

Bristol City Council

Private Housing Enforcement Policy 2008

Foreword

The Private Housing Service sets out to maintain and improve the housing conditions in privately owned property in Bristol as well as dealing with housing matters arising from privately owned land.

The Private Housing Service's approach is to give informal advice assistance and information when at all possible. Where this approach fails or it is necessary to protect the health, safety and welfare of persons or the environment, the service will take the necessary enforcement action.

The Private Housing Service's functions include: Licensing of houses in multiple occupation, empty properties, enforcement of the housing health and safety rating system (which replaced the fitness standard), overcrowding, public health matters, some local environmental quality issues and Antisocial behaviour associated with privately rented accommodation.

Bristol's Local Area Agreement sets out the city's strategy to deal with its priorities of reducing inequalities in health and well-being, providing a safe environment and good quality housing for older people and households with children. To prioritise our responsibilities to meet Bristol's priorities will require targeted enforcement activity. The policy sets out the ways that resources can be targeted.

This policy picks up the lead of the Council's Better Enforcement Strategy by setting out the ways which the Private Housing Service will use its enforcement powers to raise the profile of enforcement, increase public confidence, ensuring timely enforcement is carried out, encouraging joint working across services and addressing the issues raised in government guidance on enforcement issues.

This policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens. This policy is in accordance with the Government's Regulators Compliance Code 2007 and the Concordat on Good Enforcement adopted by the Council in March 2001.

In certain circumstances it may be concluded that provisions contained in the above documents are either not relevant or outweighed by another provision. Any decision to depart from the Code or Concordat will be properly reasoned, based on material evidence and documented.

The Private Housing Service works closely with Partners across the West of England Local Authorities and Registered Social Landlords. The protocols we have agreed to with partners are published in this policy.

The policy sets out the service's transparent approach to enforcement so that people understand how they will be dealt with by the Council in these circumstances and what guidance and procedures should be followed by Private Housing Service enforcement officers.

The main body of this document sets out our policy on these issues. The appendices are designed to provide reference material that can be read when needed in addition to the policy itself.

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2 Aim of Policy

The Aims of the policy are to:

- set out the legal responsibilities policies principles and priorities that the Private Housing Service will follow when enforcing legislation.
- to help provide safer and healthier Private Housing
- to increase public confidence in the quality of accommodation leading to a vibrant Private Rented sector in Bristol
- to raise the profile and increase transparency and consistency of enforcement in the Private Rented Sector

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 in [Appendix A](#).

3.2 Enforcement Objectives

The Private Housing Service primarily covers all privately owned residential accommodation and privately owned land in the city. In normal circumstances enforcement action will be carried out with the objective of ensuring that:

- empty homes are not left empty where there is a housing need.
- tenant's of a private landlord or a Registered Social Landlord (RSL) live in homes free of significant risks to their health and safety.
- owners or occupiers who are vulnerable and unable to support independant living, live in accommodation which is free from unacceptable risks to their health and safety.
- HMO licence conditions are met
- privately owned land or property does not present a statutory nuisance to other land owners, or does not directly or indirectly present an unacceptable risk to public health, safety or the environment.
- persons are held responsible for their actions which are detrimental to local environmental quality or to the health safety and welfare of other residents.

- persons are held responsible for their actions or anti social behaviour which affects the health safety and welfare of other persons in private rented accommodation or residents in the immediate vicinity of their house.
- we meet our statutory duties as a public authority.

4 Service Users

All the following groups will both use our service and potentially be subject to enforcement action.

Group action who may be subject to enforcement action	An example
Private Rented Sector Landlords	Improvement notice under the Housing Act 2004 to improve insulation or heating measures provide new central heating.
Registered Social Landlords (RSL)'s or Housing Association	
Private Rented sector <i>Tenants</i>	Having to comply with a Prohibition Order served under the Housing Act requiring the numbers of occupants in a property to be reduced. It is an offence not to comply with a Prohibition Order.
Registered Social Landlords (RSL)'s or Housing Association <i>Tenants</i>	
Managing Agents of rented property	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.
Council Tenants	Having to comply with an Abatement Notice under the Environmental Protection Act 1990 to carry out works to remove accumulations of rubbish prejudicial to health.
Homeowners	Notice served under the Building Act 1984 requiring defective drainage serving their property to be repaired.

Please note this is not a definitive or exhaustive list.

5 Links with other Council Strategies and Policies

5.1 Bristol City Council Key Strategies and Policies

There are a number of key Council Strategies and Policies that this policy will contribute to. The main priorities in the [Corporate Plan](#) that this policy focuses up on are:

- **Our City – ambitious together**
 - Increasing affordable housing - bringing a significant number of empty homes back into use each year.

- Tackling inequality – working to ensure services are sensitive to the needs of different communities.
- **Our City – making a difference**
 - For children and young people – putting children and young people at the heart of everything we do.
 - For older and disabled people – reducing the fear of crime
- **Our City – safer and healthier**
 - Freedom from crime and antisocial behaviour – reducing burglary and tackling antisocial behaviour
 - Healthy lifestyles and healthy communities – improving the health and wellbeing of the city's population – the houses people live in.
 - Improving the health of those whose quality of life and health outcomes are the worst.
 - Primary influence is preventing ill health

The Housing Strategy also identifies that we should:

- **Strengthen partnership** with private landlords to improve housing quality.
- **Use enforcement** powers especially in high-risk private properties.

5.2 Private Housing Service - Policy Statements

Our key priorities and policy objectives will change over time to reflect the needs of our service users in Bristol and our statutory obligations. Currently these are identified in our [Policy Statements](#). At the time of publishing they were:

Service Area	Priority	Objectives
Private Rented Sector	<ul style="list-style-type: none"> ❑ Recognising that some groups of tenants face particular difficulties with finding good quality housing. ❑ We will target resources at areas where there are high levels of poor quality private rented accommodation. 	<ul style="list-style-type: none"> ❑ Encourage landlords to improve property conditions for vulnerable tenants. ❑ Increase the supply of properties for vulnerable tenants. ❑ Improve property conditions through regulatory means. ❑ To provide a comprehensive information service for private landlords and tenants. ❑ Supporting the community.
Empty Properties	<ul style="list-style-type: none"> ❑ Action will be tailored to match housing need, nuisance issues and the length of time the property has been empty ❑ Recognising that some areas of the city suffer from higher levels of empty properties and housing need. ❑ Prioritise work will be prioritised within these areas. 	<ul style="list-style-type: none"> ❑ Establish a full picture of empty homes in Bristol ❑ Provide information on the assistance we offer and the action we can take for local residents and owners of empty properties. ❑ Bring empty properties back into residential use. ❑ Reduce nuisance and blight caused by empty homes through enforcement measures.
Home owners	<ul style="list-style-type: none"> ❑ Recognising that some groups are more likely to be suffering worse housing conditions. ❑ We will target resources at communities with the worst quality housing 	<ul style="list-style-type: none"> ❑ Housing that is warm, weatherproof and has reasonably modern facilities ❑ Residents who are well informed and feel safe in their homes and communities ❑ Housing that gives everyone quality and choice, taking into account peoples needs

6 Better Regulation Agenda

6.1 Better Enforcement Strategy

The [Better Enforcement Strategy](#) approved by the Council's Cabinet in September 2007 sets out how the Council will address the Government's Better Regulation agenda. The strategy sets out a framework of guidance for officers on how Enforcement in the Council should be carried out.

The Strategy acknowledged the review of Enforcement across the Council that aimed to:

- Raise the level and profile of enforcement as a Council function and responsibility
- Improve public confidence by ensuring that effective enforcement is taking place
- Ensure timely effective and consistent enforcement to deter offender behaviour
- Take account of the Government's Better Regulation Agenda
- Ensure effective joint working across services, with the Police and other agencies

The Strategy made statements on the way that Enforcement across the Council should be carried out now and in the future. The following statements are particularly relevant to the Private Housing Service and this policy:

- The order of priorities for the use of enforcement powers:
 1. to protect public health and safety
 2. achieve targets such as Local Area Agreement targets and what will be National Indicators
 3. published policy
 4. significant public concerns
 5. individual complaints
- That the public will be entitled to expect the Council's enforcers to consider in every case the priorities identified above and to work to them except where there is good reason not to do so. This framework needs to be flexible and so should be viewed a set of guidelines and not rules.
- To review the delegation of enforcement work across the Council to officers, with a view to widening the brief of all enforcement officers where that is appropriate. This would range from acting as the "eyes and ears" recording problems up to service of notices and prosecution.
- When tackling persistent problems a risk assessed intelligence led approach will be used.
- Service Charters will be published for each regulatory area, pro forma letters and published guidance will be reviewed for their read ability.
- The Private Housing Service will obtain the Charter Mark status now known as "The Standard" by December 2008.

- To build public confidence and promote public involvement enforcement successes will be widely publicised.

6.2 Regulatory Services Enforcement Policy

The current [Regulatory Services Enforcement Policy](#) sets out general principals of good enforcement practice that should be followed by any of Bristol City Council's regulatory services and their officers. It is based around the principles set out in the Government's Enforcement Concordat.

The Regulatory Services policy anticipated that there would be more specific policies applying to different regulatory service areas and this policy is one of those.

The Regulatory Services Enforcement Policy has been reviewed to take into account wider issues in the Government's Better Regulation Agenda such as the Regulators Compliance Code. This policy sets out how the Private Housing Service will carry out its work and the Regulatory Services Enforcement policy will set out the updated more general issues on enforcement that cover all Enforcement services. This policy will specifically relate to this service however officers will also have to take into account the generality of the revised Regulatory Services Enforcement Policy when making enforcement decisions.

7 Providing Assistance, Information and Educating

As a basic principal we want to work with our service users to meet our objectives rather than having to take enforcement action.

This ranges from advice and information by case officers on site, over the telephone and in writing.

We also have 2 websites:

[Bristol City Council Private Housing](#); and

[West of England Local Authorities' Landlord information](#) site.

Both websites provide a wide range of advice, information on standards and application forms for Houses in Multiple Occupation (HMO) licensing.

In addition we currently devote significant resources to specific projects to provide assistance and to help landlords and residents;

- Accreditation Scheme – encourages and rewards good landlords
- Private Sector Landlord's Forum – engaging with landlords on service direction and standards
- Customer Reference Panel – to get feedback on the services we provide from those who use it

- Task and Go groups on specific issues – to address issues raised by residents or other service users
- [Landlord Expo](#) – A yearly event bringing together property professionals services and users. This is an annual joint event between local authorities in association with the British Association of Letting and Managing Agents (BALMA).
- Landlord training manual and distance based learning pack is being developed
- Resource the Landlord Liaison Officer post

8 Local Enforcement Priorities

In addition to setting national priorities for enforcement the [Rogers review](#) recommended to Government other areas which should be considered as local priorities.

8.1 Local Enforcement Priorities

- Housing Health and Safety Rating Scheme (HHSRS) Enforcement
- HMO licensing
- Local Environmental Quality

Rogers recommended where the issues relating to the priorities 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 in that area of work and could do so independently of other councils if it would be appropriate to adopt them as local enforcement priorities.

8.2 HHSRS Enforcement and HMO Licensing

Rogers identified that where Councils had high levels of private rented accommodation that standards in this accommodation would make important contributions to Local Area Agreement themes in relation to Healthier Communities and Older People.

Bristol is an area where there are high levels of private rented accommodation - 17.9% of the private housing stock (15% of the total stock).

Currently in Bristol 18% of private rented properties fail the Decent Homes standard of which 19.5% of those tenants are in receipt of a means tested benefit. Source: Bristol City Council House Condition Survey 2007.

8.3 Local Environmental Quality

Local Environmental Quality was the top priority for 16% of the Unitary Local Authorities surveyed in the Rogers review. It was identified as contributing to the LAA theme of safer and stronger communities.

The Private Housing Service recognise these as priorities as necessary to provide good quality private housing in Bristol. These priorities will be balanced against the needs in

Bristol as they arise taking into account the Council's Strategies and policies in place at the time.

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 will target action:

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

- Empty properties – Door to door surveys, Council Tax information or, by our priority system
- Landlords whose tenants are on Housing Benefit tend 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 - Carrying out door to door surveys, following up adverts for rented accommodation, using Council Tax and Housing Benefit information
- Construction type – Where there is a problem with a particular method of construction.

By Areas

- Where there are particular problems in a specific locality. This can be on a street-by-street basis or an area of Bristol.
- Where an area of Bristol is identified as having adverse health or socio economic indicators.

By Individual

- 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.

9.1 Checks and balances

To ensure that there are checks and balances in our enforcement approach any targeted action will need to be agreed with a manager before it is undertaken. Our consultation on this policy identified that the checks should include:

- A check to assess if there is a risk that equality groups are being adversely affected by the targeted action and if so what steps will be taken to mitigate those effects.
- Consideration of any support and assistance that should be provided alongside the targeted action.
- Whether there are groups that should be consulted before targeting action

- That the targeted action will not damage the Private Rented Sector market disproportionately.
- Whether informal action is more appropriate
- the general approach of a lighter enforcement touch to those seeking to comply with legislation is taken whilst a stronger enforcement approach is taken where there is a history of non compliance, refusal to carry out the necessary works informally or significant health and safety risks are found.
- In most cases an Equalities Impact Assessment will be undertaken. This identifies risks to equalities groups and how they may be mitigated if necessary.

10 Specific Enforcement Issues

10.1 Mandatory HMO licensing

A licence is required in HMOs of 3 or more storeys with 5 or more persons in 2 or more households sharing the facilities. Since April 2006 Bristol City Council has widely publicised the need for these HMOs to be licensed and will continue to [publicise the requirement to have an HMO licence](#).

10.1.1 Operating an unlicensed HMO

Bristol City Council's focus of enforcing the HMO licensing provisions will be on detecting unlicensed HMOs and requiring landlords of those HMOs to apply for licences, at the same time consideration will be given to whether or not formal action is appropriate.

Systematic surveys using all relevant information held by the Council will be used to find unlicensed HMOs. Where unlicensed HMOs are found an additional finders fee on top of the licence will be charged (currently £100) as well as reducing the length of the licence to remove any advantage over those landlords that applied at the appropriate time.

If a landlord has approached the Council for a licence an informal approach will be adopted so long as the application is subsequently duly made within 14 days. There also may be exceptional circumstances that have resulted in application not being made, these will be considered. In other circumstances the Council will consider taking formal action in the form of a Simple Caution or a prosecution.

Where landlords have been prosecuted for operating an unlicensed HMO the Council will 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.

Our consultation showed that this approach had a high level of consensus.

10.1.2 Breach of licence conditions

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities.

Informal 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 affected a person's health safety or welfare.

Formal 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](#).

10.1.3 Interim 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. 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.

The Council has arrangements in place for private companies to manage any properties where an IMO is made.

10.2 Empty Properties

There is a shortage of accommodation in Bristol. Empty properties also can look undesirable, cause damage to adjoining properties and attract Antisocial Behaviour.

The Private Housing Service systematically identify long term empty properties and will work with the owner to bring back into use. The [Empty property policy statement](#) sets out the detail of our priorities in this area:

- Action will be tailored to match housing need, nuisance issues and length of time the property has been empty
- Recognising that some areas of the city suffer from higher levels of empty properties and housing need.

As the overall aim is to provide more accommodation of the type required in Bristol we will take action on empty properties within a framework that could ultimately lead to the use of Compulsory Purchase Orders to bring a property into use.

We will take enforcement action to deal with the symptoms that arise when a property is left empty where necessary.

As a result of the consultation on this policy further information will be published on our [website](#) to explain in what kinds of circumstances we will take formal enforcement action

10.3 Overcrowding

There are significant levels of overcrowding in Bristol particularly where there are larger families in the Central areas of Bristol.

We will investigate complaints from tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where the overcrowding conditions are legitimately impacting on neighbours health safety or well being.

We will work with the Council's Rehousing and Homelessness teams where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.

In response to our consultation on this matter we:

- Will consider taking action to improve the health and safety of vulnerable adults and children's living conditions whilst taking into account the views their views (where appropriate) as well as the views of parents, guardians or carers.
- Will consider taking action where the overcrowding has a significant detrimental effect on neighbours of the overcrowded property.
- May only advise adults living in overcrowded living conditions that their health is at risk but will not require them to move out if they do not wish to do so. Where we suspect that the occupants are being exploited we will take this into account when deciding what action to take.
- Will not take action where we believe that the complaint is motivated by prejudice or intended to harass the occupiers concerned.

Each case will be judged on its own merits.

11 Enforcement Action

This policy covers all types of enforcement action carried out by the Private Housing Service. This policy may be supplemented by more specific guidance such as:

[Bristol City Council's Policy on the Enforcement of the Housing Act 2004](#) which should be read in conjunction with this policy when dealing with enforcement issues that relate to a specific area of legislation.

11.1 Informal Action

There is a presumption that in the first instance officers 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. Consultation has also identified we can assist

landlords to improve and manage their properties by directing them to our [Accreditation scheme](#).

11.2 Formal Action

Where the circumstances of the case justify it, officers will be expected to take a formal approach, i.e. use their legislative powers where:

- There is a serious risk to health and safety. E.g:
 - no heating in cold weather
 - no hot water to wash and prepare food safely,
 - exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres.
 - exposed live electrical wiring which people are likely to make contact with
 - raw sewerage surcharging in someone's home
- A person refuses or fails to carry out the works informally
- There is a recent history of failure to meet requests to carry out legally required works
- There is a recent 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 in 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.

Responses to our consultation on this policy generally agreed with this approach and in response we have given some context to what may be considered a "serious risk to health and safety"

11.3 Simple Cautions

Non-compliance with legislation in Private Housing 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 a fine of up to £5000.

Officers 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 will be administered by a Senior officer of the Private Housing Service.

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>

<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/d820bbad9e5edd8680257013004d1ccf?OpenDocument>

11.4 Prosecution

Prosecuting someone is a serious matter and must be 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.

Officers 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.

11.4.1 The Code for Crown Prosecutors

Before undertaking a prosecution officers must satisfy a senior officer that the case meets the requirements of [The Code for Crown Prosecutors](#).

Prosecutions will need to meet the Full Code Test that has two stages; “The Evidential stage” and then the “Public Interest” test.

The Evidential Stage must be passed before proceeding to the public interest page however important the case is.

11.5 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 will be recovered in accordance with the relevant Statutory provisions.

11.6 Charging for Enforcement Action

The Housing Act 2004 allows Councils to charge for taking enforcement action. Some other legislation also allows Councils to recover costs for officer's time and expenses needed to determine what works need to be carried out in default.

The Private Housing Service will recover our costs and fees when formal action is taken where we think it is reasonable to expect the owner to pay for the charges in the circumstances. The full costs of an officer's time including overheads and any relevant expenses will be charged.

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. I.e where the reason for the charge was outside of the control of the person charged or persons acting on their behalf.

Our consultation demonstrated that there is broad agreement with this approach if we:

- Only charge to recover our costs and expenses
- Don't charge where we don't believe the owner is at fault eg we believe that a tenant has caused the damage or that the reason for serving the notice was outside of the control of the owner
- Those seeking to comply with the law are not charged for enforcement action whilst poor landlords may be charged for our enforcement action.
- Judged each case on its own merits.

11.7 Recovery of Debts

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

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

The Private Housing Service 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). This includes smaller debts where the cost of recovery is greater than the debt owed.

To recover debts the Council 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 the Private Housing service 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.)

11.8 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 carried out will normally be in writing or by email but can in some circumstances be given verbally, depending on the relevant Statutory provision.

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.

11.9 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.

12 Protocols

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

12.1.1 Fire Safety Enforcement Protocol with Avon Fire and Rescue Service

The [Interim Fire Safety protocol](#) 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.

12.1.2 West of England Enforcement Protocol with Bristol Partnership Registered Social Landlords (Housing Association)

The WoE local authorities and the Registered Social Landlords (RSLs) who are in the Bristol Partnership signed up to the RSL protocol. [The RSL protocol](#) sets out how each partner will work with each other in relation to complaints about housing standards in the RSL properties and if necessary how the Council will carry out enforcement action in relation to a complaint about an RSL.

12.1.3 Noise Protocol

The HHSRS under the Housing Act covers hazards from noise and in some circumstances where properties haven't been improved up to current building regulations works can be required to improve sound insulation in a property.

The Pollution Control Teams and Private Housing have agreed a *Noise protocol* between the two services for dealing with complaints about noise.

13 Guidance

There is a wide range of government as well as other sources of guidance that cover our enforcement activities from Government and its agencies. We will consider this guidance when formulating our policies and procedures. Enforcement officers will follow our policies and procedures and where appropriate will take the relevant government guidance into account on a case-by-case basis. See [Appendix B](#) and [Appendix C](#) for more information.

14 Consultation and Partners worked with

There are a wide range of partners worked with including stakeholders such as private sector landlords, residents groups, other BCC 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 Enforcement policies and procedures where the subject area is relevant and appropriate to them. [Appendix D](#) provides details of the partners we work with and the areas of work covered.

This policy has been widely consulted. A list of people or organisations consulted in relation to this policy is provided in [Appendix E](#).

15 New powers under the Housing Act 2004

There are new powers in the Housing Act in relation to [Anti Social Behaviour](#), [Additional Licensing](#) and [Selective Licensing, Discretionary and Special Interim Management Orders](#). The links to the documents provide more information.

As a result of our consultation there were a number of comments on our services role in helping tackle Antisocial behaviour linked to Private Rented Properties. We will publicise [more information on our website](#) how we will help tackle Antisocial Behaviour and how we can assist landlords who are trying to deal with Antisocial tenants. More general advice is also available on the [Bristol City Council website](#).

16 Enforcement Tools and Techniques

In order to achieve our enforcement objectives we will use the full range of tools and techniques available that are appropriate in the circumstance of the case, taking into account the overall priorities and objectives of the Council particularly the policies and guidance referred to in this policy.

Please see [Appendix F](#) for some examples of the tools and techniques used.

Our consultation resulted in a considerable amount of feedback on the use of Covert CCTV. The use of this Covert CCTV is uncommon in the Private Housing Service and indeed the rest of the Council. In certain circumstances, its use may require authorisation from a senior manager of the Council in accordance with the Regulatory and Investigatory Powers Act 2000. We will use these powers in line with the Council's Policy in force at the time covert CCTV is used.

17 Authorisation of Officers

Any officer carrying out enforcement work should be authorised to do so by the Council. Each Authorised officer in the Private 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.

18 Equalities Impact Assessment

In summary the policy aims to promote the Council's objectives of improving environmental quality, promoting prosperous communities, health and well-being.

Care has been taken to ensure that application of these policies will not result in discrimination against any of the equalities groups and to that end, an [Equalities Impact Assessment \(EIA\)](#) has been carried out. Please see <http://www.bristol.gov.uk/ccm/navigation/housing/private-housing/>

19 Appeals and Complaints Procedures

This policy and the guidance and other policies referred to in it will be relevant documents to consider when reviewing complaints in relation to our enforcement activity. It is important to stress that they are not the definitive list of guidance available and there may be more relevant or up to date guidance that should be considered in relation to any complaint. Details of the complaints procedure to follow are in [Appendix G](#)

20 Scenarios of enforcement action

[Appendix H](#) provides some are some scenarios of how cases that we encounter may be dealt with they do not relate to actual cases but do reflect how such cases could be dealt with. The scenarios are included to give some context to the actions set out in this policy.

21 Approval of this policy

This Policy was approved on xx/xx/xx by the Executive meeting together as the Cabinet.

22 Enquiries

Any enquires about this policy can be made by:

Email: private.housing@bristol.gov.uk

Telephone : 0117 353 3871

Fax: 0117 377 2533

Letter: PHST (LIPS),P.O.Box 595, Bristol BS99 2AW

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24 Appendices

24.1 Appendix A - Legislation used.

Building Act 1984 – defective drainage
Environmental Protection Act 1990 – Statutory Nuisance
Health Act 2006
Housing Act 2004
Housing Act 1985 (As Amended)
Local Government (Miscellaneous Provisions) Act 1982
Prevention of Damage by Pests Act 1949
Public Health Acts 1936 and 1961 – Clearing blocked drains and removal of noxious matter.
Regulatory Reform (Fire Safety) Order 2005
Town and Country Planning Act 1990 – seriously detrimental to the amenity

This is not an exhaustive list of all legislation enforced by the Private Housing Service.

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24.2 Appendix B- Government Guidance

24.2.1 Communities and Local Government Guidance

The main powers for enforcing standards in the Private Housing are contained in Part 1 of the Housing Act 2004 (the Housing Act).

The Fitness standard for Human Habitation has been replaced by a risk assessment based system called the Housing Health and Safety Hazard Rating System (HHSRS). Guidance on this can be found at :

<http://www.communities.gov.uk/documents/housing/pdf/150940>

Guidance on Enforcing the Housing Act was issued by the Office of the Deputy Prime Minister (ODPM) in 2006. Councils are required to have regard to this guidance when using their powers under this part of the Housing Act.

The ODPM also produced a [set of worked examples](#) to consider when hazard rating properties using the HHSRS.

The Government's Housing Health and Safety Rating System [Enforcement Guidance](#) was used as a basis for [Bristol City Council's Policy on the Enforcement of the Housing Act 2004](#).

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24.3 Appendix C - Other Guidance

24.3.1 LACORS

Local Authorities Coordinators of Regulatory Services (LACORs) was set up to provide advice and guidance to help support local authorities regulatory and related services across the country.

It principally covers enforcement services in Local Authorities and provides detailed advice guidance and good practice on issues including Private Housing. More information can be found at www.lacors.gov.uk.

The Private Housing Service works closely with LACORs on issues that affect Bristol and consider relevant LACORs guidance when carrying out enforcement work.

24.3.2 West of England Local Authority's (WoE)

Bristol works closely with the other Local Authorities in the area ie Bath and North East Somerset, North Somerset and South Gloucestershire on Private Housing related matters.

To improve consistency where its possible to do the WoE Councils will adopt the same principles to enforcement under the Housing Act. These principles have been laid out in the *West of England Common Approach* document. Information on West of England Guidance can be found at www.landlordinfo.co.uk.

24.3.3 Bristol City Council Enforcement Decision Notes

Bristol City Council produces decision notes as guidance for officers when making enforcement decisions on specific issues. The decision notes are considered and ratified by a group of experienced officers across the service taking into account what is best practice at the time.

24.3.4 Warwick University - Worked Examples

In order to supplement the limited number of worked examples of scoring hazards using the HHSRS, Bristol City Council has sent worked examples to Warwick University for ratification. The faculty of Law at Warwick University ratified these worked examples as they developed the scheme before it was incorporated into law and have been Government approved providers of HHSRS training in the country. Officers will take these worked examples into account when assessing hazards.

The Private Housing Service was awarded "Beacon Status" in Housing Renewal for 2003-2004. As part of that scheme these worked examples can be found on our website at: <http://www.bristol.gov.uk/ccm/content/Housing/Private-housing/beacon/beacon-peer-support-scheme-for-private-sector-housing.en>

24.3.5 Chartered Institute of Environmental Health (CIEH)

The CIEH is the main professional body that covers enforcement in the private rented sector. The CIEH produces guidance from time to time on relevant issues. The guidance will normally be considered when officers make enforcement decisions. Officers are not bound by CIEH guidance.

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24.4 Appendix D – Summary of Partners worked with

Stakeholders	Work Area
Private Sector Landlords Forum	Wider issues such and HMO Licensing and Enforcement approach as well as specific issues affecting landlords in Bristol
Residents groups	Student and Resident liaison issues
Landlords organisations	Wider issues that effect landlords generally; HMO Licensing approach, Enforcement Policy
Customer Panel	Satisfaction with services and how they can be improved

Partner Organisation	Work area
Avon Fire and Rescue Service	Promoting Fire Safety in Homes. Working together in relation to legal duties under the Fire Safety Regulatory Reform Order 2004.
Avon and Somerset Police Service	Taking practical steps to improve s security in homes through support of the Bobby Van Scheme. Working together to tackle Anti Social Behaviour in Private Housing.
Safer Bristol Partnership	Co-ordination of Police and Local Authority Services to tackle acquisitive crime such as burglary, drugs related issues. as well as tackling anti social behaviour
Smoke Free Bristol	Providing tailored information on where smoke free legislation applies to Private Housing. Where there appears to be non compliance providing evidence to the Council's health and Safety Team
Bristol Housing Partnership RSLs	Working together to produce a Protocol on dealing with complaints about RSLs signed up to the Partnership.

BCC teams	Work Area
Council Tax	Using powers under the Housing Act to get information about a property in relation to enforcement issues such as tackling empty properties, identification of unlicensed HMOs anti social behaviour.
Housing Benefit	We also share evidence we collect to reduce council tax and housing benefit fraud.
Anti Social Behaviour Team	Sharing information to tackle anti social behaviour including calling multi agency case conferences to tackle anti social behaviour.
Street Scene and Enforcement Team	Collaborative working to tackle fly tipping and waste related offences.

Pollution Control	Sharing information to tackle Anti Social Behaviour and Housing related issues that the Pollution Control team don't cover.
Building Control	Sharing information to tackle health and safety issues in Privately owned and rented property.
Planning Enforcement	Sharing of information to deal with health and safety related issues. Agreement in place on how to deal with privately owned properties that are detrimental to the amenity of the neighbourhood.
Children and Young Persons and Adult Services	We will inform Children and Young Persons and Adult services where we believe a vulnerable person's health, safety or welfare is in danger. Where we are aware we are dealing with vulnerable adults in relation to enforcement action will not take action without consulting Adult services and Community Care. We will co-ordinate our enforcement action with any care and support services available where possible.
Estate Management of BCC owned land and property	When the Estate Management Teams have been unable to resolve problems on their properties i.e. rubbish which is prejudicial to health or where the property is detrimental to the amenity of the area. Where appropriate Private Housing will serve legal notices to help the Estate Management Teams tackle the problems. If the notices are not complied with the Estate Management Teams will organise the works to tackle the problems and formal legal action will be considered by the Private Housing Teams.

West of England Local Authorities (WoE LAs)	Work Area
Bath and North East Somerset	Where possible we will work collaboratively with the other Councils in the ex Avon area to formulate common approaches to issues that effect service users across our own boundaries. For example we have published a WoE Common Approach to Housing Act enforcement, HMO licensing. We have protocols in place for dealing with Fire Safety and the level of Fire precautions we expect in rented accommodation.
North Somerset District Council	
South Gloucestershire District Council	

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24.5 Appendix E – List of people consulted in relation to this policy

Bristol Landlords Forum
Private Landlords registered with Bristol City Council
Private Landlord Associations
Managing and Letting Agents and Associations
Tenants of Private Rented Accommodation
Owners of Empty Properties
Shelter
North Bristol Housing Advice
Chairs of Bristol City Council Community Forums.

Bristol Housing Options and Advice Service
Results and a summary of the consultation process and how we adopted the suggestions made can be found on our [website](#).

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24.6 Appendix F – Enforcement Tools and Techniques

The following are an example of some of the means available to the Private Housing Service:

Tools or technique	Objective
Details of Housing Benefits	To find out who owns a property, who is claiming benefit
Details from Council Tax	To find out who owns a property, whether it is occupied and who is liable for Council tax payments
Overt and Covert surveillance including directed CCTV Surveillance	To demonstrate anti social behaviour or that a property is being occupied as an unlicensed HMO. Covert CCTV to be used in line with current Council policy where other sources of evidence will not provide a realistic prospect of conviction. Subject to Regulation of Investigatory Powers Act 2000 (RIPA) authorisation.
Interviews under caution	To record where an offence is suspected further evidence and to give the suspect the opportunity to formally explain the circumstances around the suspected offence.
Land Registry Search	To identify who is the registered owner of a house or piece of land
Company's House Search	To identify the details of a registered company, who the directors and company secretary are and their registered address.
Notice Requesting for Information about a property	To legally require a person to provide details about ownership and occupation of a property or piece of land
Warrant to Enter a property by force if necessary	To identify if a house is being occupied contrary to a Prohibition Order, if it is and unlicensed HMO or to carry out works in default or if any action is required under the Housing Act.
Testing of Fire Alarms, Electrical Installations, and Gas installations; or A structural survey	To determine if any action is required under the Housing Act
Require Gas Safety Certificate or Electrical Installation Inspection certificates to be produced.	To confirm that the document is in existence and whether any further action under the Housing Act is required

Require documents to be produced – such as tenancy agreements or management contracts.	To identify who are tenants of a property, who has management responsibility to identify whether any action under the Housing Act is required.
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The requirements of the Data Protection Act 1984 will be followed in relation to use of personal data.

Please note this not a definitive or exhaustive list of tools, techniques and objectives.

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24.7 Appendix G - Appeals and Complaints Procedures

24.7.1 Informal Action

Where informal action has been taken which a person wants reviewed representations should be made to the officer who has been corresponding about the matter as soon as possible or within the time limits stated.

Where it is possible to resolve the issue informally we will endeavour to do so. Where that is not possible you will be informed of what will happen if the informal request to do something is not followed such as the service of a formal legal notice.

24.7.2 Formal Legal Action

In most cases where formal legal action is taken there will be a statutory framework for appealing any decision made by an officer. Where this is the case the relevant appeals procedure should be followed. Where formal action is taken by the Council such as serving a formal notice the details of where to appeal will be provided as well as the time limits for any appeal.

Anyone considering an appeal is encouraged to immediately discuss the matter with the officer concerned to see if the points of issue can be resolved without the need for a formal appeal where that is possible. This must be carried out before any time limits for an appeal expire otherwise the right to appeal may be lost.

24.7.3 Complaints about action taken or an Enforcement Officer

If a person is unhappy about the way action the Council has dealt with an issue or the way an officer has acted you can [make a complaint under the Council's Fair Comment Complaints Procedure](#). In summary the Fair comment procedure has 3 stages.

- Stage 1 – Complaint reviewed by the officer concerned line manager or supervisor and written response given.
- Stage 2 – If you are unsatisfied with a response you can make a Stage 2 complaint. A stage 2 complaint is reviewed by a Manager or Service Manager and a written response given.

- Stage 3 – If you are unsatisfied with the stage 2 complaint a stage 3 complaint can be made to the Chief Executive.

Complaints about Data Protection or Freedom of Information requests have different complaints procedures. You will be informed of detail of those procedures if you make such a request.

Please note that the subject of a complaint should not include any aspect that it would be more appropriate to make representations on or which a formal appeal should be made.

24.7.4 Ombudsman Complaints

If you are unhappy with the Councils response to your complaints you can complain to the [Local Government Ombudsman](#). The Ombudsman will normally only accept a complaint when you have exhausted the Councils own internal complaints procedure.

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24.8 Appendix H - Scenarios of enforcement action.

Please note not all cases are the same and may not necessarily follow the same procedure as indicated below. Each case is judged on its own merits.

24.8.1 Complaint from tenant that their roof is leaking.

A tenant telephones and says that there is a leak in their roof. When asked it's apparent that the tenants have not talked to their landlord about it and we advise them to contact the landlord to ask them to carry out the necessary repairs but to ring if the repairs are not carried out promptly.

24.8.2 Landlord asks to have property accredited.

We provide the details of what is expected for a property to be accredited with the Council so the landlord has a good idea of any improvements or repairs that will be required. We identified that some security improvements were required and that the loft wasn't insulated so we arranged for the works to be carried out for the landlord. One of the Fire Alarm test Certificates was a month out of date so we asked for an up to date certificate to be provided. When we inspected the property we found that several of the spindles to the banisters were missing and there was a risk that someone could fall through. We wrote an informal letter to the landlord asking for them to be repaired within a month. The works were carried out and a new alarm certificate was provided. After the security works and loft insulation was provided the property was accredited.

24.8.3 Complaints about lack of heating, damp and mould in a property.

The tenant of a house emails us and complains that their home is cold as there is only a gas fire in the lounge and electric panel heater in the hallway of their Victorian two bedroom house. The tenants have asked the landlord several time to provide better heating as there is black mould forming on the walls even though they have the heating on as much as possible and are ventilating rooms to prevent the build up of moisture.

An enforcement officer inspects the property and confirms what the tenant has said as well as finding that there is no loft insulation, that there are solid walls and that there are metal framed single glazed windows which are badly warped and letting in draughts and water sometimes when it rains. The officer carries out an assessment and identifies that action is required under the Housing Act. The landlord had previously complied with informal requests to carry out work by the Private Housing Service and so an informal improvement notice was served which required the provision of central heating to the flat, insulation to the roof and that the windows were replaced with new double glazed units. The landlord was given a month to start the works and 3 months to complete the works. After 9 weeks the landlord had not started the works and when contacted said that they hadn't organised for any contractors to carry out the works and intended to leave the works until the New Year. As winter was approaching and there was no reasonable prospect of the works being carried out in time a formal improvement notice was served requiring all the works to be carried out and a charge of £300 was made as the works had not been carried out after an informal request to do so. The Landlord then carried out the works within the timescales required in the Improvement Notice.

24.8.4 Tenants complain about a dangerous spiral staircase

Tenants contacted us about a spiral staircase in the property they were renting. The landlord had installed the staircase to access the loft room he had built. The tenant was concerned because the staircase moved around as you walked up it, had no hand rail and there was no balustrade at the top to stop someone falling off. The tenant was over 60 and his 4 year old grandson regularly came to stay.

An enforcement officer visited the same day and found the staircase was so dangerous that there was an imminent risk of personal injury from the staircase collapsing as well as the risk of someone falling down the unguarded edge in the loft room. The officer tried to contact the landlord but he denied there was a problem so the officer carried out Emergency Remedial Action under the Housing Act. They employed a contractor to come out the same morning and remove the dangerous staircase. A Prohibition Order was then made which prohibited the use of the loft room for sleeping or living accommodation until the conversion was brought up to current Building Regulations. The landlord was recharged for the works carried out by the contractor, and for the service of the Prohibition Order.

24.8.5 Complaint about sewage backing up into someone's house.

A complaint about sewage overflowing from someone's toilet identified that there is a blockage in a private sewer which three house's waste drains into. As there is a public health risk a legal notice is served on all three house owners requiring them to clear the blockage within 48 hours. The 3 homeowners were unable to agree on appointing a contractor so the works were carried out in their default by the Council. The cost of jetting the drains and the Council's time for organising the work was recharged equally between the 3 occupiers. A couple of weeks later the toilet blocked again. The same procedure was followed and at the time the sewer was unblocked a camera survey was carried out which identified that part of the sewer had collapsed and needed relining. The owners were informed and a legal notice was served requiring them to get the sewer relined within 6 weeks. The owners then organised for the repair works to be carried out and split the costs between them. They repaid the cost of the CCT survey and the notice was cancelled.

24.8.6 Complaint that a property was unlicensed and that the fire alarm and electrical installation had been vandalised and not repaired.

A tenant living in a large 3 storey HMO complained that other tenants had vandalised the fire alarm and smashed electrical sockets leaving live wires exposed in the hallway. They had told the landlord and the landlord had seen the damage but that was 2 weeks before hand and nothing had been done about it. From checking our records we were aware that the landlord had signed a simple caution for not licensing an HMO 2 years ago. An inspection was carried out and it confirmed that the property should have an HMO license and that the damage to the Fire Alarm and the Electrical installation in the common parts contravened the regulations in relation to the management of HMOs.

The landlord was then prosecuted in the magistrates' court for operating an HMO without a licence and for contraventions of the management regulations. A Formal Improvement Notice was served requiring the works to make the property safe. As the landlord had committed offences in relation to renting houses he was found not to be fit and proper and the licence his licence application for this house and the other he held on another HMO was revoked and the application fees retained. The landlord then had to pay managing agents to run his licensed HMOs.

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