acts or Public Health Act or other relevant legislation a similar approach will be taken. In these cases the term hazard may be replaced by the relevant term including nuisance or premises prejudicial to health.

10.2 HMO 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 Strategic 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 power to designate additional licensing areas and require all HMOs in that area to apply for a licence in 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.

Strategic Housing Services will charge a fee for all licence applications as detailed in our fees and charges document.

When issuing a licence, opportunity will be given for interested parties to make representations 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.

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

10.2.1 Operating an unlicensed HMO

Where the Private Sector Housing Team 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 and in control of the property, as appropriate to the circumstances of the case. Where unlicensed HMOs are found an additional finder’s fee on top of the licence fee will be charged as well as reducing the length of the licence to remove any advantage over those landlords that applied at the appropriate time.

Where landlords have been prosecuted for operating an unlicensed HMO the council will normally use Rent Repayment Orders to claim back the Housing Benefit paid whilst the HMO was unlicensed and provide tenants with information and advice on how they can claim back the rent they paid whilst the HMO was unlicensed.

10.2.2 Breach of licence conditions

The council has a points system for non-compliance with licence requirements. When the number of points exceeds the threshold this triggers a review of the licence holder or manager’s fit and proper person status.

Points are awarded where there has been non-compliance with licence conditions and/or the Code of Good Management Practice or other matters. Non-compliance will be evidenced and the severity of breaches will be reflected in the points awarded. A person may ask for the allocation of points to be reviewed.

Where points have been awarded either informal or formal enforcement action will be used to secure compliance with licensing or legal requirements in line with this policy.

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

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

10.2.3 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 or residents is at risk have failed. Interim Management Orders (IMOs) can be made where there is no realistic prospect of an HMO licence being granted. Effectively the management and rental income from a property is taken away from the
current landlord for up to a year. The council can apply for a Final Management Order to be approved that can last for up to five years.

10.3 Protection from harassment and illegal eviction

The Protection from Eviction Act 1977 and the Protection from Harassment Act 1997 sets out the 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.

The Caravan Sites Act 1968 provides protection for occupiers of protected sites against illegal eviction and harassment. The Mobile Homes Act 2013 enhances this protection and increases the penalties for those convicted of an offence to either a fine not exceeding the statutory maximum limit or imprisonment of up to two years. The Mobile Homes Act 2013 also brings in the requirement for local authorities to publish an up to date register of site rules that make up the express terms of an occupiers agreement made under the Mobile Homes Act 1983.

We will investigate reports of harassment and illegal eviction and undertake formal enforcement proceedings where evidence of an alleged offence exists.

10.4 Empty properties

The Empty Property Delivery Plan sets out how the Strategic Housing Service 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 significant health and safety hazard to neighbouring properties. We will risk assess empty properties to effectively target resources to deal with those properties which have the greatest impact on neighbourhoods and/or present a potential risk to public health or other risk.

11 Other enforcement action

11.1 Environmental and public health complaints

We investigate environmental and public health complaints that are being caused within a private sector dwelling. Examples of these types of complaints include premises that are ‘open to access’ or considered to be filthy and/or verminous.
Where privately owned land or property presents a statutory nuisance to other land owners, or an unacceptable risk to public health, safety or the environment appropriate enforcement action will be taken to remove the risk.

11.2 Caravan site licensing

Our main involvement with caravan (including Mobile and Park Home) sites is the duty to licence those applicable sites (holiday, touring and residential), under the Caravan Sites and Control of Development Act 1960. Licences are issued with conditions which concern maintaining adequate health and safety on sites.

The Mobile Homes Act 2013 has introduced significant changes to the licensing regime of residential sites and the council will undertake an extensive publicity campaign to alert site owners and others to the amended requirements.

The Caravan Sites and Control of Development Act 1960 makes it an offence to operate certain types of caravan site without a licence. Complaints of unlicensed sites will continue to be investigated in conjunction with the council’s Planning Service on the basis appropriate planning permission must be in place.

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Informal enforcement action will be taken in relation to minor breaches of the licence conditions, for example not producing certificates on time as long as the breaches have not significantly increased the risk to a person’s health safety or welfare. The Mobile Homes Act 2013 introduces the power to serve a compliance notice to ensure that conditions on protected sites are complied with.

The Mobile Homes Act 2013 also introduces the power to require a fee to accompany licensing applications for protected sites, as well as an annual fee for those protected sites that are already licensed. We will develop and publish a fees policy for this provision in accordance with the requirements of this new legislation.

The Council will pursue formal action against site owners who fail to meet their basic responsibilities and place residents often vulnerable at risk.

11.3 Unauthorised encampments

Unauthorised encampments are characterised by persons camping on land that they do not own where they and do not have the permission of the landowner.

The Council’s Unauthorised Camping on Public Land Policy details the procedures and guidelines for dealing with these types of occurrences.
12 Enforcement tools and techniques

This policy covers all types of enforcement action carried out by the Strategic Housing Service. This policy may be supplemented by more specific guidance that relates to a specific area of legislation.

12.1 Informal Enforcement Action

Where appropriate we will seek the desired improvements or protection of the public’s health and safety in relation to private housing by working informally with those involved. If the risk to a person’s health, safety and well-being is low then it will normally be appropriate to act in this way.

12.2 Formal Enforcement Action

Where the circumstances of the case justify it, we will use our formal enforcement powers, including where:

- There is a serious risk to a person’s health and safety. E.g;
  - no heating in cold weather;
  - no hot water to wash and prepare food safely;
  - exposure to asbestos which means occupiers are likely to inhale or ingest fibres;
  - exposed live electrical wiring which people are likely to make contact with.

- A person refuses or fails to carry out the works informally.

- There is a history of failure to meet requests to carry out legally required works.

- There is history of a failure to manage a property in line with legal requirements.

- There is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years or a simple caution has been issued in the last 2 years.

- It is necessary to safeguard and protect health and safety for the future.

- It is necessary to bring an empty property back into use when informal requests to do so have failed.

The above is not intended to be an exhaustive list and each case will be considered on its individual merits.
Examples of the types of formal enforcement action we can take are given below.

12.2.1 Fixed Penalty Notices

Certain offences are subject to Fixed Penalty Notices (FPN) - they are recognised as a low-level enforcement tool.

Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids a criminal record for the defendant. In some circumstances offenders may be warned so they may change their behaviour and thereby prevent the issue of an FPN.

12.2.2 Penalty Charge Notices

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach.

Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

12.2.3 Statutory Notices and Orders

These are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities).

Examples include improvement notices, abatement notices, closure notices, stop notices, prohibition notices, suspension notices.

12.3 Simple Cautions

Non-compliance with housing legislation can make people liable to be convicted of criminal offences;

e.g.

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

- Not complying with the requirements of an Improvement Notice under the Housing Act can carry a fine not exceeding level 5 on the standard scale.

We may use Simple Cautions where someone has committed a less serious crime. Simple Cautions warn people that their behaviour has been
unacceptable and makes them aware of the legal consequences should they commit further offences.

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

Simple Cautions can only be issued where:

- there is evidence an offender is guilty;
- the offender is eighteen years of age or over;
- the offender admits they committed the crime;
- the offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead.

Simple Cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

Simple Cautions are not a criminal conviction but they are recorded and will be considered in any future proceedings. The rules covering Simple Cautions are provided on the Home Office web site or in Home Office Circular 30/2005.

http://www.homeoffice.gov.uk/police/powers/cautioning/ - named1


12.4 Prosecution

Prosecuting someone is a serious matter and is considered carefully on a case by case basis.

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

- a simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution; or

- there is a risk to public health and safety or of environmental damage as a consequence of the breach; or

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law; or

- the breach was as a result of a deliberate act or following recklessness or neglect; or
• the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or

• a legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or

• obstruction of an officer in the course of their duty; or

• the provision of false information.

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

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

• There is a serious risk to health and safety or the environment.

• There is a recent history of failure to meet requests to carry out legally required works or meet legal standards.

• There is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years or a simple caution has been issued in the last 2 years.

• It is necessary to safeguard health and safety in the future.

12.4.1 The Code for Crown Prosecutors

Before a decision to prosecute is taken, the alleged offence(s) will be reviewed by a duly authorised manager who must be satisfied that the case meets the requirements of The Code for Crown Prosecutors. Prosecutions will need to meet the two stages of the Full Code Test; “The Evidential Stage” followed by the “Public Interest Stage”.

12.5 Work in Default

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

In most circumstances a person will be given notice of the council’s intention to carry out works in their default. Once the council has started works it is an offence for that person to obstruct the council or any of the contractors that have been employed to carry out the works.
The cost of the works including reasonable costs incurred by the council in undertaking the work will be recovered in accordance with the relevant statutory provisions.

12.6 Charging for Enforcement Action

The Strategic Housing Service will generally recover our costs and fees when formal action is taken. The full costs of an officer’s time including administrative and other costs will be recovered.

The Housing Act 2004 allows councils to charge for taking enforcement action. Some other legislation allows us to recover costs for our time and expenses incurred in determining what works are required to be carried out.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken.

12.7 Recovery of Debts

Where charges for enforcement action are levied they will be registered as a local land charge against the owner’s property.

This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

We will pursue all debts owed as a result of enforcement charges or charges for carrying out works in default (as well as any other charges).

To recover debts we will use some of the following means;

- Use tracing services to track down debtors and secure judgments to pay up debts.

- Demand rents are paid to the council instead of the landlord to recover outstanding debts. (Where the legislation allows and it is appropriate to do so).

- Where applicable we will recover debts using the enforced sale procedure under the Law and Property Act 1925. This allows the council to force the owner to sell their property in order to recover its costs. (This power will only normally be used where there is no other realistic likelihood of recovering debts owed to the council.)

12.8 Powers of Entry

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation under which we operate.
In general the powers will allow an officer at any reasonable time to;

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

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days. Notice that powers of entry need to be exercised will normally be in writing or by email but can in some circumstances be given verbally, depending on the relevant statutory provision.

There are specific instances, named in legislation, where no notice is required to be given, e.g. investigating an allegation that a HMO does not have a licence when it should do.

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

- protect and health safety of any person or to protect the environment; without avoidable delay;
- investigate an offence;
- prevent the obstruction of officers;
- carry out a statutory duty or power.

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

Officers exercising their power of entry will carry identification and details of their authorisation to carry out their action.

12.9 Powers to Require Documents

Currently authorised officers have the power to require:

- documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004;
- electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation;
- 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 e.g. simple caution if appropriate or prosecution where there is sufficient evidence and it is in the public interest to do so.

13 Partners and protocols

Protocols have been established to help clarify how the Strategic Housing Service will work with other partner organisations or services in relation to private sector housing. This is not an exhaustive list and these protocols may be added to or change over time.

13.1 Fire Safety Enforcement Protocol

The Avon Fire and Rescue Service and the West of England (WoE) Local Authorities Enforcement Protocol for Fire Safety sets out how both the Council and Avon Fire and Rescue Service will take enforcement action in relation to Fire Safety in properties where there is an overlap between each organisation’s duties set out under the Regulatory Reform (Fire Safety) Order 2005 and the Housing Act 2004.

Its aim is to provide clear and simple practical arrangements for landlords and officers on how to comply with the legislation cited above.

13.2 West of England Enforcement Protocol with Bristol Partnership Registered Providers

The WoE local authorities and the Registered Providers (RP’s) that are in the Bristol Partnership are signed up to this protocol. The protocol sets out how each partner will work with each other in relation to complaints about housing standards in the RP’s properties and if necessary how the Council will carry out enforcement action in relation to a complaint about an RP.

13.3 Partnership working

There are a wide range of partners that Strategic Housing Services work with to achieve our enforcement aims including stakeholders such as private sector landlords, Registered Providers, residents groups, other council teams, agencies such as Fire and Rescue Services and the Police and neighbouring local authorities.

We value the partners we work with and will engage with them in relation to achieving organisational goals and where the subject area is relevant and appropriate to them.

14 Authorisation of Officers
Any officer carrying out enforcement work will be authorised to do so in line with the Constitution. Each authorised officer in the Strategic Housing Service will carry an identity card which summarises their enforcement powers on the back. You are entitled to ask to see this card at the time of their visit.

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

15 Equalities impact assessment

In summary the policy aims to promote the council’s objectives of protecting and improving the environment, building safer and stronger communities, and enhancing health and well-being.

An initial Equalities Impact Assessment (EIA) has been carried out which will be completed after the consultation and before approval of the policy.

16 Appeals and complaints procedures

We are committed to the delivery of quality services that meet your needs. If you wish to appeal against a course of formal enforcement action that has been taken then you should follow the appeal guidelines that accompany any formal notices/orders etc that may have been served on you. This type of appeal will normally involve a tribunal or court hearing to listen to any appeals you may wish to make.

There may be times when things go wrong and you do not receive the standard of service you expect. If you feel that you have good cause for complaint, then we need to know. We will deal with your complaint confidentially unless this is not possible, for example if legislation applies.

Step one - Go direct

If you know the specific service that your complaint is about please take it up with the relevant officer or service area in the first instance. If you are not sure who to speak to, you can call in to any council office, contact our Customer Services Officer or give your feedback online.

You can also contact your local councillor who will take the issue up for you.

Step two - Chief Executive Officer (CEO)

If you are not satisfied with the outcome of your complaint after taking the matter up with the relevant officer, you can take the matter up with the council’s Chief Executive Officer (CEO).
Our response

We aim to reply to your complaint within 10 working days. If we can't reply fully within that timescale we will let you know.

Local Government Ombudsman

If you are not satisfied with the council’s CEO response you can ask for your complaint to be examined by the Local Government Ombudsman. There is a pack available to help people making complaints. Please contact our Customer Services Officer for further information.

17 Further Enquiries

If you would like further information on any of the information contained within this enforcement policy please contact the Private Sector Housing Team on the contact details below;

Private Sector Housing Team
North Somerset Council
Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

Telephone: 01934 426885
Fax: 01934 426728
Email: privaterented.housing@n-somerset.gov.uk
Website: http://www.n-somerset.gov.uk/Housing/