

Cabinet – 25 October 2017

Walsall Housing Standards and Improvement Enforcement Policy

Portfolio: Councillor Diane Coughlan, Social Care

Service: Housing Standards and Improvement

Wards: Borough Wide

Key decision: Yes

Forward plan: Yes

1. Summary of report

- 1.1 This report provides a summary of the current legal powers available to the Council when negotiation with landlords of dwellings proves unsuccessful. It recommends the adoption of an updated formal Housing Standards and Improvement Enforcement Policy in line with the national Enforcement Concordat and guidance laid down in the Code for Crown Prosecutors and Regulators Compliance Code.
- 1.2 This is a Key decision because it is likely to have a significant impact on two or more wards within the Borough. The most significant change since the previous 2015 Policy has been the enactment of the Housing and Planning Act 2016.

2. Recommendations

That Cabinet is recommended to:

- 2.1 Approve the Housing Standards and Improvement Enforcement Policy (Appendix A).

3. Background information

- 3.1 In December 2015 Cabinet agreed an updated Housing Standards and Improvement Enforcement Policy. This Policy has again been fully reviewed and updated as a result of changes in legislation and national guidance including for example the Housing and Planning Act 2016.
- 3.2 The two key improvements in tackling rogue landlords, principally in the private rented sector, with the Housing and Planning Act 2016 have been:
 - A national shift away from prosecutions (which can be resource intensive for council's) to a system of civil penalty fines. The additional benefit from the system of civil fines rather than prosecution fines is that any fine levied is paid direct to the council for use in tackling 'rogue' landlords and or improving housing conditions rather than sums returning direct to government.

- Expansion of the powers relating to Rent Repayment Orders – a system where if a landlord fails in their duty a tenant or the council (if they have paid housing benefit) can secure repayment of rent from the landlord for a period of up to 12 months.
- 3.3 The Council and the Housing Standards Team has had a range of successes recently in terms of statutory enforcement including:
- Securing Secretary of State confirmation of Compulsory Purchase Orders for 3 long term empty homes;
 - Service in 2016 of 15 statutory notices ranging from Improvement Notices to Emergency prohibition orders. In 2017 as at 10 August 2017 a total of 5 notices have been served.
- 3.4 The new proposed policy is contained in Appendix A.

4 Council Priorities

- *Make a positive difference to the lives of Walsall people and*
 - *Safe, resilient and prospering communities:*
- 4.1 A formal Housing Standards and Improvement Enforcement Policy has a direct positive impact on the health and wellbeing of residents within the borough. Much of the legislation that it covers relates directly to ensuring that dwellings are in condition that does not impact negatively on the health of the occupants or visitors for example through tackling:
- Excess cold (excess winter deaths) and damp & mould
 - Slips, trips and falls on the level;
 - Electrical hazards
 - Carbon monoxide poisoning and explosions;
 - The distress and mental trauma caused by illegal evictions and or harassment.

5. Risk management

- 5.1 The key risk relates to the Council seeking to pursue a case against a landlord without reference to an adopted Enforcement Policy. The recommended adoption of the Enforcement policy will fully remediate this risk.

6 Financial Implications

- 6.1 Costs relating to enforcement action are provided for within the budget for Housing Standards and Improvement.
- 6.2 The Policy contains provisions to make enforcement action as cost neutral as possible through:
- the charging of licences and enforcement notices;
 - charging through rent repayment orders and civil penalty fines
 - recovery of costs where action has had to be undertaken in default. This can include in certain situations the Council being able to enforce the sale of properties to secure its funds.
- 6.3 With civil penalty fines income returns to the council rather than government and this fund can be directly used to continue to improve housing conditions and tackle rogue landlords.

7 Legal implications

- 7.1 The adoption of an updated Enforcement Policy is crucial to allow the Housing Standards Team to continue take formal legal action against property owners (principally landlords) and their agents. The policy is in accordance with the updated Regulators Compliance Code and other relevant national guidance.

8 Procurement reporting

- 8.1 There are no procurement implications from this report.

9 Property Implications

- 9.1 None.

10 Health and Wellbeing

- 10.1 As highlighted in 4.1 above the Policy has a positive impact on securing improvements in residents' health through improving housing conditions within the borough.

11 Staffing

- 11.1 The service has existing staff to deliver the enforcement services contained in this report.

12 Equality implications

- 12.1 An Equality Impact Assessment has been completed for the Policy. An updated published and adopted Enforcement Policy that is easy to understand for all tenants and landlords will provide consistency and transparency. Many of the tenants living in the worst and most dangerous private rented dwellings are amongst the most vulnerable groups in society. The Council's work in tackling poor housing conditions will positively impact upon the lives of these vulnerable residents.

The Housing Standards team actively work with:

- NASHDOM in supporting new and emerging communities within Walsall
- New and young parents
- Vulnerable residents highlighted to the team by colleagues in adult social care
- West Midlands Police and the Fire and Rescue Services to educate, inform and advice them about tenant rights and responsibilities.

13 Consultation

- 13.1 A copy of the updated adopted Policy will be available on-line and local estate agents and members of the Midland Landlord Accreditation Scheme will be advised of its adoption.

Background papers

Author

Appollo Fonka

Housing Standards Officer

☎ 01922 650947

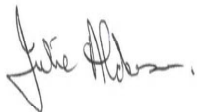
✉ fonkaa@walsall.gov.uk

David Lockwood

Housing Standards and Improvement Manager

☎ 01922 658459

✉ lockwooddavid@walsall.gov.uk



Julie Alderson
Interim Executive Director,
Change and Governance



Councillor Diane Coughlan
Portfolio Holder – Social Care

Appendix A

Housing Standards and Improvement Housing Enforcement Policy October 2017

1.0 Introduction and Scope

The Council has statutory responsibility for enforcing the minimum housing standards set out in the Housing Act 2004 (and the associated regulations). The aim is to ensure all housing, but particularly private rented housing is safe, does not give rise to injury or illness to the occupiers, is warm and energy efficient.

In general, landlords can expect to be offered the opportunity to put housing defects right through informal action initially, unless it is clear there is a real threat to the health and safety of occupiers. In such cases enforcement including emergency action can be taken to secure essential works.

Landlords can further expect to be offered advice, information and the chance to discuss the works with an officer. This may include possible alternative courses of action which may be acceptable to reach a satisfactory outcome.

The policy also covers related housing areas of;

- Houses in multiple occupation (HMOs)
- Empty dwellings
- Harassment and illegal evictions
- Licensed Caravan sites

2.0 Principles of Enforcement

The Council is bound by the Statutory Code of Practice for Regulators made under section 23 of the Legislative and Regulatory Reform Act 2006 which ensures fairness for all those affected by Council enforcement action.

The Compliance Code:

Our enforcement action is carried out in line with the principles set in the Regulators Compliance Code (updated in April 2014);

Regulators should carry out their activities in a way that supports those they regulate to comply and grow. Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views. Contacting Walsall Council Housing Standards Team is easy and straight forward:

☎ (01922) 652171 or (01922) 650942 or (01922) 650947

E-mail: Housingstandardsimprovement@walsall.gov.uk

Landlords and agents can request advice and officers to visit dwellings (subject to availability) especially prospective HMOs at no charge. Officers will seek to provide bespoke guidance and advice and the Team take part in regular landlord and agent forums.

Regulators should base their regulatory activities on risk. Regulators and the Regulatory system as a whole should use comprehensive risk assessment to concentrate resources in the areas that need them most.

Regulators should share information about compliance and risk. Landlords/Agents should not have to give unnecessary information or give the same piece of information twice. Where the law permits, the Housing Standards Team shares or obtains relevant information with/from other sections of the Council to aid in their enforcement and with partner agencies including but not limited to the West Midlands Police and West Midlands Fire.

Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. Walsall Council meets this through providing free bespoke information to landlords and agents and having information available on-line and in leaflet form on a range of topics.

Regulators should ensure that their approach to their regulatory activities is transparent. The council meets this through publication of details on our private housing web-pages. The few landlords/agents that persistently break regulations are identified quickly and face proportionate and meaningful sanctions.

Inspections and other visits.

We will carry out inspections of properties in greatest need. This will usually be where we have received a complaint or where we have a statutory duty to carry out inspections for example, HMOs which are subject to Mandatory Licensing. We will also target inspections for example, to properties identified as having particular problems such as long term empty dwellings. We also have a general duty to keep housing conditions under review to identify any actions that may need to be taken under the Housing Act 2004.

In accordance with the Compliance Code no inspection will take place without a reason.

What to expect from the Council Housing Team (or officers delegated to work on their behalf)

Landlords

- We will advise you of the legislation and or where to find relevant legislation online and help you understand how you can comply with it. The legal responsibility to comply with legislation will always remain the landlords and they may also wish to seek separate legal advice.
- We will advise you as to what action you need to take to comply with the legislation and seek to agree a reasonable timescale to comply. In some circumstances this timescale may be very short for example where there is an imminent risk.
- If we agree a timescale with you we will work with you to comply within agreed timescales.
- If we are unable to agree a timescale as we consider that works or actions should be carried out faster than you wish to do them we will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution.
- In making the decision to prosecute or issue a fixed penalty notice we will have regard to how serious the offence is, the benefit of prosecution and whether some other action would be better. This decision rests with the council
- A charge will be made for the service of a notice as stated later in this Policy.

Tenants

- We will expect you to advise your landlord of the issues within your property before contacting us. We provide handy template letters on-line that you can use to do this.
- We will advise you as to what action (if any) we can take and advise you of the expected timescales.
- We will expect you to co-operate with the landlord to get the works carried out and to advise us of any action taken by the landlord.

Owners

- We will expect owners to maintain the properties they live in. The responsibility for repairs and maintenance rests solely with owners and the council has no funds (except in specific cases which are often time limited such as energy grants / loans) to repair owners homes. Where the council has financial assistance it publishes information on its website.
- Enforcement action will be considered if there is a serious risk to a person's health and/or the property is causing a statutory nuisance to neighbouring properties.

What is expected of tenants.

The responsibilities do not solely fall with landlords or their agents. Tenants have key responsibilities too.

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to all tenants (social and private rented).

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem.

The Council provides a range of templates that tenants may wish to use to correspond with their landlord / agent when they have a problem at their home. It is key for tenants to:

- raise the matter as soon as it is a concern to them with their landlord / agent – not to delay it until they are about to leave the property or until there is a disagreement with their landlord about another matter (for example rent);
- give their landlords as much information about the issue as possible so that the landlord will be able to address it.

When a tenant wishes to raise a complaint with the Council about their property they should send or have available copies of correspondence (letters and or email) between the tenant and landlord and landlord and tenant should be provided for council officers.

In certain situations tenants will not be required to write to their landlord first, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened eviction/poor management practice;
- where the tenant is old and frail or otherwise vulnerable, e.g. where there are pre-school children in the household;
- where the tenant could not for some other reasonable reason be expected to contact their landlord/managing agent;

When a complaint is being investigated tenants are responsible for keeping Council Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the council is taking or considering taking.

Situations where a service to tenants is not provided

There are some limited situations where the council will not be able to assist. The decision on these cases rests with council officers and is on a case by case basis and will include consideration of the risk to the tenant(s) and their vulnerability. Where any of the following situations arise consideration will be given to either not providing a service or ceasing to provide a service:

- Where the tenant(s) are, of their own free will, shortly to move out of the property;
- Where the tenant(s) in the opinion of the council are unreasonably refusing or making it difficult for the landlord, managing agent or landlord's builder, to arrange access or to carry out works;
- Where the tenant(s) have, in the opinion of the council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair, etc.;
- Where the tenant(s) only reason for contacting the council is in order to get re-housed; if a tenant is not interested in their present accommodation being brought up to standard the service will not be provided;
- Where the tenant(s) have requested a service and then failed to keep an appointment(s) and or not responded to a follow up letter(s) or appointment card(s).
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Council Officers. The Council has a zero tolerance policy on abuse and threats and will seek legal action against any tenants who for example threaten their staff ;
- Where on visiting the property there is found to be no justification in the officers opinion for the complaint;
- Where the service has determined, through council procedures, that the complainant is 'vexatious';
- Where the tenant unreasonably refuses to provide the council with relevant documentation / information (including but not limited to landlord contact information) to support their complaint.

Compliance and Enforcement Actions.

The Council's enforcement policies are based on the guiding principles of the Enforcement Concordat previously adopted by the Council including transparency, fairness, proportionality, consistency, complaints about service, standards, helpfulness and objectivity.

Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution, but includes for example,

- the inspection of properties to check for compliance with legislation and
- the provision of free advice and information including landlord forums and newsletters.

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of legislation including;

- The Human Rights Act 1998

- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 – Codes of Practice
- The Criminal Procedures and Investigations Act 1996
- The Legislative and Regulatory Reform Act 2006
- The Code for Crown Prosecutors
- All relevant Guidance issued under section 9 of the Housing Act 2004

3.0 Relevant Legislation

This is not an exhaustive list of the legislation used and other legislation may be used where relevant:

- Housing Acts 2004, 1988 and 1985
- Protection from Eviction Act 1977
- Management of Houses in Multiple Occupation 2006
- Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- Town and Country Planning Act 1990
- Landlord and Tenant Act 1985
- Caravan Sites and Control of Development Act 1960
- Building Act 1984
- Local Government (Miscellaneous Provisions) Acts 1982 and 1976
- Housing and Planning Act 2016

4.0 Enforcement Strategy

All officers will use a broadly similar approach to achieve consistency. This uniformity of approach will extend to all areas of enforcement. Any advice given will be confirmed in writing and there will be the opportunity for discussion in all cases.

In carrying out their duties officers will have due regard to statutory codes of practice and relevant guidance. All officers carrying out statutory duties will be duly authorised and are required to exercise professional judgment in the implementation of this policy. They will also adhere to legal obligations relating to intention of entry. In most cases, officers will give the landlord 24 hours notice that they intend to carry out a formal inspection of a property however this may not be appropriate in some cases.

Any investigation where a statutory breach is observed will result in one or more of the following actions being taken:

- Informal action including advice
- The serving of statutory notices/orders
- The use of simple cautions
- Charging through rent repayment orders and civil penalty fines
- Prosecutions
- Works in default

Housing Standards and Improvement also issue and monitor specific housing related licences and the following action can be taken in these cases;

- Informal action
- The suspension and revocation of licences specifically in relation to Houses in Multiple Occupation (HMO's) and caravan sites
- The serving of statutory notices/orders

- Charging through rent repayment orders and civil penalty fines
- Prosecutions
- Works in default

4.1 Informal Action

Informal action may be taken where the seriousness of the act or omission is such that formal action is not required. For a short period following the introduction of new legislation, consideration may be given to the use of informal action.

Informal action includes warnings and requests for action, both verbally and in writing. This will include the provision of advice, information and assistance to ensure future compliance.

Any correspondence will clearly differentiate between matters, which are;

- required to meet statutory standards and those,
- which are recommendations of best practice.

4.2 Service of Enforcement Notices (under for example the Housing Act 2004)

Properly authorised officers will serve enforcement notices/ orders for serious issues, where there is lack of cooperation from the landlord (agent) or repeated contravention. Notices may also be issued in conjunction with prosecutions to secure immediate improvements. They will be served when issues present a significant danger to the health and safety and informal action is unlikely to resolve the issues.

The following options are available:

1. Hazard Awareness Notice – merely makes the owner aware of a hazard. It does not require any works.
2. Improvement Notice – requires owner to carry out works to remove/reduce the hazard.
3. Prohibition Order – this forbids use of the whole or part of the dwelling until a specific event or works have been carried out to remedy the hazard(s).
4. Emergency Prohibition Order – this would be appropriate when there is an imminent risk to health and safety
5. Emergency Remedial Action – this gives the council power to carry out works if there is an imminent risk to health and safety
6. Enforced Sale - The Law of Property Act 1925 gives Local Authorities the power to sell properties in order to recover a debt secured against that property. This power can be used where a debt has been incurred for example following works undertaken to an empty home in the owners default.
7. Demolition Orders and Clearance Areas – are used in extreme circumstances to require a property or number of properties to be demolished perhaps through use of Compulsory Purchase Orders.

The responsible officer will ensure that relevant guidance and codes of practice are adhered to and relevant statutory time limits or, in their absence realistic time limits are specified in any notices.

Officers will endeavour where appropriate to hold full and frank discussions concerning any remedial action required and the range of available solutions. It is important that the

recipient of a notice is made fully aware of the reason for such action being taken and any rights of appeal available to them.

4.3 Simple cautions and Prosecutions

The following criteria will also be taken into account when a simple caution or prosecution is being considered:

1. Whether there has been an illegal obstruction or assault of any officer in the course of their duty
2. The seriousness of the infringement or offence:
 - whether the contravention is of an isolated, trivial or technical nature
 - the magnitude of any deficiency or discrepancy,
 - whether any injury or serious ill health has resulted as a result of the infringement or the potential for an accident, injury or serious ill health as a result of an infringement,
 - whether the environment or economic well being or health and safety of the public has been disregarded for financial reward,
 - Whether the infringement causes serious public alarm, or distress.
3. The previous history of the offender:-
 - whether there is a history of similar offences,
 - previous responses to enforcement action, warnings and advice.
4. Mitigation offered by the offender and their attitude and willingness to prevent a recurrence of the infringement.
5. Whether the prosecution is in the public interest. Prosecutions will fall within this criterion where:
 - the outcome impacts upon the environment or a section of the community
 - there has been pecuniary interest in goods or services, or
 - There has been some other interest affecting their protection, safety, health, well being or legal rights.

Additionally the importance of a prosecution in establishing an important precedent may be considered.

6. Whether, when an offence has been detected as a result of a complaint, the complaint is malicious or vindictive.
7. The suitability of witnesses and their willingness to give evidence. Whether a prosecution may result in unjustified harm or suffering to a witness or complainant.
8. The prospect of Courts imposing reasonable penalties or awarding prosecution costs.
9. The sufficiency of the evidence provided to prove the alleged offence(s). Due regard must be given to any statutory defenses and relevant case law.

10. The professionalism with which an investigation has been conducted and the likelihood of a successful conviction being obtained. Whether any unreasonable delay has occurred in commencing proceedings or completing the investigation, which might influence the outcome.
11. Simple cautions may only be given where there is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.

4.4 Works in Default

The local authority will in certain cases carry out works in default and re-charge the owner or responsible person. The costs will usually be more than if the responsible person carries out the works themselves as they will be charged for officer time on visits, carrying out schedules of work and any other reasonable costs incurred by the local authority.

Enforced sale of empty properties will be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the owners default.

4.5 Tenure

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. The Housing Health and Safety Rating System applies to all housing whether in owner-occupation, privately rented or social housing and it is usually the owner's responsibility to carry out works to reduce or eliminate hazards.

Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or more rarely a Registered Social Landlord (Housing Association) to carry out works.

Where we have identified hazards and the Registered Social Landlords (RSL) have a programme of works to make their stock decent, the officer will take into account the programme when determining the most appropriate course of action. They will liaise with the RSL over any works necessary to deal with any category 2 hazards and for Category 1 hazards will ordinarily require them to undertake works / remedies in advance of their planned improvement programme.

In particular, with the Crowding and Space hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in statutorily overcrowded conditions.

With owner-occupiers, in most cases they will not be required to carry out works to their own home, and informal action or a Hazard Awareness Notice is likely to be the most appropriate action.

However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition Order, in respect of an owner – occupied dwelling. This is likely to be where there is an imminent

risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, for example lack of fire precautions to a flat in a block in multiple occupation.

An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases may be more appropriate than a Hazard Awareness Notice. Typically the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

5.0 Houses in Multiple Occupation (HMOs).

All Houses In Multiple Occupation (HMOs) are bound by the;

- Management of Houses in Multiple Occupation 2006 or
- the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 or both.

Any breach of these including a breach of licence conditions will result in one or more of the actions listed under 4.0 above.

HMOs of 3 storeys or more with shared amenities (or lacking in amenities) and occupied by 5 or more persons require a licence to operate. Failure to do so is an offence.

Landlords will be encouraged and given every opportunity to apply for a HMO licence (to be accompanied by a fee fixed by the Council). If they are then found to be operating a licensable HMO without a licence the relevant options in 4.0 above will apply and their tenants and/or the Council will in addition seek to secure a Rent Repayment Order to reclaim all rent payments that they have made in the previous 12 months. To deter owners / agents operating outside the law the council will seek where practicable to support residents in their claims for Rent Repayment orders.

6.0 Empty Dwellings

Where the local authority becomes aware of an empty dwelling we will aim to bring it back into appropriate use as soon as reasonably practicable. We will prioritise our activity on those properties which have been vacant for the longest period and or create the most detrimental impact on the immediate neighbourhood. We will firstly try to do this through negotiation to bring action by the owner.

Any formal enforcement action aimed at bringing an empty property back into use will only be used when repeated attempts to encourage the owner of an empty property to bring it back into use voluntarily have failed. When considering enforcement options for empty homes, each case will be assessed on its merits and will only be recommended for enforcement action where there are clear benefits to the neighbourhood or it could address a housing need. If enforcement action is necessary the following routes can be taken;

- Service of notice under the Town and Country Planning Act 1990 to require the owner to properly maintain land/property to remove the disamenity to the local area
- Serve notice under the Building Act 1984 for ruinous and dilapidated buildings to require the owner to carry out works to either restore the property or demolish it completely
- Serve notice under the Local Government (Miscellaneous Provisions) Act 1982 to secure the building. However if there is an immediate risk to the public we are not required to give notice
- Negotiated purchase with the co-operation of the owner or in extreme cases serving a Compulsory Purchase Order (CPO)
- Secure management of the empty property by use of Empty Dwelling Management Orders (EDMOs) under sections 133-138 of the Housing Act 2004 and associated Regulations

7.0 Harassment and illegal eviction

7.1 Background

There are a number of private landlords or their agents with properties in Walsall who do not conduct themselves within the requirements of the legislation relating to private rented accommodation, notably the Protection from Eviction Act 1977.

These landlords may issue a notice to quit that is not legally valid or seek to actually force their tenants to leave using a variety of methods such as repeatedly calling at the property, threats of changing the locks, and in extreme cases physically removing someone and their belongings onto the street.

Illegal eviction can normally be prevented through mediation with the landlord. However, a landlord who continues to harass or even illegally attempt to evict a tenant despite advice and information may be committing a criminal offence.

The Council provides a range of assistance to help landlords comply with their legal responsibilities including having detailed advice available free of charge on-line, leaflets and encouraging landlords and agents to join relevant regulatory bodies or landlord schemes where training is also provided.

Harassment and illegal eviction can cause considerable distress and anxiety to households and may lead to homelessness. The Council will therefore take a proactive stance against illegal eviction and/or harassment and offer support, advice and assistance to residents in this situation.

The council will take any appropriate action to help tenants regain occupancy of their home and may prosecute landlords or their agents where it is deemed appropriate to do so. The Council also have powers under the Housing and Planning Act 2016 to issue civil penalty fines for such an offence and these will be used where appropriate.

The Council seeks to provide a fast, clear and co-ordinated response to allegations of illegal eviction or harassment.

7.2 Contacting the Council

Initial contact with the council to report allegations of harassment and/or illegal eviction is normally made by tenants to the Supported Housing Team (☎ 01922 653 405) who will seek to resolve allegations of:

- sustained/prolonged harassment and or
- illegal eviction

The Council will work in partnership with its customers, landlords and partner agencies to deal with allegations of harassment and illegal eviction.

In addition to advising tenants to seek legal advice and or contact Shelter UK the Team will undertake relevant investigations and actions to seek to remedy the situation including:

- informal action – discussing with the landlord / agent or how to act legally and to not unintentionally act in an unlawful manner.
- Simple cautions and
- or prosecution.

7.3 What is harassment and illegal eviction?

There are three main pieces of legislation that deal with illegal eviction and harassment:

◆ **Protection from Eviction Act 1977.** The law makes it an offence to:

- do acts likely to interfere with the peace or comfort of a tenant or anyone living with them;
- or
- persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home.

It is an offence to do any of the things described above intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from them unlawfully.

◆ **Criminal Law Act 1977.** This act provides that if someone enters a persons home using or threatening to use violence they are committing a criminal offence

◆ **Protection from Harassment Act 1977** generally prohibits harassment.

7.4 Definitions

What is harassment?

Harassment can include any act by a landlord, the landlords agent, or any other person acting on behalf of the owner, which deliberately unsettles a persons home life. This will include:

- Withdrawal of services like electricity
- Withholding keys
- Antisocial behaviour by the landlords agent
- Demand for excessive repairs

- Failure to carry out repairs
- Repairs which are not completed
- Threats and physical violence

What is illegal eviction?

A landlord's right to get his or her property back from a residential tenant can normally only be enforced through the courts. Illegal or unlawful eviction is when the landlord, the landlord's agent or someone acting on their behalf, unlawfully deprives a tenant of all or part of the home or where any other person forces or attempts to force a tenant to leave the accommodation without following the correct legal procedure and serving the proper notice.

More information about illegal and unlawful eviction is contained in Appendix 1 (for clarity this is still part of this Policy).

7.5 Scope of the Policy for harassment and illegal evictions

The Council is charged with the delegated power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977. The power to prosecute is a matter delegated to the Head of Legal & Democratic Services

Prosecutions will be brought on behalf of the Council in the name of the Council Solicitor, on the instructions of the Head of Service, or by powers delegated from the Chief Executive. The Council Solicitor is obliged to consider and review the decision to prosecute in accordance with the criteria set down in the Code of Conduct for Crown Prosecutors. The Law Society Practice Rules require observance of this code by all prosecutors

Referrals may be made in certain circumstances to the local Police who will review the circumstances when taking a prosecution for other related factors that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.

7.6 Specific Principles

In all cases of illegal eviction and/or harassment of a residential occupier the Council will actively consider a simple caution or prosecution on behalf of the customer. In coming to this decision between the two options, the Council will have regard to the seriousness of the alleged incident of illegal eviction or harassment, and where a simple caution is refused; prosecution will usually commence having regard to the issues outlined in the following section.

7.7 Issues to be taken into account

In deciding whether a case is suitable for the application of a caution or prosecution the Authority will take a number of issues into account, and these are outlined below;

- ◆ Strength of evidence obtained
- ◆ The severity of the offence and the circumstances of the case
- ◆ Voluntary disclosure
- ◆ Social factors

A case will not be deemed unsuitable for a prosecution or caution simply because the Landlord or their agent has allowed or is about to allow a displaced residential occupier back into a property.

When considering which cases to prosecute consideration will be given to:

- the merits of each case
- the code of practise for Crown Prosecutors
- The Criminal Procedure and Investigations Act 1996

The criteria to be considered are summarised in Appendix 2.

Any case will need to meet both the **Evidential Test** and also the **Public Interest Test** (see Appendix 3) in that if there is sufficient **evidence** of a suitable quality to give a realistic prospect of conviction, consideration will also be given as to whether a prosecution will serve the **public interest**. A prosecution will usually take place unless public interest criteria are against it.

7.8 Enforcement

All investigations into alleged reports of illegal eviction and/or harassment will follow best professional practice and the requirements of:

- ◆ The Human Rights Act 1998
- ◆ The Regulation of Investigatory Powers Act 2000
- ◆ The Police and Criminal Evidence Act 1984 (PACE)
- ◆ The Criminal Procedures and Investigations Act
- ◆ The Code for Crown Prosecution

The Council will investigate non compliance with statutory requirements and take firm action, including prosecution where appropriate, against those who breach or fail to fulfil their legal obligations.

7.9 Enforcement Options

The Council regards enforcement from a holistic view whilst encompassing all actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other summary action. The following options will be available:

- ◆ Mediation & negotiation
- ◆ Simple Cautions
- ◆ Prosecution

7.9 Roles and Responsibilities

The Council is ultimately responsible for ensuring that any case of illegal eviction and/or harassment will be investigated and where appropriate, will take any necessary action including prosecution.

All staff are responsible for adhering to the policy and for reporting any matters where they suspect illegal eviction and/or harassment may be taking place.

Partner agencies have a responsibility to advise and assist customers and to refer relevant cases to the Council's Legal Department (Appendix 5 - Referral Form).

Landlords and their agents have a duty to comply with relevant legislation and to operate in a responsible and professional manner.

7.10 Other Criminal Remedies

The Police have powers under the Protection from Harassment Act 1997, the Criminal Justice and Police Act 2001 and the Criminal Law Act 1977 to investigate and prosecute a range of criminal offences which may arise when a residential occupier is unlawfully evicted.

These include:

1. Harassment of an individual;
2. Harassment of two or more persons;
3. Stalking;
4. Stalking involving fear of violence or serious alarm and distress;
5. Harassment of a person in their own home;
6. Using violence to secure entry to premises;
7. Threatening violence to secure entry to premises.

Any suspected offence should be reported to the Police immediately. The Council will assist the residential occupier to do so if required.

8.0 Licensed Caravan Sites

Where the Council issues a licence for a caravan site under the Caravan Sites and Control of Development Act 1960 they may inspect to enforce licence conditions. Where a breach of conditions is found they will aim to resolve it through informal means and then follow the other enforcement options which could result in revocation of the licence and/or prosecution.

9.0 The Suspension or Revocation of Licenses (HMO and Caravan sites)

Where any statutory breach is observed or contravention of any condition attached to the issue of a licence by Walsall Metropolitan Borough Council an Officer shall use the criteria outlined above to decide whether the licence should be suspended immediately and /or permanently revoked.

10.0 Charges and Fees

The council is able to recover the costs incurred in serving certain notices and orders under Part 1 of the Housing Act. The current charges and fees are as follows:

10.1 Service of Notice:

A charge is levied on the service of all Housing Act Notices (excluding Housing Hazard Awareness Notices) as set out below. The charges as at 1 April 2017 are:

- | | |
|---|----------------------|
| a Hazard Awareness notice (Section 28 and 29 Housing Act 2004) | |
| Up to 2 bedrooms | £200 |
| 3 and / or 4 bedrooms | £225 |
| 5 or more bedrooms | £250 |
| b Improvement and suspended Notices (Section 11 and 12 Housing Act 2004) | |
| Up to 2 bedrooms | £275 |
| 3 and / or 4 bedrooms | £300 |
| 5 or more bedrooms | £325 |
| C Prohibition Orders (including Suspended) and Emergency Remedial Action Notices (Sections 20, 21, 41 and 43 Housing Act 2004) | |
| Up to 2 bedrooms | £325 |
| 3 and / or 4 bedrooms | £350 |
| 5 or more bedrooms | £375 |
| d Request for a variation of any Housing Act 2004 Notice | |
| All dwelling sizes | £75 |
| e Fixed penalty for failure to belong to an approved redress scheme | |
| All dwelling sizes | Up to £5,000 |
| f Fixed penalty for failure to comply with a notice under the Housing Act 2004 | |
| All dwelling sizes | Up to £30,000 |

The charges will be reviewed annually by the Council and any changes and the current fees published online.

10.2 Fees for HMO licenses

The HMO fee takes into account all costs incurred by the Council in carrying out our HMO licensing functions. The level of fees are reviewed on an annual basis and are published on the Council's web-site.

10.3 Charges for carrying out works in default

The council has powers to carry out works in default when the person required to do them has failed to undertake them. The Council will recover:

- the costs of the works
- the costs of officer time in arranging and supervising the work (establishment charge)
- and interest.

In accordance with the powers available under each specific piece of legislation at the Council's disposal, expenses incurred by the council by undertaking works in default of a statutory notice will carry a simple interest rate charge above the Bank of England base rate, where the legislation allows interest to be charged. The interest rate charge

will commence from the date that the demand for payment notice becomes overdue and will remain until payment of all sums due.

10.4 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.

The council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default as well as any other charges.

To recover debts the Council will use some of the following means where legislation allows and it is appropriate to do so;

- 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 it's costs;
- Use tracing services to track down debtors and secure judgments to recover debts.
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts where possible.

The council will use its own debt recovery services (and or suppliers appointed by the council).

11.0 Data Protection and Disclosure of Information

Where the Council considers that it may need to share information or seek information from other parties including, confidential information, held by third parties, such as doctors, which may be necessary to support the council's investigation it will ask the complainant to sign a 'Consent to Disclosure Form' (current version in Appendix 4). This form will be used for example in cases such as illegal eviction or harassment.

The council will comply with the provisions of the Data Protection Act 1998.


12.0 Review and Publication

This policy will be reviewed on a regular basis and in any event, at least every two years.

In line with cabinet authority changes to this policy can be approved by the relevant Executive Director and Portfolio holder. When the Policy is updated it will be placed on the council web-site in the Housing Standards section.

How to Contact Us

If you would like to discuss any aspect of this policy or require any advice or guidance about housing standards and conditions please contact us on:

 01922 652171 or 01922 650942 or 01922 650947

Email: housingstandardsimprovements@walsall.gov.uk

Post: Housing Standards and Improvements

Walsall Council

Civic Centre

Walsall

West Midlands, WS1 1TP

Appendix 1

More details about harassment and illegal eviction

Unlawful or illegal eviction is when the landlord, an agent or any person on their behalf unlawfully deprives a tenant of all or part of the home or where any other person forces or attempts to force a person to leave without following the correct legal procedure and serving the proper notice.

Harassment and illegal eviction has a severely disruptive effect on a household and usually leads to cases of homelessness. This in turn will have a financial impact on the Council in having to find temporary emergency accommodation.

The law protects people living in residential properties against illegal eviction and/or harassment. It does this in two ways:

- by making illegal eviction and/or harassment a criminal offence, and;
- by enabling someone who is being illegally evicted and/or harassed to claim damages through the civil courts.

There are three main pieces of legislation that deal with illegal eviction and harassment:

Protection from Eviction Act 1977

It is an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her; or
- Persistently withdraw or withhold a service for which the tenant has a reasonable need to live in the premises as a home It is an offence to do any of the above intending, knowing or having reasonable cause to believe that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from them unlawfully

- **Criminal Law Act 1977**

This Act provides that if someone enters a person's home using or threatening to use violence they are committing a criminal offence

- **Protection from Harassment Act 1977**

Generally prohibits harassment

Where harassment is as a result of the landlord not undertaking repairs and the property is in poor condition, the Council also has powers under the Housing Act 2004, by using the Housing Health & Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property.

The Council will actively investigate any allegation it receives regarding harassment and/or illegal eviction. It is hoped that landlords/agents will be prompted to ensure that they do not take any action that could constitute harassment or illegal eviction and will be deterred from following such courses of action.

Appendix 2

Walsall Metropolitan Borough Council Service Criteria in dealing with cases of illegal eviction and/or harassment

Aims to mediate and negotiate in cases of serious landlord and tenant disputes in the rented housing sector

Where mediation fails or is inappropriate the Council may decide to pursue an investigation which may lead to a criminal prosecution under the **Protection from Eviction Act 1977**.

The Council will deal with cases of: -

1. Unlawful eviction of tenants by private and registered social landlords or people acting on their behalf
2. Threatened unlawful evictions of tenants by private and registered social landlord tenants or people acting on their behalf
3. Serious cases of harassment of tenants by their landlord or people acting on their behalf. Serious could be violence, threats of violence, abusive, discriminatory, aggressive or intimidatory behaviour
4. Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf
5. Cases of harassment where the tenant(s) involved may be vulnerable E.g. elderly tenants, tenants with mental or physical health problems
6. Cases of racial, sexual or other discriminatory issue relating to a tenancy

Any enquiries over general terms and conditions of tenancy, bonds, contracts, rent increases or other civil matters will be dealt with through the Walsall Housing Advice Service.

Appendix 3

PUBLIC INTEREST TEST

PUBLIC INTEREST PRO PROSECUTION	PUBLIC INTEREST ANTI PROSECUTION
Violence, actual or threatened, including threatening behaviour.	Offence committed due to genuine mistake / misunderstanding.
Premeditated offence/ongoing harassment, i.e. where landlord has previously received warnings.	Minor loss or harm due to a single incident, especially if caused by misjudgement.
Victim vulnerable/put in considerable fear/suffered personal attack.	Long delays between commission and trial unless <ul style="list-style-type: none"> - serious delay is partly due to defendant - complex offence - due to prosecuting authority
Discriminatory motivation - racial, sexual or disability	
Relevant previous convictions.	Vulnerable defendant unless serious offence / possibility of repetition
Grounds for believing offence likely to be repeated, i.e. previous complaints received.	
	Risk to witness.
Widespread offence in the area and prosecution likely to act as a disincentive.	Defendant has put right the loss or harm caused.
Help ensure person can remain in their home	Possible motives of complainant including delay in making complainant

Appendix 4. 'Consent to Disclosure Form'

The council will comply with the provisions of the Data Protection Act 1998.

Name of officer dealing with this case:

Department: Housing – Housing Standards and Improvement

Address: Civic Centre
Walsall
West Midlands
WS1 1TP

☎ 01922 652171 or 01922 650942 or 01922 650947

Email: housingstandardsimprovements@walsall.gov.uk

Authority to act for:

Name:

Address:

Postcode:

I hereby give my authority for Walsall Council's Housing Standards and Improvement Team to obtain information about me from other agencies relevant to my case of alleged:

- Illegal eviction
- Harassment
- Breach of the Housing Health and Safety Rating System
- Other: list details


I also authorise Walsall Council's Housing Standards and Improvement Team to share evidence with other agencies if the Team considers it appropriate in the circumstances.

Signed:

Date:

Appendix 5. Report of Illegal Eviction and/or Harassment

Please complete this form to report any possible cases of illegal eviction and/or harassment for investigation and possible prosecution by the Councils Legal Department.

Details of Referring Agency	
Contact Name	
Address	
Postcode	
	

Details of Aggrieved Person(s)	
Contact Name	
Tenancy Address	
Postcode	
	
Current address if different from above	

Details of Landlord(s)	
Contact Name	
Address	
Postcode	
	
Company name and address	

Details of Tenancy			
Type of Tenancy			
Tenancy start date		Eviction date	
Type of Notice issued?		Date issued	
Any rent arrears? Approx value and period			
Any shared facilities with landlord / landlady?			

Other relevant / background information	
Reason for harassment (if known)	
Any witnesses?	If yes names and contact details:
Is any person's safety at risk?	If yes, please give name(s) and reason
Have the Police been informed?	If yes, please state any involvement