



London Borough of Hackney

**Enforcement Policy for Private Sector
Housing**

1. INTRODUCTION

The Private Sector Housing service (PSH), located in the Council's Chief Executive's Directorate, is responsible for ensuring that housing conditions are safe and healthy for residents. Most landlords provide good standard accommodation for their tenants and manage their properties satisfactorily but this is not so in all cases. Data obtained by the Council¹ indicates that more than 17% of private rented sector (PRS) homes in parts of the borough contain serious hazards and/or disrepair. In shared accommodation, known as Houses in Multiple Occupation (HMOs) that percentage rises to 20%. On the ground, PSH frequently comes across situations where housing conditions are extremely poor and vulnerable people are left at unacceptable risk, particularly at the lower end of the privately rented housing market.

Where possible we prefer to work with landlords and we support the London Landlord Accreditation Scheme (ATLAS) which provides support and training for landlords in order to raise standards. Regrettably, some landlords and managing agents do not comply with the law and provide poor quality homes which contravene standards. In some cases standards are so poor that they can affect the health, safety and welfare of the tenants. Common deficiencies include the absence of adequate fire safety precautions, damp and mould, inadequate heating, poor standard amenities and overcrowding. Some landlords evade our property licensing schemes which require adherence to agreed standards of property conditions and management. In these cases enforcement action is necessary and the council is committed to taking such action to protect tenants and raise standards in the PRS.

This policy seeks to provide clarity for landlords and agents and guidance for PSH officers to ensure enforcement is taken in line with the Regulators Code². The Legislative and Regulatory Reform Act 2006 states regulators must have regard to the code when developing policies and operational procedures that guide their regulatory activities.

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement including those set out in the following:

- Regulators Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Guidance on Civil (financial) penalties under the Housing and Planning Act 2016

¹ Private sector housing stock modelling report; Building Research Establishment 2017

² Regulators Code; Department of Business, Innovation and Skills, Better Regulation Delivery Office; 2014

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf

When considering formal enforcement action, the Council will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This may not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

This policy will guide officers who are involved in taking enforcement action, investigating cases, serving notices, and recommending or deciding upon the commencement of legal proceedings when regulating others. “Enforcement” includes any criminal or civil action taken by enforcement officers aimed at ensuring that individuals or businesses comply with the law.

The Council is committed to ensuring that all its policies are applied in a fair and non-discriminatory manner. This policy will be applied in accordance with those principles.

This policy outlines the enforcement approach and the available powers we have at our disposal to regulate and manage non-compliance, predominantly within the private rented sector. It also includes those properties owned and managed by registered providers where they do not adhere to any existing protocols or agreements around property conditions and management. The policy can also apply to owner-occupied homes in certain limited circumstances.

This policy reinforces the Council’s robust enforcement stance against landlords who do not comply with their statutory obligations and enables us to penalise the worst landlords through direct financial sanctions or prosecution. It is in line with the Government’s intention to prevent landlords from benefiting from any criminal behaviour.

Our enforcement policy contributes to the Council’s vision “*A place for everyone*” and our Sustainable Community Strategy 2018-2028.

Shared Enforcement Responsibilities

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. An example is the enforcement relationship between the Council and the London Fire Brigade where dual enforcement provisions exist under the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005, as amended by The Fire Safety Act 2021.

Aim of the policy

This policy seeks to ensure that the application of any enforcement is:

- Proportionate: reflecting the level of risk to the public; enforcement action taken will relate to the seriousness of the offence.
- Consistent: we will take a similar approach in similar circumstances to achieve similar results. This does not mean uniformity.
- Targeted: enforcement action will be aimed primarily at situations that give rise to risks and in respect of the worst housing conditions. Action will be focused on those responsible for the risk and those who are best placed to control it.
- Transparent: we will ensure that landlords and agents are able to understand what is expected of them and what they can expect from us in return. The differences between statutory requirements and advice or guidance will be made clear.
- Accountable: activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaint procedures.
- Robust: through enforcement we will provide an effective deterrent against offending and ensure that those who flout the law are not able to profit from their wrongdoing, or undercut good landlords who have to compete in the same market.

2. PRINCIPLES OF ENFORCEMENT

Our principles are informed by The Regulators' Code which took effect on the 6th of April 2014 and the Guidance of Better Regulation Delivery Office as to how to apply our enforcement powers.

The six principles of the Regulators Code are:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulators should base regulatory activities on risk.
4. Regulators should share information about compliance and risk.
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. Regulators should ensure that their approach to their regulatory activities is transparent.

Prevention is better than cure and our role, therefore, involves actively working with landlords and agents to advise on, and assist with, compliance. However, where it becomes necessary to take formal enforcement action we will do so.

Where we consider that formal enforcement action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code.

In accordance with the Regulators' Code, the approach of the Council to the sanctions and penalties available to it will aim to:

- (a) change the behaviour of the offender;
- (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
- (c) eliminate any financial gain or benefit from non-compliance;
- (d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- (e) be proportionate to the nature of the offence and the harm caused;
- (f) restore the harm caused by regulatory non-compliance, where appropriate;
- (g) deter future non-compliance;
- (h) address significant wrongdoing and potentially harmful non-compliance in preference to simple technical offences, unless circumstances dictate otherwise.

All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.

Decisions will not be affected by improper or undue pressure from any source. We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action. This may include actual harm or loss or the impact on the well-being of the individual or potential or actual harm to the environment.

Hackney Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

All enforcement activities, including investigations and formal actions, will always be conducted within and in compliance with the statutory powers of the officer and all relevant legislation and in accordance with any formal procedures and codes of practice made under any other legislation in so far as they relate to the Council's enforcement powers and responsibilities. This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code. In certain instances we 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.

Notifying Alleged Offenders

If we receive information, for example from a complainant, that may lead to formal enforcement action against a business or individual we will usually notify that business or individual of any intended enforcement action as soon as is practicable. However, this may not be the case if to do so could impede an investigation or pose a safety risk to those concerned or the general public or where notification would defeat the purpose of the enforcement action. We will not reveal the identity of individuals who are the sources of our information. During the progression of enforcement investigations or enforcement actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and if so in accordance with the General Data Protection Regulations 2018.

3. ENFORCEMENT APPROACH

The type of enforcement action taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In some circumstances officers may use informal action to offer advice, information and assistance to aid compliance with housing related legislation, working with landlords and residents. However, where landlords offer poor quality and dangerous accommodation, robust enforcement action will be taken.

Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. For serious contraventions prosecutions may be instigated.

The type of enforcement action pursued is always considered on a case by case basis, and on its own merits. Following consideration of the specific circumstances of the particular case the most appropriate enforcement option will be applied accordingly. In every case enforcement seeks to:

- promote and achieve sustained compliance with the law,

- ensure that landlords take action to deal immediately with hazards and risks,
- ensure that landlords who breach legislative requirements are held to account.

Identifying the need for action

Our officers will usually investigate and identify the need to take enforcement action by:

- proactive inspections of dwellings through licensing provisions or other initiatives,
- in response to a complaint or request for assistance,
- referrals from other agencies e.g. the London Fire Brigade

Inspections and obstruction

We may undertake inspections of premises in the above circumstances but this list is not exhaustive. For routine compliance checks we will usually notify the landlord/agent and occupiers in advance and may serve formal notice of entry, giving at least 24 hours notice, under section 239, Housing Act 2004. However, in circumstances where we consider that any premises need to be entered for the purpose of ascertaining whether an offence has been committed under property licensing provisions or matters relating to HMO management regulations we may enter without giving prior notice.

We may take equipment, materials and other persons with us on an inspection where it is necessary for the purposes of the inspection . We may also take measurements and photographs and in certain circumstances remove samples of items or materials from the premises.

In circumstances where admission to premises has been sought and refused, where premises are unoccupied, or where application for admission would defeat the purpose of the entry we may apply to the Magistrates Court for a warrant of entry.

Where officers are obstructed in the performance of their duties we may take prosecution proceedings against the person(s) obstructing the officer(s).

Health and Safety precautions during inspections

Inspections will be conducted in accordance with health and safety precautions identified through a risk assessment process or as set out in guidance from relevant authorities. This may include specific precautions in relation to infectious diseases. Where prior notice of an inspection is given the occupiers will be notified of any specific precautions and we will explain to them the way the inspection will be conducted. Occupiers may be requested to comply with certain health and safety precautions during the inspection.

Enforcement Options

A wide range of enforcement powers exist in respect of private sector housing contraventions. This section summarises the types of enforcement and legislation most commonly applied. It is not an exhaustive list and is not intended to be a definitive interpretation of the legislation nor provide a full statement of the law.

The following enforcement powers will be considered where poor housing conditions or poor housing management are encountered or where licensing provisions or other regulatory provisions are evaded. In less serious cases we will usually work with landlords and managing agents to bring about improvements but when serious cases of hazardous conditions or wanton breaches of the law are discovered, particularly if the health, safety or welfare of residents is put at risk, immediate enforcement action will be likely.

i. Informal action

In certain circumstances where there are failings in maintaining acceptable housing conditions or housing management standards but the resulting detrimental impact on tenants or the neighbourhood is low, the Council will usually seek to engage with landlords or managing agents to bring about improvements. Other circumstances where informal such action may be considered include:

- when a tenant will not consent to works being carried out by their landlord,
- when a tenant's complaint is vexatious;
- when a registered social housing provider has a planned programme of works (including any works required by the Council) and the programme will be implemented within a reasonable time and achieve a better overall result.

ii. Written advice under an enforcement protocol

Written advice may be given to Registered Providers ("RPs" being Social Landlords). Where RPs work within the principles of any joint working protocol a lighter-touch, initial response may be taken for lower risk situations. This will allow RPs to resolve matters within any such agreed protocol, using their own internal procedures to an agreed timescale. Compliance advice will be given in writing, and we will monitor responses. However, where no such protocol has been agreed we may instigate more formal action within the terms of this Policy.

iii. Statutory Notices and Orders

Where informal action does not bring about a positive response, statutory notices may be served or orders may be made requiring the responsible person to take action or carry out works to remedy the matters at hand (see below).

iv. Indirect action

In some circumstances and where appropriate we will refer cases to another service, authority or agency for further action, e.g. the London Fire Brigade, Trading Standards, the Police.

v. Direct enforcement action

In more serious cases where poor conditions or management give rise to risks to tenants or where licensing provisions or other regulatory provisions are evaded we may take direct enforcement action through the issuing of Civil Penalty Notices (CPNs) or the instigation of prosecution proceedings. Where serious hazards exist we may take direct action under emergency provisions. These actions are discussed in more detail in section 4 below.

vi. Leaseholder/freeholder disputes

Disputes between long leaseholders and freeholders do arise. The Council will usually not intervene in such disputes as leaseholders have resolutions under the terms of their leases which private renters do not. We will promote the resolution of this type of dispute through civil litigation between the leaseholder and freeholder rather than use statutory enforcement. Leaseholders will be advised of the informal dispute resolution services offered by the leasehold advisory service.

4. ENFORCEMENT ACTIONS UNDER PART 1, HOUSING ACT 2004

4.1 Housing Health and Safety Rating System (HHSRS)

The HHSRS is set out in Part 1 of the Housing Act 2004. Prior to taking enforcement action for poor housing conditions, an assessment of any hazards will be carried out under the HHSRS. The assessment will determine whether the hazard is categorized as Category 1 (more serious hazards) or Category 2 (less serious hazards). Where Category 1 hazards are identified the Council has a statutory duty to take action; for Category 2 hazards it has the power to take action but is not compelled to do so. The Council will always take action in respect of category 1 hazards. In respect of Category 2 hazards we will consider each case on its merits and will take enforcement action where we consider the case warrants it.

If it is determined that enforcement action is to be taken the Council must consider what is the most appropriate enforcement action in relation to the hazard and the circumstances. The following actions are available to the Council:

- serving an improvement notice
- making a prohibition order
- serving a hazard awareness notice
- taking emergency remedial action
- making an emergency prohibition order

- making a demolition order under section 265 of the Housing Act 1985;
- declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of the Housing Act 1985.

The Council must produce a statement of reasons setting out why it considers any chosen action is the most appropriate of the options available. For Category 1 hazards the Council must consult with interested persons before taking any action (except for emergency remedial action) and may choose to do so in respect of Category 2 hazards; this is to consider the recipient's views before taking the action and to avoid any unnecessary appeals.

Recipients of any of the formal actions set out above (except hazard awareness notices) have a right of appeal to the First Tier Tribunal Property Chamber. Details of the appeals process will be provided to the recipient with the enforcement action documentation.

4.1.1 Improvement Notice

An improvement notice requires the recipient to carry out works or take action to reduce or remove any hazard(s). The notice will specify the time period in which the works must start and be completed by. An improvement notice may provide for the operation of the notice to be suspended until a given time, or the occurrence of a given event as specified in the notice. Failure to comply with an Improvement Notice is a criminal offence. Where a landlord obtains vacant possession of a dwelling in respect of which an Improvement Notice has been served, the notice will remain in force until it is complied with.

4.1.2 Prohibition Order

A prohibition order prohibits the use of part or all of a dwelling as living accommodation. A prohibition order is usually considered where housing conditions are so poor that it is not considered viable to remedy the hazards or where it is simply impracticable to remedy the hazards. They may be considered in other circumstances too and the reasons for making a prohibition order will be set out in the Council's statement of reasons. A prohibition order may provide for the operation of the order to be suspended until a given time, or the occurrence of an event, specified in the order. Where not suspended the order takes effect after 28 days if no appeal is lodged. Failure to comply with a Prohibition Order is a criminal offence.

4.1.3 Emergency Prohibition Order

Where a Category 1 hazard exists at a premises and the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, the Council may make an emergency prohibition order. These have the same effect as a prohibition order (4.1.2) but have immediate effect. Emergency prohibition orders are not suspended pending any appeal hearing.

4.1.4 Emergency Remedial Action

Where a Category 1 hazard exists at a premises and the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, the Council may take emergency remedial action by entering the premises and undertaking remedial works to reduce or remove the imminent risk of harm. Where this action is taken the Council must notify the person having control of the property (the landlord/agent) within seven days of having taken the action. The Council's costs in taking the action will be recovered from the owner of the property.

4.1.5 Hazard Awareness Notice (HAN)

A hazard awareness notice is a notice advising the person on whom it is served of the existence of a hazard arising as a result of a deficiency on the premises. A HAN does not in itself legally require the recipient to carry out works to reduce or remove the hazard, it merely notifies the recipient of the existence of the hazard. The Council can serve a HAN in respect of Category 1 or 2 hazards but is unlikely to do so in respect of a Category 1 hazard except in extenuating circumstances. The reasons for serving a HAN as opposed to alternative courses of action will be set out in the Council's statement of reasons.

4.1.6 Demolition Order and Clearance Area

The powers to make a Demolition Order or clearance area are contained in the Housing Act 1985. These are powers that are rarely used in Hackney but are reserved for use in extenuating circumstances and would follow extensive consultation.

5. OTHER ORDERS

We will also consider the following options independently, or collectively with other enforcement action, as particular circumstances permit:

5.1 Interim and Final Management Orders, Empty Dwelling Management Order (EDMO)

To ensure adequate management arrangements are in place in a licensable HMO, we have the power to make an Interim Management Order ("IMO") in respect of a licensable property where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO we can make an application to the First Tier Tribunal Property Chamber to make a Final Management Order and take over the control and management of the property for a period of up to 5 years. This disables the landlord's ability to manage the property.

An Interim and Final Empty Dwelling Management Order can be made on long term empty properties. They allow the Council to take control of the property, and

bring it back into use. These are only considered where a dwelling has remained unoccupied for more than six months, there is little prospect of it being brought back into use by the owner and/or it is having a detrimental effect on the neighbourhood. Rights of appeal to the First Tier Tribunal Property Chamber apply in relation to these powers and compensation provisions also arise in some cases.

5.2 Compulsory Purchase Order (CPO)

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner may apply. As with an EDMO these are only considered where a dwelling has remained unoccupied for more than six months, there is little prospect of it being brought back into use by the owner and/or it is having a detrimental effect on the neighbourhood.

5.3 Rent Repayment Orders (RRO)

Where certain qualifying housing offences can be proven, tenants or the Council can apply to the First Tier Tribunal Property Chamber for a Rent Repayment Order under the Housing Act 2004/Housing and Planning Act 2016. The tribunal has the power to grant a RRO which requires the landlord of the property where the offence(s) has been committed to refund up to 12 months rent to the tenants or the Council.

This power will be considered in response to all serious qualifying offences where it is in the public interest and where there is sufficient evidence for a successful application to the First Tier Tribunal.

In appropriate cases we will consider applying for an RRO or will support tenants in making an application for a RRO where we can prove that the landlord is guilty of one of the qualifying offences.

The qualifying offences are:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order (or Emergency Prohibition Order)
- Breach of a Banning Order (see 5.4 below)
- Offences under property licensing schemes
- Using violence to secure entry to a property
- Illegal eviction or harassment of the occupiers of a property

5.4 Banning Orders

A Banning Order prohibits the undertaking of Landlord or Managing Agent activities for a specified period of time. These orders may be made against Landlords and Managing Agents where they have been convicted of a 'Banning Order offence'. These offences are wide ranging and are specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. They include,

for example, failure to comply with an improvement notice or prohibition order, licensing offences, HMO management regulation offences and fire safety offences. We will apply for Banning Orders to be made where the evidence justifies this course of action and it is considered to be in the public interest to protect against rogue landlords.

6. ENFORCEMENT ACTION UNDER OTHER LEGISLATION

In addition to duties and powers under housing legislation the private sector housing team exercises duties and powers under a wide range of other legislation in relation to housing as set out in the Council's scheme of delegation. These include powers in relation to statutory nuisances, drainage, building defects, pest control and other matters. The general principles set out in this policy will be followed in respect of this legislation as with housing legislation.

Smoke & Carbon Monoxide Regulations 2015

Specific provisions in relation to Smoke and Carbon Monoxide detectors are contained in these regulations. We may issue a penalty charge of up to £5,000 where a landlord has breached the duty of compliance. Penalty charges will be imposed in accordance with the published 'Statement of Principles', found in Appendix 2 to this policy. Penalty charges are subject to an internal review process and we will ensure any written representations received are considered and responded to. Once a penalty charge has been imposed, and subject to any decision made during the review process, any unpaid penalty charges will be referred for debt collection. A statement of principles in relation to the enforcement of these regulations is to be found in Appendix 2 to this policy document.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Specific provisions in relation to Electrical Safety are contained in these regulations. We may issue a penalty charge of up to £30,000 where a landlord has breached the duty of compliance. A statement of principles in relation to the enforcement of these regulations is to be found in Appendix 3 to this policy document.

7. WORKS IN DEFAULT

Works in default is when the Council carries out necessary works to a property when the responsible person (usually the property owner) has failed to comply with a statutory notice. The cost of the works is then charged to the responsible person together with the Council's costs. Every effort is made to secure compliance in the first instance but where an enforcement notice has not been complied with, works in default may follow subject to the level of risk, practical constraints of the case and the financial circumstances. Before actually doing the work specified in the original notice, the Council will consider carefully the prospect

of recovery of any costs incurred. The Council has no duty or obligation to undertake works in default.

The Council will make every effort to recover the full cost of any work carried out in default in addition to costs incurred in administering the work in default. Where debt is incurred under works in default the Council will consider enforcing sale of the property to recoup the debt.

Works in default does not preclude parallel enforcement action e.g. civil penalties or prosecution, where warranted.

8. REQUIREMENT TO PRODUCE DOCUMENTS AND SUPPLY INFORMATION

In exercising its duties and powers the Council may require you to produce specified documents or provide specific information as to the ownership and occupation of premises. If you are required to do so under legal powers and you do not do so or you provide false or misleading information you may commit a criminal offence. Any notice served in this respect will set out its requirements and the penalty for non-compliance.

Failure to provide such documents or information will be viewed seriously where this obstructs or delays our work so that tenants are exposed to risk for unacceptable periods.

9. CHARGING FOR ENFORCEMENT ACTION

The Housing Act 2004 allows the council to make a charge for taking enforcement action where enforcement action involves the service of statutory notices and orders. A charge will normally be made for the cost of officer and administration time. The Council has a separate Fees and Charges policy which is regularly updated.

10. LEGAL SANCTIONS FOR NON-COMPLIANCE

10.1 Simple Caution

A simple caution does not impose any financial or judicial penalty of itself. It is a binding record that the offender has committed an offence and can be cited in any future proceedings when it can be taken into account by the Court in sentencing for that future offence.

There are three preconditions, which must all be satisfied, if a matter is to be dealt with by simple caution, as follows:

- there is sufficient evidence to give a realistic prospect of conviction in Court for an offence, had a prosecution been taken,
- the offender admits his or her guilt,
- the person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution as an alternative to prosecution in the courts would commonly be that the offence did not give rise to the risk of significant harm, the offender has no previous history in relation to the offence and has done everything in their power to make amends.

The Council is under no compulsion to choose a simple caution. Where a simple caution is offered but declined, the Council is likely to consider a financial penalty or prosecution.

Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. However, a simple caution cannot be conditional on the Council's costs being paid.

10.2. Financial Penalties

A civil penalty notice (CPN) may be issued for certain specified offences as an alternative to prosecution. In serious circumstances, prosecution will be more appropriate than the issue of a CPN. If a penalty is not paid, we will enforce the penalty. For a civil penalty to be imposed the Council must have evidence to meet the criminal burden of proof i.e. 'beyond reasonable doubt'.

The Council has the power to impose a civil penalty of up to £30,000 for certain prescribed offences. The Council will exercise its powers to issue civil penalties in accordance with its Statement of Principles and Matrix as set out in Appendix 1 to this policy document. This provides guidelines for determining the level of penalties for non-compliance under specified offences. Notwithstanding this, the Council will consider each case in the light of any unusual circumstances.

The matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty, the council must consider:

- Severity of the offence
- Culpability and track record of the offender
- Harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence

Officers will have regard to the matrix and the statutory guidance. This will determine an indicative level of penalty for the offence under consideration. Having determined an indicative level of penalty, it will be adjusted in each individual case to take into account other mitigating or aggravating factors that are relevant.

The penalty imposed will reflect the type and severity of offence, landlord's compliance history and other relevant factors. This will be done on a case by case basis. If a civil penalty option is decided, a prosecution cannot also be instigated.

Penalty charges are subject to an internal review process and we will ensure any written representations received are considered and responded to. Once a penalty charge has been imposed, and subject to any decision made during the review process, any unpaid penalty charges will be referred for debt collection.

10.3. Prosecution

We may decide to prosecute in respect of serious or recurrent breaches, or where other enforcement action, such as statutory notices have failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions in The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. Prosecution will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction and that prosecution is in the public interest. In making any decision we will consult any criminal landlord databases available to us.

11. THE DECISION TO OFFER A SIMPLE CAUTION/ISSUE A CIVIL PENALTY/ PROSECUTE

Two tests are applied in determining whether a simple caution, civil penalty or prosecution is viable and appropriate. We follow guidance issued by the Crown Prosecution Service when applying the tests.

A simple caution, civil penalty or prosecution will only be pursued when the case has passed both the evidential test and the public interest test outlined below.

11.1 The Evidential Test

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers will have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction would only be obtained if the Court or the jury is sure of a defendant's guilt "beyond reasonable doubt".

11.2 The Public Interest Test

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against the sanction carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the need for the relevant sanction whilst others may suggest that another course of action would be more appropriate. These may include remedial work to premises having been carried out and/or taking proper steps to ensure that the offence cannot recur.

12. ROGUE LANDLORDS DATABASE

We are committed to the Greater London Authority (GLA) “Rogue Landlord and Agent Checker” which is published on the Mayor of London’s website and cites criminal landlords and letting agents who have been successfully prosecuted or issued with civil penalties (of more than £500) for housing and other related offences. Certain offences listed on the checker can be viewed by members of the public whilst others may only be viewed by local authorities. We will consult the checker when considering legal sanctions against a landlord/agent and when determining if an applicant for a property licence meets the “fit and proper person” test.

13. PUBLICITY

The Council will consider publicising any conviction, rent repayment order, banning order or civil penalty notice. This will serve to draw attention to the need to comply with requirements and deter anyone tempted to disregard their responsibilities under the law thereby raising standards in the private rented sector. We will seek to ensure all publicity is released on the day of conviction or as soon as practicable afterwards.

APPENDIX 1: Statement of principles and matrix for imposing a civil penalty and the right to make representations

On the 23rd of October 2017 the Council's Cabinet approved, in principle, a policy for Civil Penalty Notices. This guidance document sets out the policy in greater detail, provides guidance and rationale to officers in setting the levels of such penalties, and greater transparency regarding the decision making process for recipients in particular cases.

INTRODUCTION TO RELEVANT LEGISLATION

The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a Financial Penalty as an alternative to Prosecution for certain Housing Act offences. The maximum Financial Penalty is £30,000 per offence.

The list of relevant offences for which Civil Penalties can be levied under the Housing Act 2004 are:-

- Failure to comply with an Improvement Notice (Sec. 30)
- Failure to licence a House in Multiple Occupation (HMO) (Sec. 72)
- Failure to Licence under Selective Licensing Scheme Housing Act 2004 (Sec. 95)
- Failure to comply with Licensing Conditions (Sec. 72 and 95)
- Failure to comply with an Overcrowding Notice (Sec. 139)
- Failure to comply with Management Regulations in respect of HMO (Sec. 234)
- Breaching a Banning Order (Housing and Planning Act 2016)

The October 2017 Cabinet decision introduced a Statement of Principles, which includes a Charging Matrix Policy. A Scoring Matrix has been developed with a view to assisting officers to arrive at a justifiable figure.

APPLYING THE MATRIX

The Financial Penalty should be fair and proportionate, with the main objective of punishment, deterrence and the removal of gain derived through the commission of the offence. It should not be cheaper to offend than to take the appropriate precautions. This guide is intended to assist officers with the use of the Matrix and is not intended to replace Government Guidance on the subject, which is available on the Internet by searching for Department of Communities & Local Government (DCLG) 2017 '*Civil Penalties*' under the Housing and Planning Act 2016.

In determining the level of penalty the Council will have regard to local circumstances and relevant government guidance detailing factors to be taken into account. The overriding principle is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation. Each case will be considered on its own merits. The statutory guidance makes it clear that it is for each local authority to develop and document their own policy on issuing civil penalties.

Guide to Applying the Civil Penalty Fee Matrix

Civil Penalty Notice (CPN) Scoring Matrix: Factors to be taken into account include:-

- i. Severity of the offence;
- ii. Culpability
- iii. Harm caused to the tenants
- iv. Punishment of the offender
- v. Deter the offender from repeating the offence
- vi. Deter others from committing similar offences
- vii. Remove any financial benefit the offender may have obtained as a result of committing the offence;

Vulnerable individuals: the statutory guidance states that the harm caused and the vulnerability of the individual are important factors in determining the level of penalty. The Housing Act 2004 defines a vulnerable individual(s) as one who is at greater harm and therefore the penalty should be greater when vulnerability is an issue.

In order to comply with statutory guidance officers will follow a set of principles outlined in the guidance in exercise of their functions in respect of civil penalties. In liaison with other London Boroughs through the Greater London Authority (GLA), London Private Sector Housing Partnership, the Hackney CPN Matrix table and banding was developed (see Table 1) as below. The Matrix is not intended to provide a prescriptive tariff applicable to every case but provide guiding principles intended to provide an indicative level of penalty for the offence under consideration. In turn, a fair distribution of the level of harms has been developed in accordance with their severity so as to reflect determination of the various degrees of culpability (see Tables 2 & 3).

The Hackney PSH Civil Penalty Notice (CPN) Band

TABLE 1.

Band Number	Severity of Offence		Civil Penalty Band Width (£)
1 2	Moderate	(a)	0 to 4999
		(b)	5000 to 9999
3 4	Serious	(a)	10000 to 14999
		(b)	15000 to 19999
5 6	Severe	(a)	20000 to 24999
		(b)	25000 to 30000

Note: Determination of the initial penalty level will be based on the culpability of the offender in relation to the offence and the actual or potential level of harm to the occupier as a result of the offence.

This involves three steps:-

Step 1 - Determining the Culpability (See paragraph for Determination of Culpability).

Step 2 - Determine the level of harm (See paragraph for Level of Harm).

Step 3 - Use Table 2 to determine the level of initial harm.

Determination of Culpability: Breaches of Improvement and Overcrowding Notices; Failure to licence a licensable HMO or Failure to licence a premises subject to the Selective Licensing Scheme

TABLE 2.

INITIAL HARM LEVELS	CULPABILITY		
	Low	Medium	High
Low Level (3) harm	£5,000	£6,667	£10,000
Medium Level (2) harm	£7,500	£13,333	£20,000
High Level (1) harm	£10,000	£20,000	£30,000

Note: Minimum fine level following mitigation will be 50% of the initial fine level.

Determination of Culpability: Breach of Licence Conditions, HMO Management Regulations

TABLE 3.

INITIAL HARM LEVELS	CULPABILITY (FOR MODERATE SEVERITY OFFENCE)	
	Low Level (3) harm	£1,667
Medium Level (2) harm	£3,335	
High Level (1) harm	£5,000	

Note: Minimum fine level following mitigation) will be 50% of the initial fine level.

Explanation of Severity Levels;

The Severity Levels contain factors relating to both actual harm and risk of harm. When deciding the severity level it is important to take into account the relevant piece of legislation associated with the intended action.

Severity Level 1: Highly likely to result in harm

- The offence committed is highly likely to have a serious adverse effect(s) on individual(s) and/or result in widespread impact. E.g. consider the vulnerable age group for the associated hazard

Severity Level 2: Medium likelihood of harm

- Adverse effect on individual(s) not amounting to Severity Level 1
- Where there is a medium risk of an adverse effect on individual(s) or low risk serious adverse effects

Severity Level 3: Low likelihood of Harm

- Low risk of an adverse effect on individuals
- Little or no risk of actual adverse effect on individual(s)

Failure to Licence a House in Multiple Occupation (HMO):

Failure to licence a Mandatory House in Multiple Occupation (HMO) will be regarded as a serious matter thereby meriting a Band 3 or 4 penalty of £15,000 CPN charge average as a starting point (See Table 1) unless there are mitigating factors to reduce the proposed CPN charge or aggravating factors to increase the proposed CPN charge. In cases of serious aggravating factors, then this will merit a Band 5 penalty of £22,500 CPN charge average as a starting point unless there are mitigating factors to reduce or aggravating factors to increase the proposed CPN charge.

Failure to Licence a property under a Selective Licensing Scheme:

Failure to licence a property under a Selective Licensing Scheme will usually be regarded as a moderate matter and therefore meriting a Band 2 penalty of £7,500 CPN charge average as a starting point (see Table 1) unless there are mitigating factors to reduce or aggravating factors to increase the proposed CPN charge. In cases of serious aggravating factors, then this will merit a Band 5 penalty of £17,500 CPN charge average unless there are mitigating factors to reduce or aggravating factors to increase the proposed CPN charge.

Breaching a Banning Order

Breaching a Banning Order will automatically attract a £30,000 (£30K) initial fee, unless there are mitigating factors to reduce the figure below the highest threshold of £30K. Each case of a Banning Order will be treated on its own merits and the Council reserves the right to opt for prosecution action or other action sanctioned as appropriate.

EXPLANATORY NOTES FOR TABLE 2
<ul style="list-style-type: none"> • Low Culpability assessed as Level (3) Harm will result in a proposed CPN charge of £5,000;
<ul style="list-style-type: none"> • Medium Culpability assessed as Low Level (3) Harm will result in a proposed CPN charge of £6,667;

<ul style="list-style-type: none"> • High Culpability assessed as Low Level (3) Harm will result in a proposed CPN charge of £10,000.
<ul style="list-style-type: none"> • Low Culpability assessed as Medium Level (2) Harm will result in proposed CPN charge of £7,500;
<ul style="list-style-type: none"> • Medium Culpability assessed as Medium Level (2) Harm will result in £13,333 proposed CPN charge;
<ul style="list-style-type: none"> • High Culpability assessed as Medium Level (2) Harm will result in a proposed CPN charge of £20,000;
<ul style="list-style-type: none"> • High Culpability assessed as High Level (1) Harm will result in a proposed CPN charge of £10,000;
<ul style="list-style-type: none"> • High Culpability assessed as Medium Level (1) Harm will result in a proposed CPN charge of £20,000;
<ul style="list-style-type: none"> • High Culpability assessed as High Level (1) Harm will result in a proposed CPN charge of £30,000

EXPLANATORY NOTES FOR TABLE 3
Culpability [Moderate Level Severity Offences]
<ul style="list-style-type: none"> • Low Level (3) Harm will result in a proposed CPN charge of £1,667
<ul style="list-style-type: none"> • Medium Level (2) Harm will result in a proposed CPN charge of £3,335
<ul style="list-style-type: none"> • High Level (1) Harm will result in a proposed CPN charge of £5,000

MITIGATING AND AGGRAVATING FACTORS

Examples of Mitigating Factors:

- Cooperation with investigation e.g. attends for PACE interview
- Voluntary steps taken to address issues e.g. submits a property licence application
- Willingness to undertake training e.g. for running rented accommodation business
- Willingness to join a recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance of obligations; e.g. mental health issues, unforeseen health issues, emergency health concern
- No previous relevant convictions

- Vulnerable individual(s) where the vulnerability is linked to the commission of the offence
- Otherwise good character and/or exemplary conduct

Examples of Aggravating Factors:

- Previous convictions having regard to the relevant offence and time elapsed since the previous offence
- Motivated by financial gain
- Obstruction of the subject investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance; the greater the number, the greater potential aggravating factor
- Record of non-compliance
- Record of letting substandard accommodation
- Record of poor management/inadequate management provision
- Lack of tenancy agreement/rent paid in cash

Determination of Culpability

High Culpability [Non-exhaustive list]

- Where the offender intentionally breached, or flagrantly disregarded the Law;
- Where the offender knew, or ought to have known, their actions were unlawful;
- Actual foresight of, or wilful blindness to, risk of offending, but risk nevertheless taken;

Medium Culpability [Non-exhaustive list]

Offence committed through act or omission which a person exercising reasonable care would not commit. The landlord has systems in place to manage risk or comply with their legal duties but these were insufficient nor implemented.

An example of this may be an agent or landlord who has attended Property Management Training or whom an officer has previously supported through visit(s) and advice. It is anticipated that the majority of cases will generally fall into this category.

Low Culpability [Non-exhaustive list]

An offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they may have been inadequate on this occasion;
- there was no warning or circumstances indicating a risk;
- failings were minor and occurred as an isolated incident;

LEVEL OF HARM:

When considering the level of harm, both the actual, potential and likelihood of harm will be considered.

High Level of Harm

- Serious effect on individual(s) or widespread impact;
- High level of potential harm to the occupant(s) and/or continuous;
- High risk of adverse effect on an individual;
- Serious levels of overcrowding;
- E.g. two or more Category 1 Hazard(s) and/or high Category 2 multiple hazard(s) (D, E) found in property and/or multiple breaches of Management Regulations

Medium Level of Harm

- Adverse effect on the individual(s);
- Medium risk of harm to the individual(s);
- Low risk of a serious effect on individual(s);
- E.g. Only one Category 1 Hazard or high Category 2 Hazard(s) (D&E) found and/or no more than one breach of Management Regulations;

Low Level of Harm

- Low risk of harm or potential harm;
- Little risk of an adverse effect on individual(s);
- E.g. No Category 1 Hazard or breach of Management Regulations;

CASE FILE PREPARATION COST

A case file will be prepared in the same way as for prosecution, or equivalent to a prosecution case file, with a view to justifying the costs that may be claimed back for a successful prosecution case in the event that the council opted for prosecution instead of a Civil Penalty Notice charge. The council reserves the right to charge for case file preparation costs.

REDUCTIONS AND DISCOUNTS

The council may consider a potential reduction in the Financial Penalty:

- for an early admission of guilt,
- a first offence.

The following factors may be considered in setting the level of reduction:

- the stage in the investigation or thereafter when the offender admitted guilt;
- the circumstances in which they admitted guilt;
- the degree of cooperation with the investigation.

The maximum fine level reduction as a result of mitigation will be no more than 50% of the initial fine level.

No reduction or discount will be offered in relation to a second offence or for serious high culpability offences. A maximum reduction of 30% (i.e. aggregates of 10%, 20% 30%) may be made by the Assessment Officer/Manager, but this reduction/discount may be reduced if not all factors have been met. This discretionary flexibility should allow the Council to account for any mitigating or aggravating factors of which they were not previously aware of in order to adjust the proposed CPN charge figure accordingly. Where there are strong mitigating circumstances and little or no aggravating factors as a result of evidence provided at the representation stage, then the Case Officer or Manager reserves the right to use the minimum fine level figure of 50% of the initial fine. (See Note under Tables 2 & 3).

The Council's cabinet approved on the 23rd of October 2017 the discretion to grant a reduction of 20% where there have been no relevant aggravating factors; (for example, in the event that the offender makes a licence application to licence a previously unlicensed address) within the representation period at the '*Notice of Intention*' stage. Also a discount of 20% of the original calculated Financial Penalty will be applied where the Penalty is paid within a specified time period [normally 28 days]. This discount will be in addition to the previous 20% where relevant requirements are fulfilled. Cases are assessed on a case-by-case basis taking all relevant circumstances into account.

REDUCTIONS WITH REGARD TO OFFENDER'S ABILITY TO PAY

The CPN Statutory Guidance requires that:-

"Local Housing Authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty."

For purposes of cost effectiveness of administering the CPN System within Hackney's Private Sector Housing Team (PSH), the Case Assessment Officer or other Nominated Officer may send out a standard *Landlord/Agent 'Ability to Pay' Declaration Form* for completion and return to Private Sector Housing within a period of 28 days of posting out the CPN Notice of Intention. Upon receipt of the completed Declaration Form Hackney's Private Sector Housing team may use the information in connection with the CPN reduction/discount for the subject property. In the case of non-return of a completed Declaration Form, then Hackney's PSH team may reserve the right to disregard landlord/agent reduction/discount. This process is relevant because there may be a reason that the recipient(s) of the proposed CPN may not be able to account for their assets and income, or there is no reason to suggest that the recipient of the proposed CPN may not be able to afford the payment. Therefore, it is in the interest of the recipient(s) of the proposed CPN to supply all relevant information to the council in order that information is taken into consideration during the issuing of a final CPN. An example is evidence of rental income from the property; financial assets may be the size of the property portfolio controlled or owned by the landlord/agent. Evidence in support of submissions may include company accounts, bank statements etc..

DETERMINING SUBSEQUENT OFFENCES

The CPN legislation and guidance allows the Local Housing Authority to take into account the number of times that someone has committed an offence. Second and third offences carry a much more severe and substantial penalty. Therefore, subsequent and repeated offences will attract a higher CPN Charge; a second offence will be charged at double the first offence

capped at £30K. Other subsequent offences will be charged using the worst offence even if it is not the most recent, plus 50% of the next highest in the corresponding table and capped at £30K.

SUMMARY OF SENTENCING GUIDELINE PRINCIPLES FOR CPN CHARGE

- i. Assess offence seriousness (Culpability and Harm); offence seriousness is the starting point for determining which Offence Band to choose (i.e. Moderate, Serious or Severe). When considering the seriousness of the offence, the Council shall consider the culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused. A first time offence shall be taken into account. In looking at culpability, the Council will consider the overarching principles (intention, recklessness, knowledge and negligence).
- ii. Once the starting point has been identified, the Council can then increase or reduce this to reflect any aggravating or mitigating factors that impact on the culpability of the offender and/or harm caused by the offence to reach a provisional Civil Penalty Charge (CPN); the CPN Band Width at the starting point will reflect the description of activity used to justify the starting point. The Council is not precluded from going outside the CPN Band Width Charge (up to allowed maximum) where the facts justify it; previous convictions which aggravate the seriousness of the current offence may take the provisional CPN Charge beyond the Band Width, especially where there are significant other aggravating factors present.
- iii. Form a preliminary view of appropriate CPN Charge. When the Officer has reached a provisional CPN Charge based on the assessment of the offence's seriousness, they should take into account matters of offender mitigation.
- iv. Consider a reduction for a guilty plea; the punitive element of the proposed CPN Charge may be reduced to recognise an offender's guilty plea (particularly if the offender makes an early guilty plea). The level of reduction should reflect the stage at which the offender indicated a willingness to admit guilt.
- v. Decide CPN Charge and give reasons; review the total proposed CPN Charge and ensure that it is proportional to the offending behaviour; the proposed CPN Charge must state reasons for the proposed charge (therefore, a narration of the reasons for the charge will be necessary); it is particularly important to identify any aggravating or mitigating factors that has resulted in the issuing of the proposed CPN.

STAGES IN CALCULATING A CIVIL PENALTY NOTICE (CPN)

Stage 1.

Establish the starting point of CPN from relevant column and table
--

Stage 2.

Establish culpability i.e. Low, Medium or High culpability (see Table 2 & 3)
--

Stage 3.

Establish level of culpability harm i.e. Low (level 3); Medium (level 2); High (level 1); Choose the appropriate figure from the culpability table for working out the initial CPN charge figure. (See Table 2 & 3.)

Stage 4.

Note: File preparation costs by Case Officer(s) may be claimed back in the event that a successful prosecution case was opted for instead of civil penalty. Meantime, the file preparation cost may be kept on file as part of a discount and not added to overall CPN cost at this stage. The Council reserves the right to charge for case file preparation cost.

Stage 5.

Apply reductions for early admission of guilt by offender. Also consider reductions with regard to the offender's ability to pay and any discounts applicable. Then issue proposed CPN with relevant documentation to the recipient.

WORKED EXAMPLE

A landlord has committed an offence by not complying with a Housing Act 2004 Improvement Notice. Upon consideration by the appropriate Council Officer, it has been established that the responsible landlord had a Low Culpability by virtue that significant efforts were made to address the risks, although they have been inadequate on this occasion. However, the harm caused to the individuals falls within the medium risk of harm. The landlord has shown some willingness to pay the CPN Charge within a reasonable period, typically within 28 days provided that the charge can be justified.

Check Table 2 in the culpability column. For a Low and Medium (level 2) harm then the initial starting figure will be £7500. Apply a 20% early payment discount to the initial fee; i.e. $20/100 \times £7500 = £1500$; [$£7500 - £1500 = £6000$]. (Early payment discount works out as £1500 at 20% of £7500).

Step 2.

Disregard the cost of preparing the prosecution casefile at this stage; cost of prosecution case file preparation may come into the calculations if a prosecution case is pursued instead of civil penalty. The Council reserves the right to charge for file preparation cost where appropriate.

Step 3.

Consider any aggravating and mitigating circumstances which may further increase or further reduce the proposed CPN charge. Also consider any further reductions with the offender's ability to pay the CPN. In the example given, after checking the criteria for aggravating and mitigating circumstances, the case finds no reason to make any further adjustment to the proposed CPN Charge figure of £6000; the landlord has not given any indication or demonstrated that they are unable to afford the proposed CPN charge. Therefore, the CPN Charge to be issued will be £6000.

Note: For this particular case example, minimum fine level after considering discounts/reductions etc. cannot fall below £3750 [See Table 2]. The severity of the offence is

Moderate and falls within Band Number 2 and Civil Penalty Band Width (b) [See Table 1].

Step 4.

Case Officer responsible for issuing proposed CPN Charge issues a CPN Notice of Intent to the relevant party(s) after going through the Process. The CPN Notice of Intent should clearly state that a discount of 20% has been applied to the figure making the proposed charge as stated. The Intention being that the proposed CPN charge will be settled in the 28 days (or other further period allowed). The proposed CPN is issued with documentation.

APPENDIX 2: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Statement of Principles under Regulation 13

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced legal requirements on private sector landlords from the 1st October 2015 in respect of premises occupied under tenancies starting on or after that date. The requirements are to:

1. Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
2. Equip a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. Carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

For the purposes of the legislation, living accommodation is a room that is used for the primary purposes of living, or is a room in which a person spends a significant amount of time, and a bathroom or lavatory is classed within this definition.

Enforcement

In those situations where the council has reasonable grounds for believing that:

1. There are no, or insufficient number of, smoke and/or carbon monoxide alarms in the property as required by the regulations; or
2. The smoke and/or carbon monoxide alarms were not working at the start of the tenancy or licence,

then the Local Authority shall, within 21 days, serve on the landlord a Remedial Notice detailing the actions that must be taken to comply with the regulations, and the Notice shall be in line with the requirements of the regulations.

If after the given period, being 28 days, the Notice has not been complied with, then a Penalty Charge will be levied by means of a Penalty Charge Notice on the landlord. The maximum penalty charge is set at £5000.

Standard of Alarm Provision

The type of smoke alarms to be required are alarms powered by a 10 year duration battery and where more than one alarm is required they are to be interlinked so that all will sound on activation of any single alarm.

Carbon Monoxide alarms are to be stand-alone alarms powered by a 10 year duration battery.

Penalty Charge Principles

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the regulations and which will deter non-compliance. It should also cover the costs incurred by the council in administering and implementing the regulations.

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes. This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The Department of Communities and Local Government estimate that 231 deaths and 5860 injuries could be prevented over ten years accruing a saving of almost £607.7 million by the provision of smoke alarms.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion and disorientation to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can be a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The Department of Communities and Local Government estimate that six to nine deaths and 306 to 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or a Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

For these reasons, an effective incentive to comply with these regulations is fully justified. It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, could potentially be perceived as 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 been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

For these reasons a penalty charge of £5,000 is set for non-compliance with a Remedial Notice. This will be the usual charge. The council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord. This discretion will not apply when:

1. The person/company has obstructed the council in the carrying out of its duties; and/or

2. The person/company has previously received a penalty charge under these regulations.

Appeals in relation to a penalty charge notice

The landlord has a right to seek a review of the penalty charge notice by writing to the council (details included with the Notice) within 28 days of the Penalty Charge Notice being issued.

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 will state a further appeal can be made to the First Tier Tribunal (Property Chamber) and details given.

Any representation will be considered on its individual merits. Any extenuating circumstances will be considered by the council in deciding whether to confirm, vary or withdraw the penalty charge.

Recovery of Penalty Charge

The council may recover the penalty charge as laid out in the regulations. Any penalty charge will be pursued through the Courts if necessary.

Review of Statement

This Statement of Principles shall be revised to reflect any change in legislation, corporate policy or official guidance and any revised statement will be duly published.

APPENDIX 3: Statement of Principles under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“The Electrical Safety Regulations”).

The Private Sector Housing Team (PSH) regularly come across electrical installations in rented properties that are poorly maintained, are badly out of date, or have been repaired or adapted by people who are not qualified electricians. Sometimes exposed live components are found that present an immediate danger to life.

The Electrical Safety Regulations require all landlords to keep their properties safe by having their electrical installations inspected and tested by a person who is qualified and competent, at least every five years. The regulations give powers to Local Authorities to require inspections to be carried out and, where necessary, to ensure that installations are made safe. To that end:

- In situations where PSH officers find immediate danger, Emergency Remedial Action would normally be taken under Part 1 of the Housing Act 2004.
- Where a number of other significant hazards exist alongside electrical hazards, but there is no immediate danger, officers will usually serve an Improvement Notice under Part 1 of the Housing Act 2004.
- Where there is no evidence of immediate danger and no other hazards exist, officers will usually require an up to date Electrical Installation Condition Report (EICR) to be provided under The Electrical Safety Regulations. Where necessary, breaches of the regulations will be followed up by a “remedial notice” requiring the landlord to make the installation safe or to carry out further investigations.
- Where remedial notices are breached the Council will seek to carry out the works itself and will then recover its costs from the landlord. It may also impose a civil penalty on the landlord of up to £30 000.
- Where a landlord has not carried out urgent works required under an EICR, the Council will usually, with the consent of the tenants, exercise its power to carry out Urgent Remedial Action under The Electrical Safety Regulations . The costs of the works will be recharged to the landlord and the option of issuing a Civil Penalty Notice will be considered.
- An EICR will be required in advance of every licensing inspection under our mandatory, additional and selective licensing schemes, if these certificates were not submitted in the licence application.