



# Private Sector Housing and Property Licensing Regulatory and Enforcement Policy

2025 to 2027

## Contents

[Introduction](#)

[Background](#)

[Aims and Approach.](#)

[Property Licensing Regulation and Enforcement](#)

[Private Sector Housing Regulation and Enforcement](#)

[If the Council decide to do works \(Works in Default\)](#)

[Charges, Fines and Debt Recovery](#)

[Publicity in Press and National Databases.](#)

[Joint Operations](#)

[Banning Orders](#)

[Management Orders \(Housing Act 2004, Part 4\), Demolition Orders etc](#)

[Homelessness Prevention](#)

[Proceeds of Crime Act](#)

[Remediation Orders and Remediation Contribution Orders under the Building Safety Act 2022](#)

[Appendix 1 – Policy for Civil Penalty Notices](#)

[APPENDIX 2 – Smoke and Carbon Monoxide Alarm Regulations 2015 and 2022 Enforcement Fines/Penalty Charge Policy.](#)

[APPENDIX 3 – Domestic Minimum Energy Efficiency Standards \(MEES\) Enforcement Fine Policy](#)

[APPENDIX 4 – THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR \(ENGLAND\) REGULATIONS 2020](#)

[APPENDIX 5 – Renters’ Rights Bill 2025](#)

Document Management Ref: PSHPLREP/25

Lead Service Area: Private Sector Housing	Date Created: 24 <sup>th</sup> March 2025
---	---

Author: Anthoney Quinn	Signed off:
------------------------	-------------

Review Date: 1/11/2025	Last Updated: 18/7/2025
------------------------	-------------------------

Reviewed by:	Updated by: AQ
--------------	----------------

## **1.0 Introduction**

This policy distils the Council's objectives for Private Sector Housing and Property Licensing regulatory and enforcement functions. It sets out a plan of action to aid transparency and understanding for all stakeholders. This is to ensure there is accountability, proportionality, and consistency in the Private Sector Housing Team's actions.

This enforcement policy is drawn up in line with the principles of good enforcement outlined in the Enforcement Concordat, the Hampton report, and with specific regard to the Regulator's Code (Legislative and Regulatory Reform Act 2006), and Regulatory Enforcement and Sanctions Act 2008.

In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

## **2.0 Background**

The Council already operates a Mandatory HMO licensing scheme as defined in part 2 of the Housing Act 2004.

A public consultation took place in winter/spring 2024 to collate views on renewing and introducing selective property licensing and additional house in multiple occupation (HMO) licensing schemes. Approval was given to introduce these schemes at the Council's Assembly in September 2024.

A borough wide Additional HMO Licensing scheme came in to force in December 2024. Also in December 2024, The Secretary of State for Housing, Communities and Local Government in exercise of powers under sections 58(5) and (6) and 82(5) and (6) of the Housing Act 2004 gave a general approval for Selective licensing schemes to all local housing authorities in England. Using this general approval the Council agreed to introduce a boroughwide selective licensing scheme from 6<sup>th</sup> April 2025.

The Private Sector Housing Team is responsible for the regulatory functions and enforcement of the private rented sector, using the Housing Act 2004, Environmental Protection Act 1990, Public Health Acts, Building Act and other relevant legislation and associated regulations.

This policy complements the London Borough of Barking & Dagenham Regulatory Services Enforcement Policy Statement. All specific enforcement actions within Private

Sector Housing and Property Licensing shall be made following consideration of this policy.

### **3.0 Aims and Approach**

The PSH Team has a range of legal powers and duties, which we will apply in a firm but fair, open, consistent, and helpful way. Any enforcement action will be compliant with relevant legislation and guidance and shall be in line with the principles of good enforcement outlined in the Enforcement Concordat and the Regulators' Code.

Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution but also includes the inspection of premises for the purposes of checking compliance with legislation, and the provision of advice regarding housing standards.

This enforcement policy helps to promote an efficient and effective approach to regulatory inspection and enforcement and improve regulatory outcomes without imposing unnecessary burdens. This document has been prepared having regard to the Regulator's Code Better Regulation Delivery Office (BRDO April 2014).

In certain instances, officers may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence, and documented.

We aim to ensure that all enforcement and regulatory activity we undertake is:

**Targeted** at properties and people that pose the greatest risk, including owners and landlords who evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

**Proportionate** reflecting the nature, scale and seriousness of any breach or non-compliance. This will ensure that the most serious risks are targeted first and means in some cases that we may take informal action.

**Transparent** our actions will be explained in plain language, with clear reasoning given for any enforcement action taken. Compliance failures or other problems will be discussed with anyone experiencing difficulties. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what would be desirable).

**Consistent** taking a similar approach in similar circumstances to achieve similar ends. This does not mean uniformity, as officers will consider many factors such as the level of risk, the history of compliance, and the attitude and actions of those involved.

**Accountable** undertaken in a responsible manner that has a clear purpose. Where enforcement action is taken, officers shall ensure the target is given information about their rights of appeal and otherwise how they might register a complaint.

## 4.0 Property Licensing Regulation and Enforcement

The Council's property licensing schemes ensure the properties meet specific standards for safety and management. These are detailed in our HMO and Selective Licensing checklists and standards documents.

In general, the Council believes that landlords, owners, and managing agents of rented properties in the borough should proactively keep their properties in good condition and compliant with housing standards regarding management and repair. It is expected that rental properties are regularly inspected by landlords. We recommend that those responsible for renting properties engage with landlord organisations, to network and learn, and thus drive up the standard of management and professionalism within the private rented sector in Barking and Dagenham.

The Council will process property licensing applications in compliance with the Housing Act 2004 and its associated regulations. The team will conduct checks and investigations at the start of any application. Using audits, unannounced inspections and other investigatory techniques, this regulatory process will continue after licences are issued and throughout the life of the licence. Further details on how property licences are processed and decision on revocation, refusals, variations etc, can be found in the Property Licensing Processing Policy.

The Council will conduct proactive checks and enforcement to ensure that property licence conditions and, if applicable, HMO regulations, are being complied with and properties are being managed well. Officers will collaborate with colleagues in other departments and external agencies.

## 5.0 Private Sector Housing Regulation and Enforcement

When a complaint/report is received, it will usually be responded promptly by an officer in the Private Sector Housing Team. The case will be allocated a case officer (CO), and they will be responsible for keeping the complainant up to date, contacting all other interested parties (landlords, residential providers, etc), they will follow reasonable lines

of enquiry and investigate to obtain accurate and reliable information and evidence, to enable themselves to progress the case to an appropriate conclusion.

For most cases, tenants are expected to take their own action to resolve the problem by contacting their landlord and allowing them adequate time to respond. However, the Private Sector Housing (PSH) Team can act if the issues have not been notified to the landlord or owner in high-risk cases. Officers will take this into consideration when managing the case. The overriding objective is the safety of occupiers, visitors, and this will take precedence.

Where property defects or evidence of poor management are identified and are likely to significantly impact on health, the PSH Team will act. Officers will also act where information is not provided, misleading information is given, and when fraud is identified. A significant health impact is defined by existence of a Category 1 hazard, a statutory nuisance, breach of management regulations, and/or any other significant public health hazard.

The PSH Team will usually serve a statutory Notice or Order when Category 1 hazards are identified. Reasonable timescales will be given to complete the works.

For nuisances and other public health matters that are not abated by the responsible person before the Council witnesses the problem, this will usually result in the relevant statutory notice being served. Breaches of HMO management regulations and/or breach of the conditions of a property licence will lead to enforcement.

Where legislation allows, a charge for the service of each notice will be made.

Failure to comply with notices served, will lead to legal action being taken against the appropriate person. Financial penalties will usually be used as the primary enforcement tool.

Prosecutions may be taken as an alternative to a financial penalty. The following factors may be considered but these are not exhaustive:

- Serious neglect of responsibilities as a landlord/agent, or
- Significant harm due to criminality
- Where there have been previous criminal convictions or out of court disposals
- A history of non-compliance with housing and associated legislation
- The criminality has had significant adverse effects on tenants or other victims, or

- Issuing a financial penalty is not likely to change the perpetrator behaviour or the housing conditions.

The PSH Team may also conduct works if a notice has not been complied with (works in default). The cost of the works, and the administrative costs incurred, will be raised as a charge against the property and the Council's debt collection process will seek full recovery through the courts.

**Leaseholder/Freeholder complaints:** The PSH Team will not respond to complaints/reports from leaseholders requesting assistance in acting against other leaseholders or freeholders for breach of contract or become involved in civil disputes (for all tenure types).

Officers will help in cases of exceptional circumstances. This may include cases where there is imminent risk to health. Leaseholders are advised to contact The Leasehold Advisory Service - Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX. Telephone: 020 7832 2500. [www.lease-advice.org](http://www.lease-advice.org) for advice and assistance.

**Residential Provider (RP) (Housing Association) complaints.** The council expects that RP tenants report all issues to their housing association and escalate through their internal processes if unsatisfied. We will not do this on their behalf.

If the housing association has not dealt with the disrepair complaint and RP tenant has escalated their disrepair complaint to the 1<sup>st</sup> stage of their Housing association internal complaints process, then at this point the PSH team will investigate. We will require proof that a stage 1 or equivalent complaint has been made. We will then investigate and enforce the complaints in the same way as for any other private sector housing disrepair complaints. However, we will not have any property licensing powers because RPs are exempt from property licensing.

Where the complaint/report is concerning the actions, or lack of thereof, or conduct outside of officer's remit they will try to assist wherever possible but, they cannot seek compensation or recover damages on tenant's behalf. In these circumstances we advise the complainant to contact the Housing Ombudsman Service (HOS) after using the RPs own internal complaints process. The HOS details are ([www.housing-ombudsman.org.uk/](http://www.housing-ombudsman.org.uk/)) on 0300 111 3000 or email to [info@housing-ombudsman.org.uk](mailto:info@housing-ombudsman.org.uk) written enquires should be sent to The Housing Ombudsman Service, Exchange Tower, Harbour Exchange Square, London, E14 9GE.

**Empty Properties.** The PSH team will address empty properties. This mechanism is detailed in a separate Empty Property Policy.

## **6.0 If the Council decide to do works (Works in Default)**

The owner or responsible person for a rented property are expected to conduct works to remediate an issue both before, and when instructed to, by the service of legal notice or order. If after the service of a notice or order, or on discovery of an imminent risk to health of occupiers or residents, as a last resort the Council may conduct the required works themselves or arrange for specialist contractor/s to do the works and/or provide specialist reports.

If the Council is forced to do the works, it will always be more expensive than if the owners or responsible person arrange to do the works themselves. The Council will seek to recover, not only the full cost of the works, but all costs incurred in organising works, overseeing the works, and the administration costs.

If the debt is not paid within the given Council recovery period the debt will incur interest, and the Council will take legal action to recover the debt.

## **7.0 Charges, Fines, and Debt Recovery**

The Housing Act 2004 and other legislation allow the Council to charge for the service/issue of certain Statutory Notices. The charge is for the cost of investigating and serving the notice or order. This is not a fine or civil penalty. The Council will seek to charge for issuing statutory notices in all but the most exceptional circumstances.

The Housing Act 2004 allows the Council to charge a fee for issuing property licences and other licensing functions. The Council will seek to charge for property licences in all but the most exceptional circumstances. Failure to pay a licence fee will result in the licence being refused or revoked.

The Housing Act 2004 and other legislation allows the Council to directly issue civil penalties or financial penalties (fines) for contravention of legislation including:

- Failure to comply with an Improvement Notice (Section 30)
- Failure to licence an Houses in Multiple Occupation (Section 72) or a property in a Selective Licensing Scheme (Section 95).
- Failure to comply with licensing conditions (Sections 72 and 95)
- Failure to comply with an overcrowding notice (Section 139)
- Failure to comply with management regulations in respect of an HMO (Section 234)

- Breach of a Banning Order, Section 21 of the Housing & Planning Act 2016
- Breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- Breaches of Smoke and Carbon Monoxide Alarm Regulations 2015 and 2022
- Breaches of Domestic Minimum Energy Efficiency Standards (MEES) Regulations.

Failure to pay any fine or other debt, such as works in default, may result in any property licence being refused or revoked. The Council will also actively recover fines and debt. It will use the strongest legal options to collect any unpaid civil penalty, fines, works in default cost, or other debt. Officers may use one or more options for debt recovery.

These are:

- Requesting High Court Enforcement Officers (HCEO) to recover debt
- Seeking and Enforcing a County Court Judgement
- Sending bailiffs or HCEOs to collect payment
- Seeking deduction from wages
- Placing a charge on the debtors' property
- An enforced sale
- Other legal action as appropriate

The Council's fees and charges are reviewed annually and may increase. Details of current charges can be found on the Council's webpages.

## **8.0 Publicity in Press and Notifications on National Databases**

The Council will work with various media organisations and other persons to deter, promote, and inform people about our enforcement work.

We will publish prosecutions and civil penalty charge notices on our website, social media channels, the Greater London Authority (GLA) Rogue Landlord Checker, the Ministry of Housing, Communities and Local Government (MHCLG) statutory database, and on other databases we are legally required to update or provide data to.

Media coverage will normally be sought where the offence/s are serious or involve significant factors such as the risk to health of tenants, visitors or neighbours, the exploitation of tenants, anti-social behaviour, or regarding an issue affecting the wider area or private rented sector.

Officers will proactively work with the media to assist in securing compliance by other responsible parties and to help inform others affected by similar issues. Media work

will also be undertaken to support other local authorities and regulatory partners in their enforcement efforts. Especially where the perpetrator/s operate across borough boundaries.

Media coverage will be sought to provide potential renters and tenants with information to enable them to check if their landlord or agent has a history of non-compliance. This to ensure the private rented housing market operates in a fair, equal, and open way, to prevent tenants from being exploited by dishonest landlords/ agents, and to create a level playing field for compliant landlords/agents.

Press releases will be issued regarding convictions where it is considered that publicity will bring in benefits by promoting compliance with statutory requirements designed to protect the health, safety and welfare of customers, residents, workers, and visitors.

Due regard will be given to general data protection acts and regulations, freedom of information acts and regulations and the public interest test.

## **9.0 Joint Operations**

The PSH Team work with other regulatory bodies both internally and externally. Officers may conduct joint visits with the Police, London Fire Brigade, Home Office Enforcement, and other stakeholders. The Council will share and exchange appropriate information in compliance with the Data Protection Act and GDPR regulations.

## **10.0 Banning Orders**

The Housing and Planning Act 2016 allows Councils in England to apply for a Banning Order against a person who has been convicted of a Banning Order offence.

A Banning Order is an Order issued by the First-Tier Tribunal Property Chamber (Residential Property) (FTT) and can ban a landlord from:

- Letting housing in England.
- Engaging in English letting agency work.
- Engaging in English property management work, or
- Doing two or more of the above

A landlord, or agent, against whom a Banning Order has been made, may not let or manage any residential property for the duration of the order.

A Banning Order offence is defined in the Housing Act 2004, and Housing and Planning Act 2016, and their associated regulations.

The Council will pursue a Banning Order for the most serious offenders and where we are required to do so by law. The Head of Service, or PSH Manager, will make the final decision as to whether to apply for a Banning Order and the duration of the order. The decision will be made on a case-by-case basis regarding the following factors:

**The seriousness of the offence.** In considering the seriousness of the offence, we will consider the sentence imposed by the Court in respect of the Banning Order offence, for example whether the offender received a maximum or minimum sentence. However, other factors will also be considered.

**Previous convictions/rogue landlord database.** We will check the Rogue Landlord Database and any other relevant databases to establish whether a landlord has committed other Banning Order offences or has received any Civil Penalties in relation to Banning Order offences. A longer Banning Order may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.

**The harm caused to the occupier.** Account will be taken of the harm or potential for harm to the occupier caused by the Banning Order offence. The greater the harm or the potential for harm (this may be as perceived by the occupier), the longer the proposed length of the ban is likely to be.

**Punishment of the offender.** The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that we set Banning Orders at a high enough level to remove the worst offenders from the sector. We will seek to ensure that the Banning Order has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

**Deter the offender from repeating the offence.** In imposing a Banning Order, we seek to prevent further offending. The length of the ban we propose will therefore prevent the most serious offenders from operating in the sector or, in certain circumstances, help ensure that the landlord fully complies with all their legal responsibilities in future. The length of ban will therefore be set at a long enough period that it is likely to deter the offender from repeating the offence.

**Deterring others from committing similar offences.** An important part of deterrence of others is the realisation that (a) the local authority is proactive in applying for Banning Orders where the need to do so exists, and (b) that the length of a Banning Order will be set at a high enough level to both punish the offender, and deter repeat offending.

**Other Matters.** The Council will have regard to any other matters considered relevant to the decision. This may include, but not be limited to, information held in relation to other enforcement action taken against the landlord or agent by this and other local and law enforcement authorities in respect of their activities in relation to residential properties. We will have regard to any other non-compliance which has been demonstrated.

The Housing and Planning Act 2016 permits the Council to require a landlord to provide information for the purpose of enabling us to decide whether to apply for a Banning Order. This could include but is not limited to requiring a landlord to provide information on all properties in his/her ownership. We will use this power where we consider that it will help us to achieve our policy aims and exercise our statutory powers and responsibilities effectively.

It is an offence for a landlord not to comply with this request unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction with a fine.

### **Procedure for making a Banning Order**

Where the Council intends to apply for a Banning Order, a 'Notice of Intent' will be issued to the landlord within 6 months of the conviction of a Banning Order offence. The Notice of Intent will set out why we intend to apply for a Banning Order, the proposed length of the Banning Order, and the landlord's right to make representations. The landlord then has 28 days to make representations. We will consider any representations made during that 28-day period before deciding whether to make the application for a Banning Order.

If the Council decides to proceed, a Banning Order application will be made to the HMCTS's First Tier Tribunal (FTT).

The FTT will consider the Council's application and decide whether to issue a Banning Order, and if it decides to issue a Banning Order, how long the Banning Order should last.

A Banning Order must specify the duration of the Order, and it must last for at least 12 months. There is no maximum duration.

Only the FTT can revoke or vary a Banning Order.

Where a Banning Order includes a ban on letting, a landlord (unless authorised by the FTT) is prevented from transferring the property to certain persons whilst the Banning Order is in force, including family members, business partners and their associates, or a corporate body where the landlord is an officer.

A Banning Order does not invalidate any tenancy agreement/s held by occupiers in the property, regardless of whether the tenancy agreement was issued before or after the Banning Order. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

A landlord may appeal to the Upper Tribunal against the decision of the FTT to make the Banning Order.

Government guidance encourages local housing authorities to publicise successful Banning Orders for individual landlords. The Council will also have regard to Ministry of Justice guidance when deciding whether to publicise outcomes.

### **Breach of Banning Orders**

Breach of a Banning Order is a criminal offence. Where a landlord or agent breaches a Banning Order, they can be prosecuted by the Council or face a Financial Penalty of up to £30,000 as an alternative to prosecution (see Appendix 1). If the breach continues after conviction or financial penalty, and the landlord commits a further offence, they are liable to further prosecution or Financial Penalty.

Where the landlord lets a property in breach of a Banning Order, the Council can make an Interim Management Order to take over the management of the property. The primary aim of which is to safeguard the health and safety of the occupiers.

In addition, a Council, or a tenant, can apply to a FTT for a Rent Repayment Order where a landlord has breached a Banning Order.

## Banning Order Offences

	<b>Statute</b>	<b>Provision</b>	<b>Offence</b>
1.	Protection from Eviction Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
2.	Criminal Law Act 1977	Section 6(1)	Violence for securing entry
3.	Housing Act 2004	Section 30(1)	Failing to comply with an improvement notice
	Housing Act 2004	Section 32(1)	Failing to comply with a prohibition order
	Housing Act 2004	Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
	Housing Act 2004	Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3
	Housing Act 2004	Section 139(7)	Contravention of an overcrowding notice
	Housing Act 2004	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
	Housing Act 2004	Section 238(1)	False or misleading information
4.	Regulatory Reform (Fire Safety) Order 2005	Article 32(1) and (2)	Fire safety offences
5.	Health and Safety at Work etc. Act 1974	Section 33(1)(c) where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998	Gas safety offences - duties on landlords
6.	Immigration Act 2014	Section 33A (1) and (10)	Residential tenancies – landlord offences
	Immigration Act 2014	Section 33B (2) and (4)	Residential tenancies – agent offences
7.	Fraud Act 2006	Section 1(1)	Fraud
	Fraud Act 2006	Section 6(1)	Possession etc. of articles for use in frauds
	Fraud Act 2006	Section 7(1)	Making or supplying articles for use in frauds
	Fraud Act 2006	Section 9(1)	Participating in fraudulent business carried on by sole trader etc.
	Fraud Act 2006	Section 11(1)	Obtaining services dishonestly

	Fraud Act 2006	Section 12(2)	Liability of company officers for offences by company
8.	Criminal Justice Act 2003	Schedule 15	Specified violent and sexual offences
9.	Misuse of Drugs Act 1971	Section 8	Occupiers etc. of premises to be punishable for permitting certain activities to take place there
	Misuse of Drugs Act 1971	Section 9	Prohibition of certain activities relating to opium
	Misuse of Drugs Act 1971	Section 9A (1) and (3)	Prohibition of supply etc. of articles for administering or preparing controlled drugs
	Misuse of Drugs Act 1971	Section 18(1), (2), (3) and (4)	Miscellaneous offences
	Misuse of Drugs Act 1971	Section 19	Attempts etc. to commit offences
	Misuse of Drugs Act 1971	Section 20	Assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law
	Misuse of Drugs Act 1971	Section 21	Offences by corporations
10.	Proceeds of Crime Act 2002	Section 327	Concealing etc. criminal property
	Proceeds of Crime Act 2002	Section 328	Arrangements
	Proceeds of Crime Act 2002	Section 329	Acquisition, use and possession
11.	Protection from Harassment Act 1997	Section 2	Offence of harassment
	Protection from Harassment Act 1997	Section 2A	Offence of stalking
12.	Anti-social Behaviour, Crime and Policing Act 2014	Section 30	Breach of criminal behaviour order
	Anti-social Behaviour, Crime and Policing Act 2014	Section 48	Failure to comply with a community protection notice
13.	Criminal Damage Act 1971	Section 1(1)	Destroying or damaging property
	Criminal Damage Act 1971	Section 2	Threats to destroy or damage property
	Criminal Damage Act 1971	Section 3	Possessing anything with an intent to destroy or damage property
14.	Theft Act 1968	Section 7	Theft
	Theft Act 1968	Section 9	Burglary
	Theft Act 1968	Section 21	Blackmail

The above offences are banning order offences:

- An offence listed in any of items 1 to 5 of the Schedule, unless the sentence imposed on the person convicted of the offence ("the offender") is an absolute discharge or a conditional discharge.
- An offence listed in item 6 of the Schedule.
- An offence listed in any of items 7 to 14 of the Schedule if:

- The offence was committed against or in collusion with a tenant occupying any housing (or another person occupying that housing with the tenant) or the offence was committed at or in relation to that housing.
- At the time the offence was committed, the offender was the residential landlord or property agent of that housing or an officer of a body corporate who was the residential landlord or property agent of that housing; and
- The offender was sentenced for the offence in the Crown Court

## **11.0 Management Orders (Housing Act 2004, Part 4), Demolition Orders, etc.**

The Council may decide to seek an Interim Management Order (IMO), if, following assessment:

- There is no reason to believe the property will be licenced,
- There is a breach of certain licensing offences, where the health and safety or welfare of the occupants is at serious risk (the 'health and safety condition' section 104 Housing Act 2004), and/or
- Breach of a Banning Order by the landlord or agent.

An IMO lasts for a maximum of 12 months and gives control of the subject property to the Council. It is a temporary measure designed to provide time for a longer-term management solution to be found or, if that is not possible, before the making of a Final Management Order.

At the end of the Interim period a Final Management Order (FMO) of up to 5 years may be sought, which follows the same principles as the IMO, but on a longer-term basis. The main differences between an IMO and FMO are that the Council may (under certain circumstances) create tenancies without the landlords' consent and the Council must have management scheme in place relating to the long-term management of the property.

When deciding to seek any type of Management Order the Council will consider the following:

- Is this the most appropriate course of action?
- Financial Implications
- Staffing Implications
- Implications for Occupants
- Implications for owners

Making a Demolition Order under Section 265 (Housing Act 1985 as amended by Section 46 Housing Act 2004) will be taken when it is the most appropriate course of action. This is usually when there are one or more serious Category 1 hazards, the property is detached or there is a building line separating it from other properties, the adjacent properties will be stable and weatherproof or can readily be made so, it is in

a potentially unsustainable area or it is causing severe problems to the amenity of the neighbourhood and repair would be very costly, it is not listed under the Planning Acts or is of other notable historical interest.

Declaring a Clearance Area under Section 289 (Housing Act 1985 as amended by Section 47 Housing Act 2004) will be considered where there are similar circumstances to those for determining a Demolition Order exist in a group of properties, where it is necessary for the Council to acquire the land either for its own purposes or to sell on for either new build or other purposes favoured by the majority of persons affected. Area committee views are relevant to any decision to declare a Clearance Area. This action will be followed by seeking a Compulsory Purchase Order or through voluntary acquisition.

For Empty Dwelling Management Orders and Compulsory Purchase Orders please see the empty property policy

## **12.0 Homelessness Prevention**

The Council has powers to investigate and prosecute offences of illegal eviction, harassment and offences committed by landlords, letting or management agents under the Protection from Eviction Act 1977.

Officers will provide advice, signpost, and take legal action when private rented sector housing residents have been:

- Harassed by their landlord, licence holder, managing agent or other person involved with the management of the property,
- Threatened with acts of violence by their landlord, licence holder, managing agent or other person involved with the management of the property,
- Had essential services withdrawn, or
- Been threatened with homelessness.

The Council will take appropriate action to prevent homelessness where landlords have not followed the correct legal procedures or attempt a retaliatory eviction for raising a concern about the quality of their accommodation.

With reports/complaint of harassment or illegal eviction Officers will aim to respond on the same (working) day and will contact the landlord or agent, as soon as practicable. They will, where possible/practical, aim to resolve matters by mediation. Officers will investigate allegations impartially.

However, the Council will institute formal legal proceedings when we consider there has been a wilful refusal to co-operate, an unreasonable delay, or the circumstances are of a serious nature, so it is in the public interest.

The Council will ensure that officers who perform enforcement duties are appropriately qualified and trained.

Officers will carry authorisation in the form of a warrant card, and the Council will ensure that this authorisation is reviewed periodically to reflect changes in legislation, and the powers delegated under statute and the Council's Constitution and Scheme of Delegation.

### **13.0 Proceeds of Crime Act**

Where landlords or others have benefited from the proceeds of criminal activity associated with private sector housing functions, an application may be made to recover any benefit, such as a Confiscation Order under the Proceeds of Crime Act 2002. We also may work jointly with the Police or other organisations. We will seek a proportionate amount of recovered funds through the Asset Recovery Incentivisation Scheme (ARIS).

### **14.0 Remediation Orders and Remediation Contribution Orders under the Building Safety Act 2022**

Where relevant landlords fail to remedy specified fire safety defects in a timely manner, the Building Safety Act 2022 allows the Council to make an application for a Remediation Order and/or Remediation Contribution Order to the HMCTS's First Tier Tribunal (Property Chamber-Residential Property). The Council will review the specific circumstances of each case and determine the most appropriate action to take in consultation with the London Fire Brigade.

### **15.0 Injunction**

The Council may seek an Injunction under Section 222 of the Local Government Act 1972 where there are exceptional circumstances, where there is a clear need to protect the health, safety, or wellbeing of a resident, and where nothing short of an injunction will be effective.

The Council may apply for an injunction against the landlord in cases where some form of enforcement action has been taken, a serious legal breach has been witnessed, but remedial works or actions have not been carried out, and there appears to be no realistic prospect of the landlord doing so. Injunctions will only be sought in the most exceptional of circumstances where residents are left exposed to serious defects and hazards. The following principles will apply when considering this option:

- An injunction will only be considered in exceptional circumstances and with great caution,
- The breach will have to be particularly serious, and urgent action needed to protect the residents exposed to such conditions, and
- There will be consideration of whether the unlawful conduct will continue unless an injunction is sought.

## **Appendix 1 – Policy for Civil Penalty Notices**

In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms 'House of Multiple Occupation' or 'HMO' are defined by the Housing Act 2004.

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provide local authorities with the power, through the insertion of Section 249A Housing Act 2004, to impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice [Section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 [Section 72]
- Offences in relation to the Selective Licensing of 'houses' under Part 3 [Section 95]
- Failure to comply with an Overcrowding Notice [Section 139]
- Failure to comply with a management regulation in respect of an HMO [Section 234]

In addition, Section 23 of the Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at the same property, a separate civil penalty can, and will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.

The general objective of this policy is, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties in the Council (a) know how the Council will penalise relevant offences and (b) are assured that, like cases will be penalised similarly, and different cases penalised differently. The further objectives of using financial penalties as a means of enforcing the above offences are explained below.

### **Statutory Guidance**

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled "Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities." The Council must have regard to this guidance in the exercise of functions in respect of civil penalties.

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending.' The same paragraph sets out several factors that should be considered to ensure that the civil penalty is set at an appropriate level in each case, These are:

- **Severity of the offence.** The more serious the offence, the higher the penalty.
- **Culpability and history of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- **The harm caused to the tenant.** This is a crucial factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence.** The goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of

civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

- **Remove any financial benefit** the offender may have obtained because of committing the offence. The guiding principle here should be to ensure that the offender does not benefit because of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and responsibly managed.

The factors detailed in the statutory guidance and policy aims will be considered by the Council when deciding where, within the Civil Penalties matrix below, a particular offence, and therefore its penalty, falls.

### **Other Policy Aims**

The Council is mindful that despite its best efforts, many landlords may operate unlawfully for a significant period without detection, and only a proportion of landlords committing relevant offences will be discovered. The Council is, therefore, mindful that when deciding to impose a Civil Penalty, it should create an environment where it is clear to the offender and others that operating unlawfully as a landlord will be financially disadvantageous when compared to operating lawfully.

The Council intends to create an environment where landlords engage with the Council's requirements fulsomely, openly, and honestly. This helps creates a level playing field which supports the aims of transparency and consistency. No landlord should be able to financially benefit from withholding information the Council deems relevant that is, or should be, in their control to disclose. It is expected that fulsome and complete supporting evidence is provided to support any Written Representations received in response to a Notice of Intent.

### **Civil Penalties Matrix**

In determining the level of a civil penalty, officers will have regard to the Matrix set out below, which is to be read in conjunction with the associated guidance. The Matrix is intended to provide indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors the Council deems significant including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.

In deciding what level of penalty to impose, officers will conduct the following four stage process.

- First, they will consider the seriousness of the relevant housing offence to identify a starting level of the penalty.
- Second, an assessment of the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property will be considered, which may have the effect of increasing or decreasing the penalty.
- Third, related aggravating and mitigating factors including, but not limited to, culpability, history and harm will be considered, which may have the effect of increasing or decreasing the penalty.
- Fourth, if any of the Discounts, as set out below, apply, the penalty will be decreased.

Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table below with the headings 'Seriousness of offence' and 'Starting level [£].' Consideration of the number and type of rental properties controlled, owned, or managed may adjust the penalty.

If a single aggravating factor is identified, the penalty will normally be increased by up to, but not exceeding, £5000. If there are numerous aggravating factors officers may consider that to amount to exceptional circumstances, so that the penalty may be increased significantly more than £5000 on account of aggravating factors. There may be an increase in the penalty in respect of each such factor. The penalty will normally be reduced by up to, but not exceeding, £5000 if one or more mitigating factors is/are identified. For the avoidance of doubt, the presence of one or more mitigating factors will not of itself amount to exceptional circumstances so that the penalty may not be reduced by greater than £5000 on account of mitigating factors. The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad circumstances that might give rise to mitigation.

The Council may, exceptionally, including for the reason given above, increase the penalty by greater than £5000 on account of aggravating factors or, again exceptionally, decrease it by greater than £5000 on account of mitigating factors. In order to meet the objectives of this policy and of financial penalties in particular, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £5000 on account of aggravating or mitigating factors in exceptional circumstances only excluding any Discounts as set out below. The Council will consider on a case-by-case basis whether any such circumstances exist.

Seriousness of offence	Starting level [£]
Mild	2500
Moderate	7500
Serious	12500
Very Serious	17500
Severe	22500
Very Severe	27500

**Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty.**

**Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004**

*Maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice - Unlimited*

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should conduct to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

In some cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to conduct improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

The seriousness of the offence is viewed by the Council as being a Severe matter, attracting a financial penalty with a starting level of £22500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features, (see below), will attract a civil penalty of £22500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £27500.

#### *Aggravating features/factors specific to non-compliance with an Improvement Notice*

The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the occupant[s] in the property or their guests would justify an increase in the level of the civil penalty.

#### *Generic aggravating features/factors*

The Council will have regard to general factors in determining the final level of the civil penalty including, but not limited to:

- A previous history of non-compliance would justify an increased civil penalty. Non-exhaustive examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were 'spent'), receipt of financial penalties, rent repayment orders, works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- A failure to cooperate with a Council investigation. Non-exhaustive examples of failure to cooperate would include failing to comply with a s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with a s.235 Housing Act 2004 notice, failing to provide a substantive response to a letter of alleged offence.

- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after the Council sent relevant correspondence.
- The number of residents placed at risk.
- Offending over an extended period i.e. 6 months or longer.

## **Failure to License offences**

*Maximum Court fine following prosecution that can be levied for failure to license an HMO or Part 3 House – Unlimited*

### **Failure to license a Mandatory 'HMO' – Section 72(1) of the Housing Act 2004**

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority. HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

This seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant.

Factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £22500.

*Aggravating features/factors specific to failure to licence offences*

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

**Failure to license a property under the Council's Additional [HMO] Licensing Scheme – Section 72(1) of the Housing Act 2004**

The Council would view the offence of failing to license an HMO under an additional licensing scheme as a significant failing. If the Council introduces additional HMO licensing, it will be amongst other reasons, in order to regulate management, conditions, standards and safety in the properties considered to represent a higher risk to tenants as regards such matters as fire safety and overcrowding compared with properties occupied by a single-family household.

This seriousness of the offence is viewed by the Council as being a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or

two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £17500.

#### *Aggravating features/factors specific to failure to licence offences*

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.

#### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above.

### **Failure to license a property under the Council's Selective Licensing Scheme – Section 95(1) of the Housing Act 2004**

The Council has also exercised their powers under section 80 Housing Act 2004 and has designated all wards in the Borough as a selective licensing area. Under this scheme, which came into force on 1st September 2019 and expires on 31st August 2024, most privately rented homes which are occupied by a single-family household or by no more than 2 unrelated persons, are required to have a property licence to operate in the borough. Through the Selective Licensing scheme, which was introduced to combat anti-social behaviour that exist in privately rented homes, the Council intends to improve the professionalism of private landlords and drive-up property standards.

The Council would view the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

This seriousness of the offence is viewed by the Council as being a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £17500.

#### *Aggravating features/factors specific to non-licensing offences*

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, a property that required a Selective Licence and was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

#### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above.

### **Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004**

*Maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice – Unlimited*

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. The notice specifies, on a room-by-room basis, the maximum number of persons

allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.

The seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £22500.

#### *Aggravating features/factors specific to non-compliance with an Overcrowding Notice*

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty

#### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above.

### **Failure to Comply with a Banning Order – Section 21 of the Housing and Planning Act 2016**

*Maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.*

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. If the Council were satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

**Failure to Comply with The Management of Houses in Multiple Occupation [England] Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007**

*Maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation - unlimited*

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 in respect of:

- Providing information to occupiers [Regulation 4]
- Taking safety measures, including fire safety measures [Regulation 5]
- Maintaining the water supply and drainage [Regulation 6]

- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 7]
- Maintaining common parts [Regulation 8]
- Maintaining living accommodation [Regulation 9]
- Providing sufficient waste disposal facilities [Regulation 10]

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

**Failure to comply with the duty of manager to provide information to occupier.**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide information to occupier as a Mild matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £2000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £2000, attracting a civil penalty of £4500.

*Aggravating features/factors specific to Management Regulation breach offences*

- The number and nature of the management regulation breaches
- The nature and extent of deficiencies within each regulation

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

## **Duty of manager to take safety measures**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to take safety measures as a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £22500.

### *Aggravating features/factors specific to Management Regulation breach offences*

- As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

## **Duty of manager to maintain water supply and drainage**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the water supply and drainage as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £17500.

*Aggravating features/factors specific to Management Regulation breach offences*

- As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

**Duty of manager to supply and maintain gas and electricity.**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the gas and electricity supply as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £17500.

*Aggravating features/factors specific to Management Regulation breach offences*

- As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

**Duty of manager to maintain common parts, fixtures, fittings, and appliances**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the common parts, fixture, fittings, and appliances as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £12500.

*Aggravating features/factors specific to Management Regulation breach offences*

- As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

**Duty of manager to maintain living accommodation**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the living accommodation as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £12500.

#### *Aggravating features/factors specific to Management Regulation breach offences*

- As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

#### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

#### **Duty to provide waste disposal facilities.**

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide waste disposal facilities as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more

HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £12500.

*Aggravating features/factors specific to Management Regulation breach offences*

- As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

**Breach of licence conditions – Section 72(3) Housing Act 2004 and Section 95(2) Housing Act 2004**

*Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited*

All granted property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property including, but not limited to:

- Ensuring gas installations and appliances are in a safe condition
- Ensuring electrical appliances are in a safe condition
- Undertaking Gas Safe and electrical checks
- Installing and maintaining smoke alarms and carbon monoxide alarms
- Obtaining tenant references, providing written tenancy agreements, and protecting deposits
- Notifying the Council in any specified changes in circumstances
- Conducting specified measures to prevent or address anti-social behaviour
- Ensuring that the gardens are free from refuse
- Ensuring that the property is free from pests or infestations
- Arranging access is arranged for Council Officers to survey the property to ensure compliance

For HMO, licences granted under part 2, conducting works that were a condition of the granted licence or reducing occupation levels as necessary.

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

## **Failure to comply with licence conditions related to signage or information for tenants.**

The Council would view the seriousness of the offence of failing to comply with a licence condition relating to signage or information for tenants as a Mild matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling, owning, or managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £2000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £2000, attracting a civil penalty of £4500.

### *Aggravating features/factors specific to Licence Condition breach offences*

- The number and nature of the licence condition breaches
- The nature and extent of deficiencies within each licence condition breach

### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

## **Failure to comply with licence conditions related to procedures for dealing with complaints, ASB, vetting of incoming tenants, licence conditions relating to maintenance of common parts and living areas, licence conditions relating to waste receptacles, minor repairs, alterations, or decoration.**

The Council would view the seriousness of the offence of failing to comply with a licence condition relating to procedures for dealing with complaints, ASB, vetting of incoming tenants, licence conditions relating to maintenance of common parts and

living areas, licence conditions relating to waste receptacles, minor repairs, alterations or decoration as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £12500.

#### *Aggravating features/factors specific to Licence Condition breach offences*

- The number and nature of the licence condition breaches
- The nature and extent of deficiencies within each licence condition breach

#### *Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

### **Failure to comply with licence conditions related to the provision of documentation regarding fire detection, emergency lighting, gas installations or electric installations.**

The Council would view the seriousness of the offence of failing to comply with a licence condition relating to the provision of documentation regarding fire detection, emergency lighting, gas installations or electricity installations as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £17500.

*Aggravating features/factors specific to Licence Condition breach offences*

- The number and nature of the licence condition breaches
- The nature and extent of deficiencies within each licence condition breach

*Generic aggravating features/factors*

- As set out under 'Failure to comply with an Improvement Notice' above

**Failure to comply with licence conditions related to minimum floor areas.**

The Council would view the seriousness of the offence of failing to comply with a licence condition relating to minimum floor areas as a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £22500.

### *Aggravating features/factors specific to Licence Condition breach offences*

- The number and nature of the licence condition breaches
- The nature and extent of deficiencies within each licence condition breach
- Failure to comply with licence conditions related to the condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations or fire detection and prevention including provision of safe means of escape.

The Council would view the seriousness of the offence of failing to comply with a licence condition relating to the condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations or fire detection and prevention including provision of safe means of escape as a Severe matter, attracting a financial penalty with a starting level of £22500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £22500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £27500.

### *Aggravating features/factors specific to Licence Condition breach offences*

- The number and nature of the licence condition breaches
- The nature and extent of deficiencies within each licence condition breach

### **Process for imposing a civil penalty and the right to make representations.**

Before imposing a financial penalty on a person, the Council will give the person a Notice of Intent.

A person who is given a Notice of Intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be

made within a 28-day period, this period starting the day after the date on which the Notice of Intent was given. As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from the Civil Penalties Matrix and guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide fulsome and cogent evidence to support the existence of any such circumstances when they make representations in response to the notice.

In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.

After the end of the period for representations the Council will:

- (a) Decide whether to impose a financial penalty on the person, and
- (b) If it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any written representations received in the appropriate period.

Furthermore, an offender's compliance with the identified breach during the representation period would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate i.e. compliance at that stage would be relevant to the amount of any imposed financial penalty (see 'Discounts' below).

If, following the receipt of written representations and/or the expiry of the period to make written representations, the Council decides to impose a financial penalty on the person, it will give the person a Final Notice imposing that penalty.

The Final Notice will set out and summarise:

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,
- d) The period for payment of the penalty,

- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

### **Discounts**

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

- In the event that the offender rectifies the identified breach, for example by making a duly made application to license a previously unlicensed address, within the representation period at the 'Notice of Intent' stage (i.e., within the period of 28 days beginning with the day after that on which the Notice of Intent was given), the Council would reduce the level of any figure that would have otherwise been imposed in the Final Notice ("the original calculated financial penalty) by 20%;
- A discount of 20% of the original calculated financial penalty will be deducted from the penalty imposed in the Final Notice should the penalty be paid within a specified period (normally 28 days). This discount would be in addition to any reduction applied because of compliance at the Notice of Intent stage.

### **Illustrative example**

The landlord of a Mandatory HMO property fails to obtain a licence. They only operate two HMO properties and there are no other relevant factors or aggravating features. The offence is regarded as a Very Serious matter. Upon receipt of the 'Notice of Intent' to impose a £17500 financial penalty, the landlord makes a complete application for the HMO licence, including all required documentation and paying all relevant application fees, within the period allowed for representations. Written representations are made to the Council.

Because of the written representations received by the landlord, without the landlord having rectified the breach, the Council would have imposed a financial penalty of £16000 ("the original calculated financial penalty"). Because of the landlord rectifying the breach the penalty imposed in Final Notice was £12800 (£16000 with a 20% discount). In the event the landlord pays within 28 days of the date of the Final Notice a further 20% discount is given so that the landlord makes a discounted payment of £9600 (£12800 with an additional 20% discount of original calculated financial penalty of £16000).

## **APPENDIX 2 – Smoke and Carbon Monoxide Alarm Regulations 2015 and 2022 Enforcement Fines/Penalty Charge Policy.**

### **STATEMENT OF PRINCIPLES (under Regulation 13)**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced legal duties on private sector landlords from the 1<sup>st</sup> of October 2015 in respect of premises occupied under tenancies starting on or after that date. These were amended in the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022.

The main requirements are to:

1. Install a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. Install a carbon monoxide alarm in any room of the premises which is used as living accommodation and contains a fixed combustion appliance (excluding gas cookers).
3. Ensure smoke alarms and carbon monoxide alarms are repaired or replaced by the landlord/licence holder once informed and found that they are faulty.

These regulations also added mandatory property licence conditions (Selective, Additional or Mandatory HMO).

### **ENFORCEMENT**

Where the council has reasonable grounds for believing that the relevant landlord has breached one or more of their legal duties,

- 1) If the property has a property licence (Selective, Additional or Mandatory HMO) then we will investigate it as a breach of their licence conditions under sections 72 or 95 of the Housing Act 2004. We will take enforcement action as stated elsewhere in this policy.
- 2) If no licence application is in place for the property, then the Council shall, within 21 days, serve on the landlord a Remedial Notice detailing the actions that must be taken to comply with the regulations.
- 3) If within 28 days of becoming aware the remedial notice has not been complied with, the Council will,
  - a. If the necessary consent is given, arrange for an authorised person to take the remedial action specified in the remedial notice.  
And
  - b. Issue a Penalty Charge Notice on the responsible landlord.

## **PENALTY CHARGE PRINCIPALS**

The absence of working smoke alarms and carbon monoxide alarms in residential premises is a serious and significant risk to the occupants, adjacent properties, and the surrounding neighbourhood.

In the year ending June 2022, 279 people lost their lives due to a fire at home. Fires where a smoke alarm was not present accounted for 24 per cent of all dwelling fires and 37 per cent (76) of all dwelling fire-related fatalities. The most common cause of death for fire-related fatalities (where the cause of death was known) was "overcome by gas or smoke," given in 32 per cent (88) of fire-related fatalities. Smoke alarms and early warning play a vital part to reduce these statistics.

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of detectors and alarms is low. In many cases, they can be self-installed without the need for a professional contractor.

The impact on occupiers, potential loss of life, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event, are far out of proportion to the low cost of installing alarms or detectors.

Therefore, the Council feels the imposition of the maximum potential fixed penalty charge of £5,000 is justified, and this will be the amount usually charged.

In some cases, this could present an excessive financial burden, but this is balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have already been given to comply prior to any penalty charge being levied, through licence conditions for those who have a licence and the remedial notice process.

The council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord.

## **PENALTY CHARGE NOTICE APPEALS**

The landlord has a right to make a representation in regards the service of a penalty charge notice. This should be in writing to the Council (details will be found on the Notice) and made within 28 days of the Penalty Charge Notice being issued.

Any representation shall be considered on its individual merit. Any extenuating circumstances will be considered by the Council in deciding whether to reduce the cost of the penalty charge.

On consideration of any representation and accompanying evidence, the council may confirm, vary, or withdraw the penalty charge notice.

This decision is then confirmed by issuing a decision notice on the landlord. If the penalty charge is confirmed or varied, the notice shall state a further appeal can be made to the First Tier Tribunal (Property Chamber).

## **RECOVERY PENALTY CHARGE**

The Council will recover any unpaid penalty charges as detailed in our debt recovery section of this policy.

## **REVIEW OF STATEMENT**

This Statement of Principles shall be reviewed at a minimum of every 4 years or if new legislation comes into force. We will amend to reflect any change in legislation, corporate policy, or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and in the public interest.

## APPENDIX 3 – Domestic Minimum Energy Efficiency Standards (MEES) Enforcement Fine Policy

At a Council Assembly meeting on 29<sup>th</sup> January 2020, the Council declared a climate emergency. Councillors agreed a motion that commits the Council “to do everything within their power” to take the steps to become a greener borough. This enforcement of MEES requirements is part of this process.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and its associated regulations “MEES Regulations” are enforced by the Council it gives us a range of powers to check and ensure compliance.

The MEES Regulations state, since 1 April 2020 there is a prohibition on renting out any properties where their Energy Performance Certificate indicates they are rated “F” or “G”, unless they have registered an exemption.

If the Council has evidence that a landlord has failed to fulfil their obligations under the MEES Regulations, they can serve the landlord with a compliance notice. If a breach is confirmed, the landlord may receive a financial penalty.

A compliance notice may request information on:

- The EPC that was valid for the time when the property was let.
- The tenancy agreement used for letting the property.
- Information on energy efficiency improvements made.
- Any Energy Advice Report in relation to the property
- Any other relevant document

If the Council confirms that a property is (or has been) let in breach of the Regulations, we may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months.

As the Council has declared a climate emergency and as we are living in a cost-of-living crisis, combined with the fact that it is often the most vulnerable persons who live in properties with poor energy efficiency we will seek the maximum penalties allowed per property and per breach of the Regulations. They are:

- Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.
- Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.

- Up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register
- Up to £2,000 and/or publication for failure to comply with a compliance notice.
- The maximum amount of fine per property is £5,000 in total.

If a recipient does not agree with a penalty notice, they can ask the Council to review the decision. The penalty notice may be withdrawn if,

- New evidence shows a breach has not occurred.
- A breach has occurred, but evidence shows the landlord took all **reasonable** steps to avoid the breach.
- Officers decide that because of the circumstances of the case, it was not appropriate to issue a penalty.

If the Council upholds a penalty notice, a landlord may appeal to the First-tier Tribunal if they think that:

- The penalty notice was based on an error of fact or an error of law.
- The penalty notice does not comply with a requirement imposed by the Regulations.
- It was inappropriate to serve a penalty notice in the circumstances.

## **APPENDIX 4 – THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020**

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to all private sector landlords and all tenancies and came into force on 1st April 2021. The regulations also give enforcement powers to the Council.

This policy is to inform landlords, tenants, and other stakeholders in the Private Rented Sector about how the Council will exercise these powers, and how decisions will be taken in this process.

The regulations do not apply to private sector landlords who share their homes with their tenants.

The Regulations make landlords responsible for:

- Ensuring that minimum electrical safety standards are met during any period that the property is occupied.
- Ensuring fixed electrical cables or fixed electrical equipment located on the consumer's side of the electricity supply meter is inspected and tested at least every 5 years by a qualified person.
- Conducting the first inspection and test, before the tenancy commences (new tenancies) or by 1st April 2021 (existing tenancies).

To comply with the Regulations, landlords must:

- Get a written report from the qualified person who conducted the inspection and test, which provides the result and date of the next inspection and test.
- Supply a copy of the report to tenants within 28 days of the inspection and test.
- Supply a copy of the report to the local authority within 7 days of a written request from the authority.
- Retain a copy of the report and supply this to the qualified person conducting the next inspection and test; and
- Supply a copy of the most recent report to new tenants before they occupy the property; and
- Supply a copy of the report to prospective tenants within 28 days of written request.
- If the inspection report advises the landlord is or potentially is in breach of the duty to ensure that minimum electrical safety standards are met, and requires the landlord to undertake further work to be carried out to bring the property

up to standard, then landlord must, i. ensure that the work is carried out by a qualified person within 28 days or the period in the report, if less than 28 days; and ii. get written confirmation from a qualified person that the standards have been met; and iii. supply the written confirmation and a copy of the report to all tenants and local housing authority within 28 days of completion.

The Council may act against a landlord who has not complied with their duties under the Regulations. These include:

- a) To serve a Remedial Action Notice on the landlord
- b) To take Urgent Remedial Action
- c) To take Remedial Action
- d) To issue a Civil Penalty Notice of up to £30,000

Officers will decide which action to take, when they have reasonable grounds to suspect that a landlord has breached one of the duties under the Regulations.

### **Remedial Action Notice**

The Council will serve a Remedial Action Notice when we have reasonable grounds to suspect that a landlord is in breach of one of the three duties under the Regulations. Landlords have a duty to comply with these notices.

This notice will be served within 21 days of the date upon which we decide that reasonable grounds to suspect that a breach has occurred.

Landlords have a right to make representations; these suspend the duty to comply with the Remedial Action Notice. We will only consider representations that are in writing and received within 21 days of the day upon which the Notice was served. Representations can be made via email. We will not consider representations that refer to other documents and/or material unless copies are attached.

The name and address of the person to whom representations must be made is on the Remedial Action Notice. We will respond to representations after the end of the 21-day appeal period. We will always respond in writing (although the response may be sent via email). If our decision is to confirm the Remedial Action Notice, then we will inform you when the period of suspension ends.

Landlords must comply with the Notice within 28 days of service, or within 7 days of the end of the suspension period if representations have been received.

Failure to comply with a Remedial Action Notice may result in one or more of the following actions:

- Take urgent remedial action.
- Take remedial action.
- Impose a Civil Financial Penalty

The Council may take urgent remedial action when:

- A report recommends urgent remedial action.
- We believe that it is more likely than not that the landlord has not conducted the required work.
- The tenant's consent.

The Council may take remedial action when:

- We have served a Remedial Action Notice
- We believe that it is more likely than not that the landlord has not conducted the work required to comply with the notice.
- The tenant's consent.

The information that will be considered before deciding whether to take remedial action (urgent or otherwise) includes:

- The nature of the remedial action required and the danger to residents, neighbours, and visitors if no action is taken.
- Any attempts to comply with the Remedial Action Notice
- The likelihood of future compliance and the timescales involved.
- The landlord's level of compliance with the Regulations prior to issuing the Remedial Action Notice
- Landlord's general history of engagement and compliance
- Any previous orders or notices served on the landlord and their response.
- Any other relevant information.

The Council will serve notice that we are taking remedial action, urgent or otherwise. This Notice will include details of appeal rights, time limits and the address of the Tribunal.

There are 2 grounds to appeal against Remedial Action:

- All reasonable steps have been taken to comply, or
- Reasonable progress has been made towards compliance.

## **Costs and Debt Recovery**

As detailed earlier in the document in sections, "If the Council decide to do works (Works in Default)" and "Charges, Fines and Debt Recovery", we will always attempt recover any costs incurred taking remedial action or urgent remedial action or recovery of unpaid financial penalties. The money spent on making a premises safe is made possible using public money and financial penalties must function as deterrence and punishment for breaching these regulations.

The Council will provide landlords with an invoice for our costs and a demand for payment. Costs become payable at the end of the period of 21 days beginning with the day on which the demand is served unless an appeal is lodged.

Civil Penalty Notices will come with full details, why it is being served and how to pay.

The Council will also provide landlords with information about the procedure of their right to appeal against a demand for costs, such as the time limits and the address of the Tribunal.

### **Civil Penalty Notices**

The Council can issue a Civil Penalty Notice when we have evidence that meets the criminal standard of proof, that the landlord is in breach in one of the duties under the Regulations (see Landlord's duties and responsibilities above). We can issue a Civil Penalty Notice as well as take Remedial Action.

Any breach of regulation 3, including but limited to, poor electrical safety, improper or no maintenance, not keeping the correct documentation, using incompetent persons or general poor electrical safety practices has serious and often fatal consequences, through the potential of electrocution and fire. The Council would view the seriousness of all breaches of these regulations as a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling, owning, or managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5000, attracting a civil penalty of £17500.

The first part of the Civil Penalty Process is serving the landlord with a Notice of Intent.

The landlord has 28 days to make any representations. The Notice of Intent will explain how, where and to whom any representations should be made.

**Representations must be in writing.** The Council will only consider representations that are in writing and received within 28 days of the day after the day upon which the Notice was served. Representations can be made via email. We are unable to consider representations that refer to other documents and/or material unless copies are attached.

The Council will reply to any representations within 28 days of the end of the period in which representations can be made. Any reply will be in writing. We may confirm, increase, or withdraw the Notice following any representations.

Within 28 days of the end of the period giving the right to make representations the council will decide whether to impose a financial penalty on the private landlord; and decide the amount of the penalty.

The Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in the notice of intent or final notice. This will be conveyed through giving notice in writing to the private landlord on whom the notice was served.

A private landlord on whom a final notice is served may appeal to the First-tier Tribunal against either the decision to impose the penalty or the amount of the penalty. Full details how to do this will be found on the Final Notice paperwork.

An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was served.

If a private landlord appeals, the final notice is suspended until the appeal is finally determined or withdrawn by the HMCTS's First or Upper Tribunal.

## APPENDIX 5- Renters' Rights Bill 2025

The Renters' Rights Bill is working its' way through Parliament and should be enacted in the Autumn 2025.

Although the details below may change, it will bring major changes for the private rented sector (PRS), which may include:

- An end to fixed term assured and assured shorthold tenancies (ASTs). All tenancies will be periodic assured tenancies.
- Tenants will benefit from a 12-month protected period at the beginning of their tenancy, although a tenant can give notice during this time.
- An end to section 21 'no-fault' evictions. After 12 months a landlord may only seek possession under section 8 (e.g. landlord wants to sell the property or move back in, rent arrears, anti-social behaviour).
- Rent increases (within a tenancy) limited to once per year at market rate. Renters can challenge increases to First-tier Tribunal.
- Only one month's rent payable in advance and unable to request payment before agreement is signed.
- All tenancies must have a written agreement.
- Every tenant has the right to request a pet, which the landlord cannot unreasonably refuse.
- Ends the unfair practice of rental bidding.
- Illegal for landlords to discriminate against tenants who receive benefits or have children.
- Introduction of a PRS Ombudsman
- Extension of the Decent Homes Standards (DHS) to the PRS. The DHS has already been in place for social tenants for many years.
- New PRS database - all landlords will be required to register.
- Awaab's Law to be extended to the PRS.
- Changes to enforcement powers and rent repayment orders (RROs).

This Appendix is being held for its inclusion once the Bill is enacted.