

Bristol City Council Enforcement Policy for the Housing Health and Safety Hazard Rating System – Housing Act 2004

1. The Housing Act 2004 Part 1 replaces the current fitness standard. The new system is designed to be a more targeted and proportional system reflecting the latest understanding of health and safety risks.

Bristol City Council is required to use the Health and Housing Health and Safety Hazard Rating System (HHSRS) as the basis for tackling the worst housing conditions.

This document sets out how we should use these enforcement powers to ensure safe and healthy environments in Bristol's private housing.

The significant issues in addition to our statutory duties under the 2004 Act are that the Council will:

- Exercises its discretion to take action where a category 2 Hazards exists.
- When specifying works in relation to category 2 hazards require improvements to a standard that must be to a band lower than the existing band for the hazard assessed, where it is possible to do so.
- Takes enforcement action where there is an unacceptable risk of injury or ill health due to a hazard outside of a persons control where that it the most appropriate course of action in the circumstances
- Agrees to use its powers to make charges for taking enforcement action
- Follows the principals of the Regulatory Services Enforcement Policy when making enforcement decisions.
- Acknowledges that a category 1 hazard will replace the fitness standard element in the Decent Homes standard.

Procedural details of how these issues will be administered.

2.Taking Action on Category 2 Hazards

In addition to Bristol City Council's duty to take action where a category 1 hazard exists the Council will exercise its discretion to take the most appropriate course of action where a category 2 Hazards exists, in the following situations:

In normal circumstances there will be a presumption that officers will consider taking action under the Housing Act where a hazard is rated at Band D unless that would not be the most appropriate course of action.

2.1.In circumstances where:

- a number of hazards at Band D or below appear to create a more serious situation when looked at together e.g. ;or
- there is the impression of a run down property e.g,

A Senior Environmental Health Officer, Private Housing Manager, or Private Renewal and Investment Manager may authorise the most appropriate course of action to be taken.

2.2.In exceptional circumstances where a Private Housing Manager, or the Private Renewal and Investment Manager may authorise the most appropriate course of action to be taken.

These proposals are identified by the ODPM as being necessary options for Councils.

3.The standard to which Bristol City Council has decided to improve hazards.

The Housing Act requires that when requiring works to improve the risk to health and safety from a category 1 hazard, the works specified must result in the hazard presented being reduced to a category 2 hazard.

3.1. Where any works for either a category 1 or 2 hazard are needed Bristol City will require works to standard that will prevent patch and mend repairs. To do this we will specify works that hold a hazard below a level that we would consider taking action for at least the next 12 months.

4. Bristol City Council will take enforcement action against a person where there is an unacceptable risk of injury or ill health due to a hazard outside of a persons control and where that it the most appropriate course of action in the circumstances

These are some examples of this:

4.1. Where a tenanted property contains an actionable hazard the private housing service in the main only requires landlords including housing associations to carry out improvements or make changes to their properties.

4.2. In some circumstances we may be forced to require owners to carry out works to their own homes. This is normally when the state of their property could effect the health and safety of others outside of their household.

For example we may require an owner occupier of a flat in an House in Multiple Occupation to provide a fire door and smoke detector linked to a communal alarm system to provide safe means of escape in case of fire.

4.3. Where we believe it is more appropriate for someone to pursue their own private action to remedy the situation we will inform them of this.

For example where a leaseholder is in dispute with their freeholder we would normally expect both parties to resolve any issues of disrepair themselves using their leasehold agreements and or the associated Leasehold legislation. We would only normally consider taking action in circumstances where these avenues have been exhausted.

4.4. Where there is an actionable hazard due to noise between dwellings we believe that the most appropriate course of action would normally be to a Hazard Awareness Notice.

5. Bristol City Council will agree to use its powers to make charges for taking enforcement action.

The Council currently uses its power to make charges for serving formal notices under the Housing Act. The charges are only levied where there has been no adequate response to informal requests to carry out works, where there is a serious health and safety issue that requires immediate formal action or where there is previous non-compliance with notices served by the Council.

The new Housing Act amends those provisions to allow the Council to charge for :

- deciding which notice to serve (including the cost of any inspections); and
- whether to serve it,
- identifying what action to take; and
- for the cost of the service of the notice.

5.1. It is proposed that the Council continue to charge for taking enforcement action using similar principals i.e. that charges are only made where:

- A formal notice is required to remove a serious threat to health and safety unless the risk was outside of the control of the person responsible for carrying out the works to remove the health and safety risk or;
- There is evidence of previous non compliance with Housing Act or other related legislation within the last year or;
- Within the last 5 years the person or company against whom the action is due to be taken was either personally or as senior officer of a company fined for a contravention of a Housing Act or other related legislation or;
- No adequate action has been taken to comply with informal requests to take action or carry out works.

5.2. The government advises that we should take into account the personal circumstances of the person before charging them for the cost of enforcement action.

Our primary consideration for taking action is to protect people from significant hazards to their health and safety.

To assess someone's personal circumstances the Council will consider the vulnerability of the person we intend to charge.

5.3. We will consider use the definition of vulnerability in Bristol City Council's "No Secret's" policy on protecting vulnerable adults:

"Someone who is 18 or over...., who has and may need help with everyday living. This includes disabled people who have physical or sensory impairments, learning difficulties, who suffer from mental illness or emotional distress or are frail older people; and who for any other reason are unable to care for themselves or protect themselves from significant harm or exploitation."

We will also take consider whether someone is financially vulnerable, vulnerable due to a medical condition or vulnerable due to a personal situation not covered by the above definition.

5.4. When making decision on whether to waive a fee the Council will take the view that;

.where a person is providing accommodation for others the paramount duty is to ensure the accommodation is safe and healthy to live in.

.This means that only in exceptional personal circumstances will charges be reduced or waived.

5.5. These charges can be waived at the discretion of a Private Housing Manager or Private Sector Renewal Manager or their equivalent.

6. Bristol City Council will follow the principals of the Enforcement Concordat when making enforcement decisions.

The Council has signed up to the Government's Enforcement Concordat. The Regulatory Services Enforcement Policy

Document explains our commitment to the principles of good enforcement.

These proposals build on that Policy and give specific guidance for enforcement action in relation to new Housing Act.

6.1.As a first principal the Council will take an informal approach to the enforcement of the Act.

This will not be appropriate where:

- There is a serious risk to health and safety that needs to be resolved promptly eg Band A category 1 hazard exists that requires action either immediately or without the delay of taking informal action first; or
- Where there is evidence of previous non compliance with Housing legislation or related legal provisions as described in section 5.1 above (evidence of non compliance within the last 12 months or convicted in the last 5 years of Housing Act or related offences.
- Discretion is given to Private Housing Managers, Private Sector Renewal Manager or their equivalent to decide to either serve formal notices where informal notices would normally be served or vice versa.

7.That the officers recognise a category 1 hazard will replace the fitness standard element in the Decent Homes standard.

Currently a property has to meet the fitness standard under the 1985 Housing Act (As amended) for it to meet the Decent Homes standard.

When the new Housing Act 2004 powers come into force they will replace the old fitness standard. This means from the date the new provisions come into force to pass the Decent Homes standard a property will need to be free of any category 1 Hazards.

The Decent Homes standard will not be used as an enforcement standard.

8. Taking action against Registered Social Landlords (RSLs)

RSL's are required to meet the Decent Homes standard by 2010. RSL's should have improvement programmes in place to improve their stock to this standard.

Where RSL's can demonstrate that they have already programmed the improvement works which have been identified as requiring action then officers must take this into account before taking formal enforcement action.

8.1. In all cases officers should follow the principles of the enforcement concordat detailed in section 6 above.

This means that formal action can be taken where:

- an officer believes that formal action is necessary to protect anyone affected by the condition of a Housing Associated owned property from a serious risk to their health and safety.
- the RSL has a history of non compliance falling to the categories in section 5.1 ; and
- they have the approval of a Private Housing Manager, Private Sector Renewal Manager or their equivalent.