

## **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

### **CONTENTS**

1. Introduction
2. Purpose and Scope
3. Approval
4. Review
5. Access to the Policy
6. Principles of Good Enforcement
7. Enforcement Options
8. Implementation

### **1 INTRODUCTION**

- 1.1 This enforcement policy relates to the duties and powers vested in the Council to deal with substandard conditions in and management of private housing, and public health hazards or nuisance arising from private housing. "Private housing" means domestic dwellings which are not owned or managed by the Council or by registered providers of social housing (except in exceptional circumstances – see section 6.16).
- 1.2 The relevant Acts and Regulations include (but are not limited to):
  - The Housing Act 1985
  - The Housing Act 2004
  - The Building Act 1984
  - The Environmental Protection Act 1990
  - The Public Health Act 1936
  - The Local Government [Miscellaneous Provisions] Act 1976 and 1982
  - The Housing and Planning Act 2016
  - The Prevention of Damage by Pest Act 1949
  - Regulations relating to Fire and Gas Safety, Electrical Installations and Energy Efficiency
- 1.3 For a full list of the powers delegated to private sector housing officers see Appendix 1.
- 1.4 This policy details the approach to the use of enforcement powers, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other.
- 1.5 The Council is committed to on-going consultation with landlords and residents in setting its policy priorities and these will be reflected in its overall enforcement approach.
- 1.6 The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available must be taken into account. However, this

policy should leave most readers in little doubt as to what they can expect by way of enforcement.

- 1.7 Particular regard has also been given to the provisions of the Regulators' Code and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.
- 1.8 The Private Sector Housing Enforcement Policy sits alongside the Environmental Services Enforcement Policy Approved by the Cabinet Member for Environment, Transport & Residents Services.
- 1.9 Any legislation which allows the Council's trading standards officers to impose civil penalties on landlords, letting agents, estate agents, property managers or property agents, is covered by the above Environmental Services Enforcement Policy and Trading Standards Policies and Procedures. Examples of such powers would be unlawful letting fees, failure to join a redress scheme or issuing sham licences instead of tenancy agreements under the Tenant Fees Act 2019; Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme) Order (SI 2014 No. 2359); Consumer Protection from Unfair Trading Regulations 2008.

## **2 PURPOSE AND SCOPE**

- 2.1 The Private Sector Housing team deals with environmental health and licensing functions in relation to Private Sector Housing properties. Within the team there are a variety of separate but interrelated operational/functional areas. These are:
  - Housing standards in the private rented sector, including safety in respect of fire, gas, electricity and other housing hazards
  - Licensing of Houses in Multiple Occupation and Part 3 houses <sup>1</sup>
  - Public health hazards and statutory nuisance
  - Energy efficiency in relation to domestic properties
- 2.2 This document is the overall enforcement policy covering these disciplines. It outlines the approach to enforcement and lays down the principles that will be followed in deciding upon, and taking, action.
- 2.3 The policy applies to all officers and managers in the Private Sector Housing Team who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings.
- 2.4 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or landlords, including Local Authority managed premises, comply with the law.
- 2.5 In this policy, the term 'landlord' should be read as including letting agents, managing agents and any other person involved in the letting or management of privately rented accommodation.

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<sup>1</sup> See [Housing Act 2004](#)

### **3 APPROVAL**

The Cabinet Member for Environment and Regulatory Services approved this policy on 5 October 2020.

### **4 REVIEW**

This Enforcement Policy will be reviewed annually and updated, if appropriate, in response to new legislation or guidance.

### **5 ACCESS TO THE POLICY**

This Enforcement Policy is publicly available and a copy can be obtained by contacting the Private Sector Housing Team by e-mail at [phs@lbhf.gov.uk](mailto:phs@lbhf.gov.uk) . It is also available on the Councils' website <https://www.lbhf.gov.uk/housing/private-housing>

### **6 THE PRINCIPLES OF GOOD ENFORCEMENT**

- 6.1 Officers will seek to adopt efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.
- 6.2 Whilst the general principles outlined below will apply in all cases it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached. In certain instances for example, we may conclude that a provision in the Regulators' code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.
- 6.3 Past experience in the enforcement of statute and regulations shows that, in most cases, landlords and individuals comply with the law. Any failure to comply with legislative requirements often stems from ignorance, carelessness, lack of training, lack of effective management control and sometimes from wilfulness or malice.
- 6.4 Officers will take enforcement action to minimise risk; against those suspected of negligence or a deliberate failure to act; who fail to comply with their legal obligations; and where that failure results in actual harm or constitutes a risk to the public or employees.
- 6.5 The level of enforcement will be proportionate and/or appropriate to each particular case. Officers will seek to be transparent and consistent, when taking enforcement action, including consistency with other local authorities or enforcement agencies
- 6.6 Depending on the seriousness of a situation, the preference will be to enforce through advice and mutual agreement, where possible and in the first instance, progressing through a graduated response to a tougher formal stance if offences are repeated. A tougher stance may be taken for serious first offences e.g. resulting in personal injury/ harm/death or to protect the vulnerable e.g. failure to maintain safety standards or to minimise a high level hazard.

- 6.7 Sometimes people break the law because of ignorance (which is not a valid excuse) rather than deliberately or negligently. Where enforcement action is justified, officers will also provide advice and information to assist with the training of those involved.

We believe that prevention is better than cure and therefore our role involves actively working with landlords and individuals to advise on and assist with compliance. We will make clear not only what they have to do but, where relevant, what they don't. In practice, this means distinguishing between legal requirements and advice or guidance about what is best practice but not compulsory, to minimise business costs.

- 6.8 We will target our resources where they will have the greatest effect. We will carry out inspections only where there is a reason for doing so, for example, when investigating a complaint, in response to intelligence about a particular premises or a particular issue/problem or as part of our risk assessment process. The greatest effort will be focussed where failure to comply would pose a serious risk of harm or injury and there is a high likelihood of non-compliance.
- 6.9 We will apply a light touch approach to those landlords who comply with regulatory requirements and those who work with us to achieve compliance. However, we will not hesitate to use the full range of enforcement tools at our disposal against those companies or individuals whose activities are likely to cause material loss or harm to others, the environment, or endanger the health, safety and wellbeing of people or our community.
- 6.10 Enforcement decisions will be made in a fair, independent and objective way and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, disability, sexual orientation or the political views of the suspect, victim, witness, offender or council officer. Officers will make decisions based on risk.

### **6.11 Transparency**

- We will make it clear what must be done, distinguishing between legal requirements and what is best practice but not compulsory in written and verbal communication
- We will write to confirm any verbal advice if requested
- Any written advice given shall be provided in plain, accessible language and in a range of formats and media where possible
- Where immediate action is necessary, we will give an explanation of why such action is to be taken and confirm this in writing
- Adequate information will be provided to enable reference to be made to the relevant legal and associated documents
- Any service standards such as the content of inspections or when you can expect a response, will be available on request and on our website

- We will make it clear what sort of conduct can be expected when an officer visits and what rights of complaint are available
- Any relevant complaints or appeals procedures will be explained.

### **6.12 Accountability**

- Visits and inspections are sometimes made unannounced but, if appropriate and
- Where necessary, appointments will be made or advance notice will be given
- Where access cannot be obtained during the day, or in other appropriate circumstances, visits will be made outside normal working hours. Unless carrying out authorised covert surveillance work or unless health and safety reasons at the time dictate otherwise, enforcement officers will identify themselves by name and their role within the Council and will produce their Authorisation Warrant, when required by law or when requested.

### **6.13 Proportionality**

- The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question. Action taken will be proportionate to the breach/offence which has occurred.
- Where the law requires that risks should be controlled “as far as reasonably practicable” officers, will take into account the cost and the ease of any suggested action as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

### **6.14 Consistency**

- Decisions on enforcement always entail a degree of personal judgement by officers and the circumstances of each case will inevitably differ in detail.
- Furthermore, guidance upon which officers act does change over time and a decision made one day may differ from one made the next for that reason.
- Consequently, there may be instances when over time, enforcement may appear to be inconsistent. Officers will try to ensure that enforcement action is as consistent as possible by:
  - Following current internal procedural and guidance notes
  - Taking account of appropriate guidance from other authoritative or professional bodies e.g. Chartered Institute of Environmental Health or London Fire and Emergency Planning Authority (LFEPA) and LACORS (Local Authority Coordinators of Regulatory Services)
  - Taking due account of new case law relating to enforcement
  - Taking account of any new legislation or guidance which impacts on their duties
  - Liaising with other enforcement agencies as necessary
  - Actively participating in joint local authority schemes to achieve greater consistency

- Having due regard to the Housing Health and Safety Rating System
- Carrying out benchmarking exercises from time to time
- Sharing of enforcement information between officers and across different teams

The above measures will be supplemented by specific enforcement training officers and managerial checks on performance.

### **6.15 Prioritisation**

The decision to inspect specific premises may be taken due to complaints, or problems that have been reported, e.g. housing hazards or unlicensed properties, which are in need of investigation, or the premises need to be inspected due to its risk rating (which determines the frequency of enforcement inspections for high and medium risk premises).

Enforcement will be targeted to those persons, premises and/or companies whose activities give rise to the risks that are the most serious or least well controlled.

#### **Requests from leaseholders**

Other than in exceptional cases, the council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves. Leaseholders will normally need to consult a solicitor specialising in leasehold law but may be able to get advice about how to settle a dispute about repair problems from the Leasehold Advisory Service, 31 Worship Street, London E2CA 2DX, Telephone 020 7374 5380 email: [info@lease-advice.org.uk](mailto:info@lease-advice.org.uk)

In exceptional circumstances we may take housing enforcement action on owner occupiers or long lease holders. Examples of when this might be appropriate are:

- Where there is a significant risk to the health and safety of occupiers or third parties
- When the person having control of the property is considered to be particularly vulnerable
- Where a statutory nuisance has been identified.

#### **Situations where we may not provide a service**

We may decide not to provide a service or to cease providing a service where:

- The tenant(s) are, shortly to move out of the property by their own choice
- The tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, in order for works to be carried out
- 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
- A tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Property Standards and Enforcement Service is to secure rehousing
- The tenant(s) have failed to keep an appointment and not responded to a follow up letter or appointment card
- Where the tenant unreasonably refuses to provide the council with relevant documentation, e.g. a tenancy agreement or notice seeking possession

- The tenant(s) have been aggressive, threatening, verbally or physically abusive or shown racist behaviour towards officers

### **Tenants of Registered Providers of Social Housing**

Tenants of Housing Associations have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner, including a complaints procedure and a final right of appeal to the Housing Ombudsman Service.

We will assist tenants if the property contains a Category 1 Hazard, a statutory nuisance, or is a House in Multiple Occupation which does not comply with current fire safety and amenity standards, and where the Housing Association's own procedures have not resolved the issue. We will mediate where there are continuing disputes or difficulties, encouraging tenants to follow the RP's complaint procedures, and will intervene where we foresee an immediate risk to health or safety.

### **Council Tenants**

We will investigate complaints relating to conditions in former council-owned properties that have been sold into private ownership and are now rented by landlords to tenants. We have no formal powers to deal with Council-owned dwellings. Complaints relating to the council's own stock are redirected to the appropriate Housing Management Team. Council tenants are advised to contact their area Housing Office directly <https://www.lbhf.gov.uk/housing/council-tenants> .

### **Empty Properties**

The Council will undertake a joined up approach across the council with Council Tax and other Departments to support Corporate strategies to ensure that privately owned empty dwellings in the borough are brought back into use.

Where owners are not willing to engage with the council we will use appropriate enforcement powers. We will carry out any works to remedy any defects affecting neighbouring properties or which may be considered to be a nuisance or a danger to the public. The council will consider the use of Enforced Sale in appropriate cases to facilitate bringing a property back into use and may use Compulsory Purchase Orders under Section 17 of the Housing Act 1985, but only in exceptional circumstances as the consent of the Secretary of State is required and compensation provisions for the owner apply.

Interim and Final Empty Dwelling Management Orders can be made on empty properties and also allows the Council to take control and rent the property out. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

## **6.16 Helpfulness**

We will work with individuals and landlords to help them comply with the law, in the following ways:

- Actively advise landlords (especially small and medium sized landlords) and assist with compliance.

- Officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a phone call if requested);
- Provide advice and information on our website
- Look to provide advice in a specific language, if requested and provide a courteous and efficient service.
- We will minimise the costs of compliance for residents and landlords by ensuring that any action required is proportionate to the risks involved or seriousness of any breach. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when determining action. We will have regard to various courses of remedial action and will consider what is 'reasonably practicable'.
- We will take particular care to work with small landlords and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

## **7 ENFORCEMENT OPTIONS**

The type of enforcement action used should produce the highest reasonable standards of compliance within the least time where practicable. In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- the seriousness of compliance failure
- current business practices, including response to previous advice
- the degree of risk from the situation
- the particular circumstances of the case and likelihood of its continuation or recurrence
- whether any harm was caused
- views of any victim/injured party, financial gain or benefit from a non-compliance
- the general cooperativeness of the offender
- the past history of the person(s), company or premises involved
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender
- the likely effectiveness of the various enforcement options
- any relevant legal provisions, policy or official, professional guidance or advice
- whether the situation undermines the licensing objectives
- whether it is a Category 1 or high-risk Category 2 hazard under the Housing Act 2004
- whether there has been a blatant/reckless disregard for the law
- whether there has been poor management
- whether a conviction is likely to result in a significant penalty
- whether the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance
- whether the defendant has previous convictions or cautions which are relevant to the present offence
- whether the offence, although not serious in itself, is widespread in the area where it was committed
- whether an officer has been obstructed
- whether the cumulative effect of such breaches would be serious even if the breach in itself was not
- whether a prosecution will have a significant deterrent effect
- local priorities of the Service and the Council



- whether any party has been the victim of modern slavery exploitation or human trafficking.

Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant financial detriment.

The options that are available to officers, having considered all the relevant information and in accordance with written procedures, are:

- to take no action
- to give advice either verbal or written
- to take informal action
- to exercise the power of entry
- to serve a preliminary notice or warning letter
- to serve a statutory notice
- to carry out works in default
- to impose a financial penalty
- to prosecute
- to apply for a rent repayment order
- to apply for a banning order
- to notify the Greater London Authority of entries onto the London Landlord and Agent Checker

Further options are available regarding the Licensing of Houses in Multiple Occupation:

- to serve a notice of intention to refuse, grant, revoke or vary a licence
- to refuse, grant, revoke or vary a licence
- to serve a notice of intention to apply for an Interim Management Order
- to apply to the First Tier Tribunal Property Chamber for an Interim Management Order
- to serve notice of intention to make a Final Management Order
- to make a Final Management Order.

### **Option to take no action**

No further action by the Council may be required in certain circumstances, for example if on investigation it is found that:

- there is no breach of relevant legislation or significant nuisance
  - the health and well-being of residents is not particularly at risk or
  - there is no risk to public health generally
  - it is a minor or technical non-compliance that was rectified immediately
- or there are extenuating circumstances such as a public health or other major emergency which over-rides the need to take action on a housing issue.

### **Option to take informal action**

Formal action will normally be pursued in the enforcement of proper standards of housing, because it would be wrong to leave tenants in unhealthy or unsafe housing conditions, which may be prolonged if informal action is taken. Only in specified or exceptional circumstances will informal action be considered, such as:

- when a tenant will not consent to works being carried out by their landlord, or if their complaint is vexatious
- where a deficiency or hazard is not the landlord's responsibility
- where a registered social landlord has a planned programme of works (including the works required by the Council) and the programme will be implemented within a short time and achieve a better overall result
- the defect or breach of duty is not serious enough to warrant formal action
- the consequences of non-compliance will not pose a significant risk to the residents or the public at large
- the complainant or resident elects to take up an alternative remedy
- previous history of the resident or landlord involved suggests that informal action will achieve compliance within a suitable time
- confidence in the landlord is high or they are members of the accreditation scheme for landlords and they continue to adhere to proper standards of management.

This option may involve providing advice, verbal warnings, recommendations for action contained in a letter or referral to another agency for action or an alternative remedy.

### **Option to use Powers of Entry**

In order to enforce the various statutory provisions regarding Statutory Nuisance or the condition of private sector housing, Parliament has also made provision for powers of entry allow certain officers of the Private Sector Housing Team who are properly authorised in writing to require entry to:

- survey
- conduct a valuation
- determine if the Council should use enforcement powers
- determine if a notice has been complied with
- carry out work in default
- determine if an offence has been committed.

These powers of entry usually involve the giving of notice to an occupier and/or owner that an authorised officer wishes to gain entry for a specified purpose on a specified day. On other occasions informal requests for access may result in access being provided. Failure to provide access as requested may result in an offence of obstruction being committed. Some enforcement powers do not require giving advance notice, in which case such notice might not be given (eg HMO inspections where there is a suspicion that offences may have been committed under section 72 or 95).

Formal requests for access under powers of entry requiring notice will state the purpose for which entry is required.

Obstruction of an officer or of a worker or contractor employed by the Council to carry out work in default will be considered for prosecution in accordance with the policy set out above.

Certain powers of entry also provide for a justice of the peace (JP) to issue a warrant authorising entry by force, if needed. The JP must be shown on sworn information in writing, that such entry is necessary for the purpose of survey and examination to determine if any powers should be exercised by the Council under the law for the

purpose of ascertaining if an offence has been committed or to carry out works in default

The JP can only grant the warrant if satisfied that admission to the premises has been refused, or would be refused, or cannot be obtained. Evidence will also be required that the appropriate notice before entry has been given. Alternatively the JP must be satisfied that an application for admission would defeat the purpose of the entry.

Application for a warrant to enter will be made when at least one of the following applies:

- there has been a history of failure to provide access in response to informal and formal requests
- the alleged offence involves a flagrant breach of the law such that the safety, health or well being of residents or others is put at risk.
- the alleged offence involves knowingly or wilfully failing to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty
- the alleged offence involves a failure to comply with a requirement after reasonable notice
- there is a history of similar offences involving risk to the safety, health or well being of residents or others or breach of legal duty
- the purpose of the inspection would be defeated by the service of a notice.

Execution of warrants for entry will be notified to the relevant police office and where appropriate the police may be asked to assist in the execution or to prevent a breach of the peace. Entry may be undertaken by force if necessary.

If the premises subject to the warrant is unoccupied or the occupier is temporarily absent, the Council will leave the premises as effectively secured against trespassers as it was found if it was entered by force. If new locks have been fitted to secure the premises, information will be left on how to obtain the keys.

### **Option to serve a preliminary notice or warning letter**

In most cases formal action under the Housing Act 2004 will be preceded by the service of preliminary notices or warning letters by which the Council sets out a proposed schedule of works and time scales for completion of the work. These invite landlords to make representation if they disagree with the requirements or if they wish to suggest an alternative course of action. If representation is made and the alternatives are not agreed, the landlord will be advised of the reasons for this.

The preliminary notice or warning letter invites landlords to complete an undertaking stating that they agree to the required works and the proposed timescales. If an undertaking is received, no further action will be taken unless the agreement is not adhered to.

The preliminary notice or warning letter advises the landlord that a statutory notice will be served in 14 days if an undertaking is not received or if they do not make a representation.

The statutory notice will normally list the same works as outlined in the preliminary notice or warning letter, unless a further inspection reveals additional remedial work required.

For non-Housing Act 2004 enforcements there is no provision for preliminary notices. In cases where action is required immediately we will serve a notice in the first instance.

### **Option to serve a statutory notice**

Statutory housing notices will be served in the first instance when one of the following situations apply:

- there is no provision in the legislation for the service of a preliminary notice
- there is a lack of confidence in the individual or residents or landlords to respond to an informal approach
- the consequences of non-compliance present a serious risk to residents or the public
- effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk and are deteriorating or likely to deteriorate e.g. gas or electrical hazards
- immediate action is required to deal with a public health matter or statutory nuisance e.g. blocked drains

Statutory notices will only be served by officers who are authorised under the scheme of delegation. Notices will be served in accordance any relevant statutory guidance and codes of practice. Authorised officers will be in possession of sufficient evidence to enforce any statutory notice and be prepared to pursue non-compliance, for example through prosecution, the issuing of financial penalties or works in default.

Wherever possible, the officer serving the notice will attempt to discuss the requirements of the notice with the person responsible for compliance. All notices will specify realistic time limits for compliance.

Failure to comply with a statutory notice will, in general, result in the further legal proceedings and/or the carrying out of works in default of the person responsible for compliance.

Statutory notices will set out details of the right of appeal against the notice as well as the time scale for an appeal and details of where to make the appeal.

A charge may be made to recover the cost of the work involved in preparing a statutory notices under the Housing Act 2004, according to the fees and charges schedule.

### **Option to Carry Out Work in Default**

Failure to comply with a notice may also result in the Council deciding to carry out works required by a notice and recovering the cost incurred.

Where it is legally possible, the Council will consider the need for work in default in each case where a statutory notice is not complied with. Such consideration may be in addition to or instead of the prosecution policy set out above. There will be situations that arise when it is appropriate to carry out work in default because of the urgent nature of the required work or because work has still not been carried out after a previous prosecution.

Notification of the intention of the Council to carry out work in default will be given to all

interested parties in accordance with relevant statutory provisions. Tendering processes and contractors engaged by the Council to carry out work in default will be in accordance with the Council's Financial Limits and Procedures. The schedule of rates for the relevant works will apply when determining the reasonableness of any estimate from a contractor and professional and administration fees will be added to determine the final cost on completion of the work in default.

### **Option to Prosecute or Impose a Financial Penalty**

Civil Financial Penalties for housing offences were established under Housing Act 2004 s.249A (as amended by Housing and Planning Act 2016 Schedule 9). Civil Financial Penalties are also available for failure to comply with the:

- Smoke Alarm and Carbon Monoxide Regulations 2015
- Energy Efficiency Regulations 2015.
- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Tenant Fees Act 2019

Detailed procedures for determining the level of a financial penalty are in Appendix 2.

Where multiple offences are committed and the offender is issued with more than one financial penalty, the council should consider the following guidance from the Definitive Guideline in relation to Offences Taken into Consideration and Totality.

*“The total financial penalty is inevitably cumulative. The council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the council. The council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the council should consider how to reach a just and proportionate financial penalty.”*

The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 SI 2017/367 prescribe that local authorities can use any money recovered under a housing financial penalty to meet the costs and expenses incurred in connection with carrying out any of their enforcement functions in relation to the private rented sector.

The Council has discretion whether or not to prosecute for an offence or impose a financial penalty and the decision will be based on the circumstances of each individual case. Regard will also be had to the Code for Crown Prosecutors.

Prosecution will be related to risk, serious nuisance or other similar situations affecting any individual or the environment, and needs to pass the test that prosecution is “in the public interest” for one of the following reasons. Generally, prosecution will be used instead of a civil financial penalty where one or more of the following criteria apply:

- Aggravating features such as non co-operation, hostility or aggression towards tenants, third parties or officers
- Two previous financial penalties imposed by the same Council on the subject
- Multiple offences relating to the same or different properties committed by the same subject
- Belief by officer that a financial penalty will have little or no deterrent effect or impact on changing behaviour
- Serious injury or death caused by the offence(s)

In all other cases where a financial penalty is available in law, the financial penalty will normally be more appropriate than prosecution, provided there is believed to be sufficient evidence that a specified offence has been committed and that it will act as a sufficient deterrent against re-offending.

Officers investigating offences will seek to ensure that their investigations and decision making is not unduly prolonged and that complainants, witnesses and other parties are kept informed of progress with the case.

### **Option to apply for Rent Repayment Orders**

The Council must apply to a First-tier Tribunal (Property Chamber) for an RRO to recover housing benefit or housing costs element of universal credit paid (to any person) where a landlord has been convicted of one of the offences set out in s.40(3) Housing and Planning Act 2016.

The Council will serve a notice of intended proceedings which will:

- inform the landlord/agent that the authority intends to apply for an RRO and set out the reasons
- state the amount that the authority seeks to recover
- invite the landlord/agent to make representations within a specified period (of not less than 28 days), and
- relate to a period of maximum 12 months of the landlord/agent committing the offence.

The amount the Council seeks to recover cannot exceed the amount of housing benefit or universal credit paid (directly or indirectly) to the landlord/agent in the relevant period.

The authority can apply for an RRO after the expiry of the notice of intended proceedings and after it has considered any representations made.

Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 SI 2017/367 prescribe that local authorities can use any money recovered under an RRO to meet the costs and expenses incurred in connection with carrying out any of their enforcement functions in relation to the private rented sector.

### **Option to apply for a Banning Order**

After considering any representations, the Council may apply for a Banning Order to the First-tier Tribunal (Property Chamber) after a landlord has been convicted of a Banning Order offence. The Council will consider the following factors when deciding whether to apply for a banning order and, if so, the length of the order it will apply for: <sup>2</sup>

- The seriousness of the offence
- Previous convictions
- The harm caused to the tenant
- Punishment of the offender

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697643/Banning\\_order\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf)

- Deter the offender from repeating the offence
- Deter others from committing similar offences.

The Council will serve a notice on the landlord or agent stating why it is applying for a banning order; the length of order it will apply for and that s/he has at least 28 days to make representations in their defence. The notice must be served within six months of the conviction for the banning order offence. After considering any representations the authority must apply to a First-tier Tribunal.

### **Option to Publicise Offences**

Media coverage will normally be sought in the following circumstances:

- Where the offence is widespread in the area and coverage will assist in securing compliance by others; to draw attention to particularly serious hazards.
- The offence is serious and/or was committed wilfully and the council wishes to draw attention to their willingness to deal with offenders. Coverage is otherwise in the public interest.
- Where it is considered that publicity will have the desired effect by promoting compliance with enforcement standards

### **Option to notify the Greater London Authority of entries onto the London Landlord and Agent Checker, and to notify the National Rogue Landlord Database**

Under the Housing and Planning Act 2016, the Council must make an entry on the database where a landlord or property agent has received a Banning Order. The Council may make entries where a landlord or property agent has been convicted of a banning order offence or has received two or more civil penalties within a 12-month period. The Council may also make entries onto the GLA's London Landlord and Agent Checker when a landlord or agent has been convicted or received a financial penalty for any housing related offence. These entries will always be made, after which the landlord or agent may make representations why the information should not be made public. If the representation is accepted by the Council as exceptional reasons not to publish, the Council will agree to the information not being published.

### **Options regarding Licensing of Houses in Multiple Occupation (HMOs) and Selective Licensing**

All decisions in respect of licensing will be taken in accordance with the appropriate legislation and guidance.

A notice of intention will be served on the licence applicant setting out our decision to refuse, grant or vary a licence. These notices invite landlords to make representation if they disagree with the conditions of the licence. If representation is made against the licence conditions and an alternative proposal is agreed, another notice of intention will be served with the agreed amendments. If representation is made and the alternatives are not agreed, the landlord will be advised of the reasons for this in writing.

The notice of intention will be followed by a notice to refuse, grant or vary the licence. A notice of refusal will set out the grounds for the decision not to license the

house. When a licence is granted or varied, specific conditions will be imposed and set out with the notice. In most cases a licence will be valid for five years.

If the Council intends to apply for an Interim Management Order to take control of a house which cannot be licensed, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the landlord before an application is to be made to the Property Tribunal for such an Order. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the application for an Order will be made.

If the Council is satisfied that an Interim Management Order is the only suitable course of action, the notice of intention will be followed by an application to the Tribunal for an Interim Management Order.

If the Council intends to make a Final Management Order to take control of a house which has an Interim Management Order in place, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the landlord before the Order is made. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the Order will be made.

If the Council is satisfied that a Final Management Order is the only suitable course of action, the notice of intention will be followed a Final Management Order.

## **8 IMPLEMENTATION OF THE ENFORCEMENT POLICY**

- 8.1 Relevant Team Managers and Heads of Service will be responsible for ensuring that all enforcement officers are familiar with the requirements and carry out their duties in accordance with this Enforcement Policy.
- 8.2 If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager by telephone on 020 8753 1081 or by e-mail at [phs@lbhf.gov.uk](mailto:phs@lbhf.gov.uk) (or by writing to them at: Environmental Health, Private Housing, 43 Beavor Lane W6 9AR).
- 8.3 Where possible, a complaint will be investigated within 15 working days. A complainant will be advised at the outset about how the complaint will be dealt with and when to expect information on the progress of the investigation.
- 8.4 If a complainant is dissatisfied with the result of their complaint to the Team Manager, the complaint will be reviewed at a higher level, and may ultimately be dealt with by the Director or their nominated deputy. The formal complaints procedure is on the Council's website: <https://www.lbhf.gov.uk/councillors-and-democracy/complaints>

11 May 2020



## Appendix 1

### Powers delegated to officers in Private Sector Housing at PO grades and above (except where specified)

Pursuant to the provisions of the Council's Scheme of Delegations to officers, private sector housing standards officers and managers are authorised to perform the relevant functions and powers specified including:

- to carry out investigations under the various provisions in order to determine the necessary course of action
- to carry out the relevant powers of entry for the various provisions, including where appropriate applying for a warrant of entry and carrying out entry of premises under such a warrant
- to sign and serve appropriate notices and orders under the various provisions and all subordinate regulations and ancillary sections
- to initiate and supervise arrangements for works in default
- to make demands for payment for the costs of works in default and / or for financial penalties in prescribed circumstances agreed in advance with a manager
- to authorise works in default (Managers only)
- to impose financial penalties other than fixed penalty notices (Managers only)
- to initiate prosecution proceedings (Managers only)

<b>SCHEME OF POWERS DELEGATED TO PRIVATE HOUSING OFFICERS AND MANAGERS</b>	
<b>LEGISLATION</b>	<b>SECTION</b>
<b>GENERAL</b>	
Local Government (Miscellaneous Provisions) Act 1976	Section 16 Power to obtain particulars of persons interested in land
Protection from Eviction Act 1977	Section 7 Power to require name and address of landlord to be provided Section 1 Power to initiate proceedings for unlawful eviction or harassment
Local Government (Miscellaneous Provisions) Act 1982	Section 29 Power to undertake works to a building to prevent unauthorised entry
<b>DRAINAGE AND CLEANSING; UTILITIES</b>	
Local Government (Miscellaneous Provisions) Act 1976	Section 33 Power to reinstate gas, electricity and water supplies.  Section 35 Power to serve notices requiring removal of obstructions from private sewers
Building Act 1984	Section 59 Provision as to drainage of existing buildings - service of notices requiring

	<p>satisfactory provisions, etc. Section 60 Provisions as to soil pipes and ventilation shafts - service of notices requiring remedial works.</p> <p>Section 64 Buildings having insufficient closet accommodation or closets so defective as to require reconstruction - Service of notices requiring remedial works.</p> <p>Section 84 Yards and passages to be paved and drained - service of notices requiring remedial works.</p>
Public Health Act 1936	<p>Section 45 Building having defective closets capable of repair – power to serve of notices requiring remedial works.</p> <p>Section 48 Power to examine and test drains believed to be defective.</p> <p>Section 78 Cleansing of courtyards yards and passages - service of notices notifying works, carrying out works and requiring payment for the costs of works</p> <p>Section 79 Removal of noxious matter from premises - service of notices requiring remedial works, carrying out works in default and requiring payment for the costs of works in default.</p>
Public Health Act 1961	<p>Section 17(3) Power to serve notice requiring the remedy of stopped-up drains and the repair of drains and private sewers.</p> <p>Section 22 Power to cleanse or repair drains.</p> <p>Section 34 Power to serve notices and take action in respect of accumulations of rubbish.</p> <p>Section 74 Power to deal with various birds causing nuisance etc.</p>
Public Health Act 1936 as amended by Section 35 of the Public Health Act 1961	<p>Section 83 Cleansing of filthy and verminous premises – power to serve notices requiring remedial works, carrying out works in default and requiring payment for the costs of works in default.</p> <p>Section 84 Power to take remedial action in respect of cleansing of verminous articles.</p> <p>Section 85 Power to take action in respect of verminous persons.</p>

<b>NUISANCES AND PEST CONTROL</b>	
Prevention of Damage by Pests Act 1949	Section 4 Power to serve notices requiring action by owners or occupiers in respect of rats and mice. Section 5 Power to carry out works in default and require payment for the costs of works in default. Section 6 Power to take action in relation to groups of premises for the destruction of rats and mice, etc.
Anti-Social Behaviour, Crime and Policing Act 2014	Power to serve Community Protection Warnings and Notices under sec 43 Part 4 of the Anti- Social Behaviour, Crime and Policing Act 2014.
Town and Country Planning Act 1990	s.215 - Power to require proper maintenance of land
Environmental Protection Act 1990	Power to investigate s.79 Statutory Nuisances and to serve notices under s.80; and power of entry and default powers in Schedule 3
<b>GAS, ELECTRICITY AND ENERGY EFFICIENCY</b>	
The Gas Safety (Installation and Use) Regulations 1998	Power to investigate offences, serve notices and initiate proceedings under s.35 and 36 (duty of employers and landlords to check gas appliances for safety and keep records)
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015	Sec 5 Power to serve a remedial notice, serve notices and initiate proceedings for non-compliance
Electrical Safety Standards in the Private Rented Sector Regulations 2020	Power to investigate offences, serve notices and initiate proceedings for non-compliance
Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	Power to investigate offences, serve notices and initiate proceedings for non-compliance with regulations 23 and 27 (prohibition on letting of sub-standard property)
<b>HOUSING CONDITIONS AND LICENSING</b>	
Housing and Planning Act 2016	Part 2 Take action regarding rogue landlords and property agents in England Section 41 Power to apply for a Rent Repayment Order (Managers only) Section 15 Power to apply for a Banning Order (Managers only) Power to apply for an entry in the national rogue landlords database (Managers only)



<p>Housing Act 2004</p> <p>Managers only</p>	<p>Section 20 and 21 Power to make Prohibition Orders relating to Category 1 or 2 hazards.</p> <p>Section 23 Power to suspend a Prohibition Order.</p> <p>Section 26 Power to review a suspended Prohibition Order</p> <p>Section 25 Power to revoke or vary a Prohibition Order.</p> <p>Section 43 Power to make Emergency Prohibition Order in respect of Category 1 hazards.</p> <p>Section 249A and Schedule 13A Power to impose a financial penalty for a relevant housing offence under Housing Act 2004 (as amended by the Housing and Planning Act 2016, namely:</p> <ul style="list-style-type: none"> <li>(a) section 30 (failure to comply with improvement notice)</li> <li>(b) section 72 (licensing of HMOs)</li> <li>(c) section 95 (licensing of houses under Part 3) – selective licencing</li> <li>(d) section 139(7) (failure to comply with overcrowding notice), or</li> <li>(e) section 234 (management regulations in respect of HMOs).</li> </ul> <p>Power to initiate prosecution proceedings for any offences in the Housing Act 2004</p> <p>Power to carry out works in default and recover expenses under Schedule 3</p>
<p>Housing Act 2004</p> <p>Managers only</p>	<p>Section 102 Power to make Interim Management Order.</p> <p>Section 111 Power to vary Interim Management Order.</p> <p>Section 112 Power to revoke Interim Management Order.</p> <p>Section 113 Duty and power to make a final Management Order.</p> <p>Section 121 Variation of final Management Order.</p> <p>Section 122 Revocation of final Management Order.</p>
<p>Management of Houses in Multiple Occupation (England) Regulations 2006</p>	<p>Reg 6 – Power to make written request for gas safety record</p> <p>Power to initiate proceedings for breach of the regulations (Managers only)</p>

<b>EMPTY DWELLINGS</b>	
Housing Act 2004 sections 133 to 137	<p>Power to make applications for Interim Empty Dwelling Management Orders and to make Final EDMOs</p> <p>Power to make management arrangements and carry out works in default and carry out the Council's duties under Interim and Final EDMOs</p>
Housing Act 1985 section 17	Power to initiate proceedings with a view to Compulsory Purchase of empty dwellings for housing purposes