

# **Private Rented Housing Enforcement Policy**





## Private Rented Housing Enforcement Policy

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### 1.0 Introduction

- 1.1 The London Borough of Bromley ('The Council') is responsible for enforcing a wide range of statutory provisions relating to private sector housing and environmental conditions affecting health, wellbeing, and safety, these include:
- reducing the number of properties with serious risks to health and safety.
  - improving energy efficiency, warmth of homes and help reduce fuel poverty.
  - improving standards in private rented sector (PRS) accommodation.
  - improving the standards in HMOs (houses in multiple occupation).
- 1.2 This Private Rented Sector Housing Enforcement Policy (PRSHEP) policy is specific to the investigation of housing conditions and enforcement action taken by the Private Rented Sector Housing Team (PRSH Team); but is intended to be read in conjunction with the overarching Public Protection Enforcement Policy 2020 (PPEP 2020). The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available must be taken into account. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.
- 1.3 In determining this policy, stakeholders have been consulted and current government guidance and relevant codes of practices have also been considered. In particular the requirements of the Legislative and Regulatory Reform Act 2006 (the "2006 Act"), the Enforcement Sanctions Act 2008 and the Regulators' Code (2014) made under that Act have been taken into account. In doing so, this policy seeks to ensure that the application of any enforcement is founded around the principles of:
- Raising awareness
  - Proportionality and accountability
  - Consistency in approach
  - Transparency and
  - Targeted
- 1.4 The methodology and reasoning behind investigations, information requirements, Cautions, Prosecutions, Evidential Tests and the Public Interest Test are the same as stated within the PPEP 2020.

### 2.0 Purpose and Scope

- 2.1 The PRSHEP contributes to the Council's key priorities of a quality environment, regeneration, supporting independence and a healthy Bromley.
- 2.2 The Council will utilise a range of delegated powers to deal with statutory nuisance from property, hazards and amenity standards in the home which affect the health, safety, comfort and convenience of occupiers, visitors, and the public.
- 2.3 The purpose of the PRSEP is to outline the areas of legislation used by the PSH Team, and to set out the Councils policy where the legislation permits discretion. The PRSHEP 21 sets out the:

- investigative pathway associated with different tenures (section 3)
- how the PSH Team will respond to service requests in relation to enforcing housing standards, and the situations where a service may not be provided (Section 4)
- the enforcement actions that will be considered to secure housing improvements (Section 5)
- the range of proactive and statutory actions to improve housing standards that are available (Section 6)
- The Charges for Notices, and the use of Civil Penalties (Section 7)
- The complaints process (Section 8)

The extent of enforcement will be related to the risk posed by the condition or situation and the likely benefits achieved by compliance. In accordance with requirements, a policy and statement of intent on how Civil Penalties and smoke and carbon monoxide alarm requirements will be applied are set out in Appendix 3 (Civil Penalties Policy under the Housing Act 2004 and the Housing and Planning Act 2016) and Appendix 4 (Statement of Principles for the determining of financial penalties – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015) respectively.

### **3. Tenure Groups**

- 3.1 The Private Sector Housing Service has investigative and enforcement powers relating to all housing tenure. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Social Landlord (RSL). Generally, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not always able to do so. For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

#### **3.2 Owner Occupiers**

As owner occupiers are ordinarily able to make informed decisions about maintenance or safety issues in their homes, formal enforcement action against this tenure group is ordinarily limited, however, there may be exceptions including:

- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected.
- Hazards that might reasonably affect persons other than the occupants.
- Serious risk of life-threatening harm such as electrocution or fire.

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take, or, if deemed appropriate, refer them to the Home Improvement Team for assistance. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of

the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

### 3.3 Private Tenants

Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This reasonably affords landlords an opportunity to carry out their obligations under the legislation. Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will continue to try to contact their landlord, even if this is after they have contacted the Private Sector Housing Team. Copies of correspondence between the landlord and tenant should be provided for Officers. In certain situations, tenants will not be required to write to their landlord first, for example:

- where the matter appears to present an imminent risk to the health and safety of the occupants.
- where there is a demonstrable history of harassment/threatened eviction/poor management practice.
- where the tenant could not for some other reason be expected to contact their landlord/managing agent.

For private tenants who rent through a Lettings Agency or Property Management company, there is a requirement for them to belong to a Government approved redress scheme in accordance with the Enterprise and Regulatory Reform Act 2013. These tenants therefore have the right to complain to an independent person about the service they receive which should assist in settling disputes.

Letting Agents and Property Management companies that fail to belong to a redress scheme may be subject to enforcement action from the Council's Trading Standards Team. For further information please refer to the London Trading Standards – Model London Lettings Enforcement Policy ([add link](#)).

### 3.4 Registered Social Landlords (“RSL”)

These are usually housing associations, being a private, non-profit making organisation that provides low cost “social housing” for people in need. Their performance is scrutinised by the Homes and Communities Agency and the Housing Ombudsman. RSL's have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure. This service will not normally take action against an RSL, unless the problem in question has been properly reported to the RSL, they have failed to take the appropriate action and the tenant has been to the Housing Ombudsman without a satisfactory result. The Council will consider enforcement action against an RSL where there are significant risks to the health and safety of tenants and/or the wider public.

### 3.5 Leaseholders

Other than in exceptional cases (on a case by case basis), the Council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves. Leaseholders may be able to get advice about how to settle a dispute about repair problems from the:

Leasehold Advisory Service –  
31 Worship Street,  
London E2CA 2DX,  
Telephone 020 7374 5380  
[info@lease-advice.org.uk](mailto:info@lease-advice.org.uk)

Leaseholders may need to consult a solicitor specialising in leasehold law.

### 3.6 Caravan Sites

The use of land as a caravan site usually requires a caravan site licence under the Caravan Sites and Control of Development Act 1960 and the Council may impose site licence conditions. The Council can take enforcement action should a site be operating without a licence or where site licence conditions are not being met.

### 4.0 Reporting Poor Housing Conditions

- 4.1 Our online reporting form can be used to report housing complaints via [https://www.bromley.gov.uk/info/200052/housing\\_advice\\_and\\_options/291/disrepairedaccommodation/7](https://www.bromley.gov.uk/info/200052/housing_advice_and_options/291/disrepairedaccommodation/7)

You can also contact The London Borough of Bromley, by telephone on 0300 303 8657, by email to [ehs.customer@bromley.gov.uk](mailto:ehs.customer@bromley.gov.uk) or by letter to the following address:

Housing Enforcement N112  
The London Borough of Bromley  
Civic Centre  
Stockwell Close  
Bromley  
BR1 3UH

When reporting an issue, it is useful for us to have as much information as possible, such as:

- Description and photographs of the disrepair issue and affected room.
- How long the item of disrepair has been present.
- When the responsible party (i.e. landlord or management agent) for the property was notified of the problem, and copies of the correspondence.
- Following notification, the response (if any) from the responsible party.
- Address of property concerned
- Name/address/telephone number of owner/landlord/managing agent
- Name/address/telephone number of complainants
- If rented when they started tenancy & type of tenancy agreement held.

Unless there is an imminent risk or danger, anonymous complaints will not be investigated; on receipt of the above the Council will contact the person responsible, allowing them 14 days to make representations and providing them an opportunity to carry out the works.

### **4.2 Situations Where a Service May Not be Provided**

There may be occasions where an investigating officer cannot substantiate the complaint. When this arises, the person who has raised the issue will be informed that Council will not take any further action.

There are other circumstances that may result in the cessation of an investigation, or the withdrawal of service, these include (but are not limited to):

- the complaint has been withdrawn and does not warrant further investigation.
- the tenant(s) are, shortly to move out of the property by their own choice.
- the complaint relates to minor disrepair only.
- the landlord of the property has initiated eviction proceedings where there has been a breach of tenancy agreement.
- the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, for works to be carried out.
- the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair.
- a tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Private Sector Housing Enforcement Team is to secure rehousing.
- the tenant(s) has failed to follow the appropriate process.
- the tenant(s) have failed to keep an appointment and not responded to a follow up letter or appointment card.
- the tenant(s) unreasonably refuses to provide the Council with relevant documentation, e.g. a tenancy agreement or notice seeking possession.
- the Complainant has continually submitted additional complaints related in whole or in part to an initial complaint already submitted and under investigation or which has been fully investigated and the Council's duty discharged.
- the tenant(s) have been aggressive, threatening, verbally or physically abusive or shown racist behaviour towards officers, or has made spurious and/or unsubstantiated allegations.
- make repetitive complaints and allegations which disregards the responses the Council has supplied in previous correspondence to the complainant or their representative(s).

## **5. Enforcement Responsibilities and Options**

- 5.1** In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that



referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

- 5.2** We will minimise the costs of compliance for residents and landlords by ensuring that any action required is proportionate to the risks involved or seriousness of any breach. As far as the law allows, we will take account of the circumstances of the case and the attitude of the owner or agent when determining what action to take. We will have regard to various courses of remedial action and will consider what is 'reasonably practicable'.

**5.3 Housing, Health and Safety Rating System (HHSRS)**

- 5.4** HHSRS is set out in Part 1 of the Housing Act 2004 (the Act), and the Council will base enforcement decisions in respect of residential premises on assessments made under that system. It is a risk-based approach consisting of 29 hazards. In undertaking an inspection of a dwelling, an Environmental Health Officer (or other suitably qualified Officer), undertakes an assessment of the potential risks to health and safety from any deficiencies identified in a dwelling. The officer will then determine whether any enforcement action is required depending upon the severity of the hazard, or whether there is a duty or discretion to act.

- 5.5** Where a Category 1 hazard exists, The Council has a duty to act, however, with regards to Category 2 hazards, the power to act is discretionary, and there is an option to take informal action with a landlord where there is a low risk to health and safety and where there is no history of non-compliance from the landlord.

- 5.6** Action by the Council will be based on a three-stage consideration:

- The hazard rating determined under HHSRS;
- Whether the authority has a duty or power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and
- The authority's judgement as to the most appropriate course of action to deal with the hazard.

- 5.7** The Act contains enforcement options, and the choice of the most appropriate course of action is decided having regard to statutory enforcement guidance.

**5.8 Legislation, Action and Powers**

- 5.9** In addition to HHSRS, there are other legislation and regulations under which the team's responsibilities as a Housing Authority will be taken into account, these include (but are not limited to):

- The Public Health Act 1936 and 1961
- The Prevention of Damage by Pests Act 1949
- Caravan Sites Act 1968 (as amended by the Mobile Homes Act 2013)
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982
- Protection from Eviction Act 1977



- The Building Act 1984
- The Housing Act 1985
- The Environmental Protection Act 1990
- The Housing Act 2004
- The Regulatory Reform Order 2005
- The Management of HMOs (England) Regulations 2006
- Enterprise and Regulatory Reform Act 2013
- Deregulation Act 2015
- The Energy Efficiency (Private Rented Property) (England & Wales) Regulation 2015
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Housing and Planning Act 2016
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

- 5.10 Authorised officers can inspect and survey the entire premises, take samples, and use equipment to take measurements and photographs where appropriate.

There are several actions officers may take and these will depend on the circumstances of the case:

- **Take no action** – Where premises are found to be satisfactory.
- **Take informal action** - Informal action will be taken where insignificant Category 2 hazards are found and recommendations are being made.
- **Take formal enforcement action** – This action will normally be the first course of action following the inspection where a Category 1 hazard, or where a significant category 2 hazard is identified.

Where an officer identifies an imminent risk of serious harm the officer will make every effort to contact the owner to give them the opportunity to remedy the situation within a short timescale.

### 5.11 Informal Action

This may include:

- Offering advice.
- Making recommendations verbally or by letter.
- Making written requests for action. These will include letter, schedule or a pro-forma requesting timescales for the start and completion of any works.
- Discussing options with owners.

### 5.12 Formal Action

In the case of hazards determined under the HHSRS the Council has a statutory duty to act in the case of Category 1 hazards and a power to act in the case of Category 2 hazards.

The Council will exercise its power to deal with Category 2 hazards formally for those hazards that it considers to be significant. Whilst it is not possible to be prescriptive in describing all hazards which the Council would deem to be

significant, factors that may be considered to assist in the determination of which hazards are deemed to be significant include one or more of the following:

- Whether the hazard pertains to threats from uncontrolled fire (and smoke).
- Whether there are multiple hazards within the property.
- Whether there is a vulnerable individual or group in occupation or likely to be in occupation.
- Whether or not it is reasonable to assume the conditions are likely to deteriorate in the next 12 months.

Informal action is still an option to the Council where the Category 2 hazard is deemed to be insignificant by the Officer.

**5.13 In relation to the above enforcement options for hazards, the following enforcement notices will be considered, depending on the severity and or number of the hazards identified:**

- Serve a Hazard Awareness Notice.
- Serve an Improvement Notice requiring remedial works.
- Make a Prohibition Order, which closes the whole or part of a dwelling or restricts the number or class of permitted occupants or restricts its use.
- Serve an Emergency Prohibition Order; \*
- Suspend any of the above, until a date or time specified.
- Take Emergency Remedial Action; \*
- Make a Demolition Order; \*\*
- Declare a Clearance Area\*\*
- Apply for an Empty Dwelling Management Order\*\*

*\* Only in respect of Category 1 hazards*

*\*\*Circumstances for these Notices are stated in Appendix 1 (Demolition, Empty Dwelling Orders and Clearance Areas)*

**5.14 In addition to the above, alternative or additional Notices may be considered under the legislation listed in 5.9 depending on the circumstances. This includes all legislation that pertains to gathering information as part of a PSH enforcement investigation, these include (but are not limited to)**

- Section 16 Local Government (Miscellaneous Provisions) Act 1976, (Requisition for Information Notice);
- Section 235 Housing Act 2004 - (Requisition for Documents Notice)

Failure to respond to either of the above notices within the specified time frame is a criminal offence and may lead to prosecution. These notices do not register as a Land Charge and are not included on the Council's Enforcement Register.

### **5.15 Enforcement Considerations**

**5.16 In determining which of the above courses of action to take, the Council may take the following factors into consideration:**

- The current occupiers, if any, and their views as to what should happen.
- Likely regular visitors and any vulnerabilities.
- The turnover of tenancies.
- The risk of excluding vulnerable groups of people from the private rented sector.
- The size, type, and location of the property.
- The sustainability of an area – if it has been identified for potential demolition within an Area Action Plan.
- The views of the owner(s).
- In the case of demolition or clearance the views of residents, businesses and Councillors will also be considered.

5.17 In the event that a Notice is Suspended, these will be reviewed at least annually, and The Council will consider requests to vary or revoke an improvement notice or a prohibition order. In doing so they will have consideration to some or all of the following factors:

- The views of the Fire Authority, where appropriate.
- The risk presented by the hazard and the potential effect of any variation.
- The level of confidence in the recipient to respond and their history of compliance or otherwise.
- The progress made with any other work specified in the Notice or Order.
- The costs of any works in relation to the benefit to be derived from them.
- Any additional unforeseen works which become apparent during the course of remedial works.

If the Council considers that there are special circumstances in relation to a Prohibition Order or an Improvement Notice, it may revoke the order or notice.

### **5.18 Entering A Property and Powers of Entry**

5.19 Where practicable, landlords and/or agents will be given 24 hours' notice of the Council's intention to carry out an inspection of the property as per the requirements of section 239 Housing Act 2004.

5.20 If the landlord/agent or representative wishes to attend the inspection they must also provide the tenant with the necessary notice. After the inspection, whilst onsite, the Council will discuss the findings of the inspection and the possible options to reduce or remove the hazards, if requested to do so by the landlord/agent or representative and it is practicable to do so. This is only available when the landlord/agent or representative attends the property for the inspection. The Council will rate the hazards using the HHSRS and serve any relevant notices as soon as is practicable. It should be noted, however, that any works discussed with the landlord/agent or their representative will be before the deficiencies have been scored using the HHSRS and this could impact upon the assessment.

5.21 There may be times where Officers need to enter a premises, in these cases, the warrant will be sought under the appropriate Act being used, this can include powers of entry under:

- The Housing Act 2004 section 239
- The Environmental Protection Act 1990 – Schedule 3, para. 2,
- Prevention of Damage by Pests Act 1949 – Section 22,
- The Public Health Act 1936 – Section 287,
- The Building Act 1984 – Section 95, and
- The Local Government and Housing Act 1989 – Section 97.

- 5.22 The power of entry is to enter the land or premises at any reasonable hour for the purpose of carrying out an inspection and/or investigation either required by the legislation or in order to ascertain if any part of the relevant legislation should apply. When using a power of entry, the associated advanced notice as required by the various Acts will be provided to the owner/landlord/responsible party.
- 5.23 If officers are refused entry, the Council has the right to apply to the Magistrates Court for a warrant to enter the land/property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the matter under investigation. Any person who wilfully obstructs an authorised officer acting in exercise of a right of entry commits an offence and may be liable on summary conviction to a fine, the level of which is specified by the respective legislation:

## **6.0 Charges for Notices and Financial and Civil Penalties**

### **Charges for Notices**

- 6.1 Enforcement means an action carried out in exercise of or against the background of enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, and application for a rent repayment order or the issue of civil penalty notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.
- 6.2 Having regard to the relevant statutory power, and where the law allows, a financial charge will be made for the service of all Housing Act notices and the making of Prohibition Orders. There is no maximum charges, and the final charge will be based on the full cost to the Council of taking the action including inspection, preparation, and service of the notices. Any action to recover costs and expenses will be in accordance with the requirements of the relevant Acts. (See Appendix 2 Charges for Notices).
- 6.3 In respect of formal notices served in relation to significant Category 2 hazards, this charge may be waived at the Council's discretion when required works as specified within the Notice are completed to the satisfaction of the Officer within the specified timeframe (See Appendix 2 Charges for Notices).
- 6.4 Costs incurred carrying out Work in Default or Remedial Action will be charged separately. When the charge demand becomes operative, the sum recoverable will be a local land charge. Costs will be charged at an hourly rate for the enforcement officer, administration and management costs. For more

information see the Council's Works in Default Procedure. (See Appendix 2 Charges for Notices)

### Civil Penalties

- 6.3 The Government has introduced legislation that gives the council the option to impose a financial penalty of up to £30,000 as an alternative to prosecution for certain housing offences. These new powers were introduced to help local authorities take more enforcement action against rogue landlords.
- 6.5 Specifically, the Housing and Planning Act 2016 Act gives the council the power to issue Civil Penalty notices of up to £30,000 as an alternative to prosecution, where there is evidence beyond reasonable doubt of certain offences i.e. failure to:
- Comply with an improvement notice
  - License a property which requires a licence
  - Comply with licence conditions or occupancy requirements
  - Comply with an overcrowding notice
  - Comply with HMO management regulations requirements
  - Failing to licence a house in multiple occupation ("HMO")
  - Knowingly permitting the over-occupation of a licensed HMO
  - Failing to comply with the condition of an HMO licence
  - Failing to comply with an overcrowding notice in respect of a non-licensable HMO
  - Failing to comply with HMO management regulations; and
  - Breaching a banning order.
- 6.6 Local authorities are entitled to retain any monies collected, provided they are used to fund private sector housing enforcement functions. However, before any financial penalties can be issued, statutory guidance requires the council to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty, and the level of financial penalty it should impose in each case.
- 6.7 Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case. The government have issued statutory guidance to councils on the use of Civil Penalty notices under the 2016 Act. The council has also published its own policy (Appendix 3 Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016) on how it will decide on the level of financial penalty which is in accordance with the government guidance.

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will be made on a case-by-case basis in line with this policy and current guidance.

- 6.8 The upper limit for fines in the magistrates' court has been removed; this means if found guilty of an offence, there is no maximum fine. In some cases, the council can apply to court to recover rent from a landlord if a property has been let illegally. Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved.
- 6.9 Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The council will decide whether to publicise sentences following prosecution on a case by case basis. Publicising guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders.
- 6.10 In addition to charges for Notices served under the Housing Act 2004 other Notices served under other legislation or regulations have penalties attached, usually where the Notice served has been contravened. These include (but are not limited to):
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (£5000 maximum) (See Appendix 4 Statement of Intent)
  - The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (£5000 maximum)
  - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (£5000 maximum)
- 6.11 Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served.

### **7.0 Options Regarding Licensing of Houses in Multiple Occupation (HMO)**

- 7.1 The London Borough of Bromley currently operates the Mandatory HMO Licensing scheme. From 1st October 2018 HMO licences are required for all HMOs of any storey height that are occupied by five or more persons, who form two or more households and share facilities (such as kitchens, living rooms and bathrooms), unless they are exempt. OR Purpose-built flats where there are up to two flats in the block and one or both flats are occupied by 5 or more persons in 2 or more separate households. This will apply regardless of whether the block is above or below commercial premises.
- 7.2 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 7.3 Licensable HMOs operating without a licence**
- 7.4 It is a criminal offence if a person controlling or managing a licensable HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.



- 7.5 The Council has an intelligence-led, targeted approach to housing enforcement and the identification of licensable HMOs that are operating without a licence. It will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will prosecute them or impose a civil penalty.
- 7.6 Consideration will be given to any representations that are received from landlords in relation to exceptional circumstances that may have resulted in a 'duly made' HMO licence application not being submitted on time.
- 7.7 If a landlord responds quickly to the Council's notification that an HMO requires an HMO licence and they co-operate fully with the Council to ensure that the HMO is licensed as soon as practicable, the Council may decide (at its sole discretion) not to prosecute the landlord or impose a civil penalty. Each case will be determined on its individual merits and circumstances.
- 7.8 As mentioned above, it is an offence to operate a HMO without a licence and penalties are set out in Appendix 3 (Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016).
- 7.9 All decisions in respect of HMO licensing will be taken in accordance with the Council's published policy and the appropriate legislation and guidance.

### **8.0 Related policies and Supporting Documents**

- 8.1 A copy of the guidance on civil penalties can be accessed via:  
<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-andplanning-act-2016>

A copy of the Guidance on rent repayment orders can be accessed via:  
<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housingand-planning-act-2016>

A copy of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Q&A booklet for the private rented sector – landlords and tenants can be downloaded from:

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants>

A copy of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

<https://www.legislation.gov.uk/ukdsi/2020/9780111191934>

A copy of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

<https://www.legislation.gov.uk/ukdsi/2015/9780111128350/contents>



A copy of the Regulators Compliance code can be downloaded from:  
<https://www.gov.uk/government/publications/regulators-code>

A copy of the Enforcement Concordat: Good Practice Guide can be downloaded from  
<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

### **9.0 Complaints Relating to this Policy**

- 9.1 Should you feel that your request for service or that undertakings in relation to housing enforcement from the Council has not been adequately considered, you may make a formal service complaint by contacting our Corporate Complaints Team.
- 9.2 Prior to doing, the Housing Enforcement Team must have received your complaint directly and you are encouraged to discuss the matter initially with your case Officer first and where necessary the Team Manager or Head of Service.

Corporate complaints may be contacted via:

Corporate Complaints  
[corporate.complaints@bromley.gov.uk](mailto:corporate.complaints@bromley.gov.uk)  
London Borough of Bromley  
Civic Centre  
Stockwell Close  
Bromley  
BR1 3UH

020 8313 4740

### **Appendix 1 Demolition, Empty Dwelling Orders and Clearance Areas**

#### **Making a Demolition Order under section 265 (Housing Act 1985 as amended by section 46 Housing Act 2004)**

This action will be taken when it is considered to be the most appropriate course of action, usually when there are one or more serious category 1 hazards, the property is usually 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 or of other historical interest.

#### **Empty Dwelling Management Orders (EDMOs) under section 133**

In respect of a wholly unoccupied property and in accordance with the Housing Act 2004, Part 4, the Council may consider seeking an interim EDMO by application to First Tier Tribunal (FTT). The Council will only consider using this power as one of last resort and where the property is in a habitable condition or can be made habitable at a reasonable cost and is likely to become occupied if this action is taken.

Under an EDMO the Council does not take over ownership but is entitled to possession of it and can prevent the owner from using it or letting someone else use it while the order is in force

There are two stages of an EDMO:

- Interim EDMO – last for an initial period of 12 months during which time the Council must work with the owner to agree a way of getting the property back into use. The Council would still need to seek the owner's permission to let the property during this period.
- Final EDMO – lasts for a maximum period of 7 years and in this stage the owner has fewer rights in how the property is brought back into use. If the Council does not proceed to make a final EDMO full possession is returned to the owner.

The Council will provide a statement of reasons for any of the above actions. There is however no requirement to provide the inspection report.

#### **Declaring a Clearance Area under section 289 (Housing Act 1985 as amended by section 47 Housing Act 2004)**

This action will be considered where similar circumstances to those for determining if a demolition order exist but 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 will be relevant to any decision to declare a clearance area. This action will be followed by seeking a compulsory purchase order or voluntary acquisition.

## Appendix 2 Charges for Notices

### Section 1: Enforcement Fees

Section 49 of the Housing Act 2004 provides the Council with a power to make such reasonable charge as it considers appropriate as a means of recovering certain administrative and other expenses incurred in connection with its enforcement activities under the Act. Other legislation, detailed within this policy, also imposes fees and penalties:

<b>Service of Statutory Notices – Housing Act 2004*</b> <i>In respect of formal notices served in relation to significant Category 2 hazards, this charge may be waived at the Council's discretion when required works as specified within the Notice are completed to the satisfaction of the Officer within the specified timeframe</i>	£550
<b>Works in Default and Remedial Action</b>	Based on cost - charged at an hourly rate for the enforcement officer, administration and management costs, in addition to the cost of the works. For more information see the Council's Works in Default Procedure
<b>HMO Interim Order &amp; EDMO</b>	Based on cost- charged at an hourly rate for the enforcement officer, administration and management costs,
<b>Variation Notices</b>	No charge unless there are additional units.
<b>Revocation Notice</b>	No charge
<b>Energy Efficiency Contravention Penalties</b>	See Chapter 6 of the Regulations
<b>Housing Offences subject to a Civil Penalty Notice</b>  <b>Section 30 – Failure to comply with an Improvement Notice.</b>  <b>Section 72 – Licensing of HMOs (House in Multiple Occupation).</b>  <b>Section 95 – Licensing of houses under Part 3.</b>  <b>Section 139(7) – Failure to comply with overcrowding notice.</b>  <b>Section 234 – Management regulations in respect of HMOs.</b>	See Appendix 3 Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016

<b>Maximum fine if convicted in court for these offences</b>	If the offender was to be prosecuted and convicted of the same offence for which, the financial penalty could be imposed as an alternative, the maximum fine the court could consider is unlimited.
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### Appendix 3 Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016

#### 1.0 Introduction

- 1.1 The Council is committed to supporting good, responsible landlords and ensuring that residents renting private accommodation in the Borough live in homes that are safe, decent, well managed and properly maintained.
- 1.2 Although the majority of landlords in the Borough operate lawfully and responsibly, a small minority of rogue landlords choose to operate outside the law, knowingly renting out (often to our most vulnerable residents) accommodation that is unlicensed, substandard and/or unsafe.
- 1.3 The Housing and Planning Act 2016 (the 2016 Act) introduced several measures designed to enable Local Authorities to deal more robustly with rogue landlords. These changes included:
- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences in the Housing Act 2004
  - Banning orders for the most serious and prolific offenders
  - The extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences
  - Powers to require the sharing of certain data held by the three main Tenancy Deposit Protection schemes to assist councils in identifying privately rented accommodation in their area: and
  - A database of rogue landlords and property agents convicted of certain offences.
- 1.4 The Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government) has published Statutory Guidance for Local Housing Authorities in implementing the legislation under Schedule 9 of the 2014 Act (Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities) – hereafter ‘the Guidance’.

In this policy, the term “landlord” will be used to refer to the “owner”, “person having control”, “person managing” or “licence holder”, as defined under the Housing Act 2004.

#### 2.0 Purpose

- 2.1 This Policy outlines the way in which the Council will use these powers, how it will decide when to prosecute or impose a civil penalty and, where the imposition of a civil penalty is considered to be a suitable alternative to a prosecution, how it will determine the amount of that penalty.
- 2.2 Section 126 and Schedule 9 of the 2016 Act provides Local Authorities with the power to impose a civil penalty of up to £30,000 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 the licensing of Houses in Multiple Occupation (HMO's) (section 72).
- Offences in relation to licensing of houses under Part 3 of the Act (section 95).
- Offences of contravention of an overcrowding notice (section 139) and
- Failure to comply with management regulations in respect of HMO's (section 234).

2.3 Section 23 of the 2016 Act also extends a power to impose a Civil Penalty for the breach of a Banning Order (see Appendix 4). Breach of a Banning Order would be considered a very serious matter and as such the amount of any financial penalty would be considered on a case by case basis, taking account of relevant factors and exceptional circumstances.

### 3.0 General principles

3.1 The Council will conduct its housing enforcement activities in a manner that is consistent with its obligations under the Regulators Code and in accordance with the above Private Rented Sector Housing Enforcement Policy 21 and the Public Protection Enforcement Policy 2020, that is to say in a manner which is targeted, proportionate, fair and objective, transparent, consistent and accountable.

3.2 Underpinning our enforcement approach are two principles: That offenders pay the cost of the enforcement work we do (rather than good landlords or the taxpayer) and that those who chose to flout the law do not profit from their crimes. This approach ensures that we continuously drive up standards in the sector and improve housing conditions for our residents, whilst at the same time levelling the playing field for good and responsible landlords.

3.3 A Civil Penalty is intended to provide an alternative to prosecution. The Council cannot impose a Civil Penalty and pursue a prosecution for the same offence. Whilst only one Civil Penalty can be issued for each of the first 4 offences in the list set out above, a Civil Penalty can be issued for each separate breach of the HMO Management Regulations (section 234).

3.4 Where an offence has been committed by both a landlord and property/letting or managing agent, (including offences arising from the failure to licence a property), a civil penalty may be imposed on both as an alternative to prosecution. The amount of the penalty imposed on each party may in such cases differ depending on the individual circumstances of the case.

### 4.0 Burden of Proof

4.1 Although a Civil Penalty is intended as an alternative to prosecution, it should not be considered a lesser or easier option. In all cases where a formal sanction is being considered (whether that be by way of prosecution or the imposition of a Civil Penalty) the supporting evidence must rise to the criminal standard of proof and officers should be satisfied that the evidence is sufficient to demonstrate beyond reasonable doubt that the offence has been committed and such that, if the matter were prosecuted in the Magistrates Court, there

would be a realistic prospect of conviction. The same considerations would apply where a Civil Penalty is imposed, and an appeal is subsequently made to the First-tier Tribunal.

- 4.2 In determining whether the evidence meets this test, the Council will have regard to the Crown Prosecution Service 'Code for Crown Prosecutors'. The Code sets out a two-part test:
1. The evidential test- this involves an objective assessment of all available evidence taking into consideration the admissibility, reliability, and credibility of the evidence.
  2. The public interest test- this involves an examination of the seriousness of the offences, the level of culpability of the offender, the impact of the offence on victims and the community, the age of the offender, whether a prosecution is a proportionate response and the need to protect sources of information.

### **5.0 Decision making - When to prosecute**

- 5.1 The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or issue a Civil Penalty, taking into account all the evidence available and the circumstances of the offence and offender.
- 5.2 In general, prosecution will be reserved for those cases deemed particularly serious or where the offender has committed a similar offence in the past. This does not however mean that Civil Penalties will not be used where serious offences have been committed and in such cases (for what the Guidance refers to as 'the worst offenders') the Council reserves the right to apply the maximum civil penalty where this is considered to be an appropriate and effective sanction.
- 5.3 Prosecution may be appropriate in a case where a strong zero-tolerance message is necessary and where publicising a conviction will serve as a deterrent to the offender and other rogue landlords. A prosecution may also be pursued where this will enable the Council (on the back of a conviction) to apply for a Banning Order under Section 15 of the Housing and Planning Act 2016. Note that the issue of a civil penalty is not generally a matter of public record (although see paragraph below on Rogue Landlords Database).
- 5.4 A prosecution may also be pursued in the following (non-exhaustive) instances:
- Where the offence is not one for which a Civil Penalty may be imposed.
  - Where the case involves external agencies such as LFEPA, internal colleagues such as Planning or Trading Standards or other local authorities, where this supports regional or sub-regional activity.
  - Where an individual or company has imperilled the health, safety or wellbeing of occupiers, visitors, or members of the public.
  - Where an individual or company has deliberately, negligently, or persistently breached their legal obligations.



- Where an individual or company has deliberately or persistently ignored written warnings or formal notices /orders, or no reasonable progress has been made in relation to the carrying out of the requirements.
- Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

All decisions made will need to be properly documented in accordance with this policy

### **6.0 Reviews**

- 6.1 Before imposing a Civil Penalty, the Council must within 6 months of becoming aware of the offence, give the landlord notice of its proposal to do so ("Notice of Intent"), setting out, amongst other things, why it proposes to do so and the level of fine to be imposed. The recipient has a right to make written representations to the Council asking the Council to review its decision, including the decision to sanction him or her, but this must be lodged in a period of not less than 28 days beginning on the day the penalty was served. The Council must consider all representations received and decide whether to confirm, vary or withdraw the Notice. If the Notice is confirmed (i.e. a Final Notice served) and the landlord remains dissatisfied; he has a right of appeal to the First Tier Tribunal.

### **7.0 Civil Penalties - Factors determining the level of penalty**

- 7.1 The Council has the power to impose a Civil Penalty of up to £30,000. There is no minimum penalty. Although the amount of any penalty falls to be determined by the Council, we must have regard to the Guidance when exercising our functions in this respect. Of relevance is Paragraph 3.5 of that document which states that "The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlords previous record of offending." The same paragraph goes on to set out several factors that should be taken into account to ensure that the penalty is set at an appropriate level, namely:

#### **a) Severity of the offence.**

The more serious the offence, the higher the penalty should be.

#### **b) Culpability and track record 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.

#### **c) The harm caused to the tenant**

This is a very important 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.

### **d) 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 also important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

### **e) Deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of 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.

### **f) 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 housing 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.

### **g) Remove any financial benefit the offender may have obtained as a result of committing the offence.**

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

When setting a civil penalty, the Council will, in addition to the above, take into account the cost of investigating the offence(s); preparing the case for formal action; and include any costs that are or may be incurred from defending its decision at the First Tier Tribunal.

## **8.0 Setting an appropriate Civil Penalty**

To ensure that we exercise this power in a consistent and transparent manner, the Council has developed a calculation matrix for determining the level of penalty to be applied in any individual case.

## **8.2 Calculating the Financial Penalty**

Each offence receives its own civil penalty calculated on the matrixes below.

## Failure to License a mandatory licensable HMO

<b>Penalty</b>	£15,000
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### 8.3 Penalties relating to housing conditions, management, licence conditions

A score for each of the five areas below is chosen depending on the seriousness of each area and reasons for each score must be accompanied by a full justification and production of relevant evidence.

#### Civil Penalty Calculation Matrix

Factors	Low Seriousness	Medium Seriousness	High Seriousness
<b>1. Severity of Offence</b>	<b>Score 5</b>  Low level offence e.g. broken glazing (cat. 2)	<b>Score 15</b>  Medium level offence e.g. defective boiler, no hot water (cat. 1)	<b>Score 25</b>  Serious Offence e.g. multiple management issues, inadequate/defective fire detection (imminent risk)
<b>2. Deterrence &amp; Prevention</b>	<b>Score 5</b>  High confidence a fine will deter repeat offending	<b>Score 15</b>  Medium confidence a fine will deter repeat offending	<b>Score 25</b>  Low confidence a fine will deter repeat offending
<b>3. Harm to Tenants</b>	<b>Score 5</b>  Low level harm	<b>Score 15</b>  Moderate level harm	<b>Score 25</b>  High level harm
<b>4. Size of Business</b>	<b>Score 5</b>  1 property	<b>Score 15</b>  2-5 properties	<b>Score 25</b>  6+ properties
<b>5. History of Offending</b>	<b>Score -5</b>  First time offence	<b>Score 5</b>  Second time offence (previous FPN)	<b>Score 10</b>  Conviction in the Magistrates Court (within previous 2 years)

The combined score from the above matrix is then used to determine the penalty based on the table below.

Score	Penalty	Score	Penalty
<b>15-20</b>	£250	<b>66-70</b>	£14,000
<b>21-25</b>	£500	<b>71-75</b>	£16,000
<b>26-30</b>	£750	<b>76-80</b>	£18,000
<b>31-35</b>	£1000	<b>81-85</b>	£20,000

## Private Rented Sector Housing Enforcement Policy

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<b>36-40</b>	£2000		<b>86-90</b>	£22,000
<b>41-45</b>	£4000		<b>91-95</b>	£24,000
<b>46-50</b>	£6000		<b>96-100</b>	£26,000
<b>51-55</b>	£8000		<b>101-105</b>	£28,000
<b>56-60</b>	£10,000		<b>105-110</b>	£30,000
<b>61-65</b>	£12,000			

## **Appendix 4 Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### **1.0 Introduction**

- 1.1 This statement sets out the principles that the London Borough of Bromley will apply in exercising its powers under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”).

### **2.0 Purpose**

- 2.1 The Council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge for failure to comply with a Notice.

### **3.0 Duties**

- 3.1 The Regulations impose the following duties on certain landlords (Residential Social Landlords, HMO's, long leaseholders, student halls, healthcare residences, hostels and live in landlords by agreement are excluded) of a residential property of a specified tenancy (defined in Section 2 of the Regulations), namely, to ensure that:

- a smoke alarm is installed on each storey of the premises where there is living accommodation (for these purposes living accommodation includes bathrooms and lavatories)
- a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation and which contains a solid fuel burning combustion appliance.
- that at the start of any new tenancy, checks are made by the landlord, or someone acting on his behalf, that the alarm(s) serving the premises is/are in proper working order

- 3.2 Properties subject to Part 2 or Part 3 licensing under the Housing Act 2004 (i.e. as licensable Houses in Multiple Occupation) are exempt from the Regulations.

### **4.0 The Legal Framework**

- 4.1 Where the Council has reasonable grounds for believing that a landlord is in breach of one or more of the above duties, we have a duty to serve that person with a Remedial Notice within 21 days detailing the actions that must be taken to comply with the Regulations.
- 4.2 For the purposes of this provision, ‘reasonable grounds’ may include being informed by a tenant, letting agent or Officer that the required alarms are not installed. The Regulations do not require that the Council enter the property or prove non-compliance in order to issue a remedial notice, however, the Council will aim to visit such properties to confirm that the required works have not been

undertaken. Where the Council is satisfied on the balance of probabilities that a landlord has not taken the remedial action specified in the Notice, within the timescale stipulated in that document, the Council will:

- Arrange (where the occupier consents) to undertake the remedial action specified in the Notice within 28 days; and
- Require the landlord to pay a penalty charge of such amount as the Authority may determine, not exceeding £5,000.

### **5.0 The purpose of imposing a financial penalty**

5.1 The primary purpose of the Council exercising its regulatory power is to promote and protect the public interest. The primary aims of financial penalties are to: -

- lower the risk to tenant's health and safety by ensuring that the property has a safe means of escape in the event of a fire
- eliminate any financial gain or benefit from non-compliance
- reimburse the costs incurred by the Council in enforcing the regulations
- change the behaviour of the landlord and deter future non-compliance
- penalise the landlord for not installing alarms in line with the Regulations and after being required to do so, under notice
- proportionately address potential harm outcomes and the nature of the breach.

### **6.0 Principles to be followed in determining the amount of a Penalty Charge**

6.1 Any penalty charge imposed should be proportionate to the risk posed by non-compliance, the nature of the breach in the individual case and set at such a level as to sufficiently deter the offender and others. It should also cover the costs incurred by the Council in administering and implementing the legislation.

6.2 Fire and Carbon Monoxide poisoning are two of the 29 hazards prescribed by the Housing Health and Safety Rating System. These risks are real and substantial: A bulletin issued by the Home Office in 2017 (Fire Statistics: England April 2015 to March 2016) reports that: "Fires where a smoke alarm was not present accounted for 28 per cent of all dwelling fires and 33 per cent (76) of all dwelling fire-related fatalities in 2015/16" and that, "Fires where a smoke alarm was present but either did not operate or did not raise the alarm, accounted for 31 per cent of all dwelling fires...." Moreover, according to the Office for National Statistics, there were 53 deaths from accidental carbon monoxide poisoning in England and Wales in 2015.

6.3 The Department of Communities and Local Government conducted an impact assessment prior to the introduction of the Regulations. That assessment suggested that the cost of the requirements imposed on landlords (i.e. the purchase of smoke detectors and carbon monoxide alarms) was £25 and estimated that the provision of smoke alarms would, over ten years, prevent 231 deaths and 5860 injuries, accruing a saving of almost £607.7 million, and that the provision of Carbon Monoxide Alarms would, over the same period, prevent

a total of six to nine deaths and 306 to 460 injuries, accruing a saving of almost £6.8 million.

- 6.4 The Council considers that compliance with the Regulations do not place an excessive or unreasonable burden on a landlord. The cost of the alarms is low and, in many cases, can be self-installed without the need for a professional contractor. The risk and impact on occupiers resulting from a fire or carbon monoxide poisoning event far out-weighs the cost of compliance. While the imposition of the maximum potential fixed penalty charge of £5,000 may present an excessive financial burden on some landlords, this has to be balanced against the risk, the low cost of compliance, the fact that the offender will have been given all reasonable opportunity to comply prior to any penalty charge being levied and the offenders statutory rights of appeal.
- 6.5 For all of the above reasons, and so as to ensure that there is an effective incentive for landlord's to comply with the Regulations, the Council proposes to impose a penalty charge of £5,000 for non-compliance with a Remedial Notice, with a reduction of 50% where payment is received within 14 days of service of the penalty charge notice.
- 6.6 Notwithstanding the above, the Council may, following a representation made by the landlord, exercise discretion and reduce the penalty charge further if it considers there to be extenuating circumstances.

This discretion will not however apply when:

1. The person served has obstructed the Council in the carrying out of its duties; and/or
2. The person served has previously received a penalty charge under this legislation.

### **7.0 Review and Appeals in relation to a penalty charge notice**

- 7.1 If a landlord disputes the issue of a penalty charge notice, they can make a request to the Council for it to be reviewed. This request must be in writing and within the time specified in the penalty charge notice. Any representation received will be considered on its individual merit. Any extenuating circumstances will be considered by the Council in deciding whether to reduce the level of the penalty charge levied.
- 7.2 Potential mitigating factors –
- No previous convictions / charges
  - Self-reporting, high level of co-operation with the investigation – where this goes beyond what would normally be expected
  - The age health and other vulnerabilities of the offender
  - Voluntary steps taken to address issue – submission of licence application



- 7.3 A landlord will not be in breach of their duty to comply with the remedial notice, if he can demonstrate that he has taken all reasonable steps to comply with the requirements of the remedial notice.
- 7.4 The Council may, on consideration of any representation and evidence, chose to confirm, vary, or withdraw a penalty charge notice and we are required to communicate that determination by issuing a decision notice on the landlord. If varied or confirmed, the decision notice must state that a further appeal can be made to a First Tier Tribunal on the following grounds:
- 1) the decision to confirm or vary the penalty charge notice was based on an error of fact.
  - 2) the decision was wrong in law.
  - 3) the amount of penalty charge is unreasonable; or
  - 4) the decision was unreasonable for any other reason
- 7.5 Where a landlord raises an appeal to the Tribunal, the operation of the penalty charge notice is suspended pending its determination or its withdrawal. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

### **8.0 Recovery of Penalty Charge**

- 8.1 The Council may recover the penalty charge on the order of a court, as if payable under a court order however such proceedings may not be started before the end of the period by which a landlord may give written notice for the Council to review the penalty charge notice and where a landlord subsequently appeals to the Tribunal, not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.

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