

Appendix 6

Private Sector Housing Enforcement Policy & use of Civil Penalties and Fine Matrix.

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Private Sector Housing Enforcement Policy

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Introduction

- 1.1 This policy sets out how Haringey Council as the Local Housing Authority will deal with breaches of housing law and other public health legislation. The

Authority will aim to ensure the law is applied fairly and consistently, and to tackle offenders in proportion to any crime committed, whilst minimising the impact for the complainant.

- 1.2 This policy deals with the practical application of enforcement procedures that will be used to achieve compliance with housing and environmental standards. The full range of enforcement options can be found in appendix 1.
- 1.3 The Council expects landlords to comply with the law and proactively manage their properties. This is to ensure that the health and welfare of tenants are protected and their properties, and activities at their properties, are not having a negative effect on the neighbouring population.
- 1.4 Our overall aim of our enforcement action is to protect health and improve housing standards by;
 - changing the behaviour and seeking legal punishment of those who flout the law;
 - eliminating financial gain or benefit from non-compliance;
 - providing transparent and consistent regulation within a private market;
 - promoting professionalism and resilience within the private rented sector.
- 1.5 Enforcement action and resources will be applied proportionally based on the seriousness of the offence(s) and focused toward seeking the highest penalties for the worst offenders. This means taking legal action where we detect serious or systematic breaches of housing and public health legislation.
- 1.6 Where less significant breaches of the law are witnessed and/or the risk to health is lower, we will attempt to resolve problems through the signposting of complainants, possibly using lesser civil legal routes or through informal action. This will enable economic growth for compliant businesses.

2. How we investigate

- 2.1 We will use intelligence on licenced properties to target our proactive and reactive inspections on those premises with disrepair, overcrowding, nuisances and other public health issues and also those without property licences and those in breach of their licence.
- 2.2 In the first instance for most cases, tenant(s) are expected to take their own action to resolve the problem. This will usually need to be in the form of a written complaint to their landlord, allowing them sufficient time to respond. Where tenant(s) approach the service with a complaint, we will ask to see a copy of any such correspondence prior to initiating action.
- 2.3 Leaseholder complaints: Haringey Council is generally not able to respond to

complaints by long leaseholders requesting assistance in taking action against other long leaseholders or freeholders (this includes all tenure types). Haringey will only offer assistance in cases where there are exceptional circumstances; this may include cases where there is imminent risk to health.

- 2.4 In all other situations the leaseholder will be redirected to;
The Leasehold Advisory Service - Fleetbank House,
2-6 Salisbury Square, London, EC4Y 8JX
Telephone: 020 7832 2500
<http://www.lease-advice.org>
- 2.5 We will endeavour to provide general information, advice and guidance to make it easier for landlords to understand and meet their regulatory obligations. We will also attempt to signpost those landlords who have more complex questions or require legal advice. Such information will be provided via the Council's website.
- 2.6 The Council's additional HMO licencing scheme will be 'light touch' for compliant landlords and its enforcement focus will be on the non-compliant landlords. We will achieve this through the risk assessment of data from various sources, such as complaints, licensing audits and historical data.
- 2.7 The Council will assist landlords, licence holders and agents where possible on its licensing procedures and requirements. In most cases the Council will attempt to communicate with Landlords where contraventions are suspected unless the suspicions are serious or if the suspect has a history of poor standards and/or non-compliance. Where required, property inspections will then be carried out, with a view to immediate enforcement.
- 2.8 Where property defects and evidence of poor management are identified, which are likely to significantly impact on health, the Council will take action. It will also take action where information is not provided or misleading information is given and when fraud is uncovered.
- 2.9 A significant health impact is related to the existence of Category 1 hazards, statutory nuisances, management regulations breaches and other significant public health hazards.
- 2.10 The Council will usually serve a statutory Notice or Order where Category 1 or multiple high category 2 hazards are found. Reasonable time will be given to complete the works if a notice is served.
- 2.11 Nuisances and other public health matters that are not abated by the responsible person before the Council witnesses the offence will result in the relevant statutory notice being served. Breaches of HMO management regulations and/or breach of the conditions of the property licence will normally lead to enforcement as detailed appendix 1.

- 2.12 Charges for the service of each notice will normally be made, where Applicable.
- 2.13 Where landlords fail to comply with notices, the Council will normally take legal action against the appropriate person. It may also carry out works in default of the owner. The cost of these works and the administrative costs will be raised as a charge against the property (see below).
- 2.14 Where legal action is necessary to address housing offences and other related offences, the Authority will consider the appropriate action required on a case by case basis. The Authority will usually consider imposing a civil penalty as the primary enforcement tool having regard to the most up to date Statutory Guidance published by the Department for Communities and Local Government on 'Civil Penalties under The Housing and Planning Act 2016'. The same criminal standard of proof is required for a civil penalty as for a prosecution.
- 2.15 The Authority may consider whether a prosecution is the most appropriate course of action. Cases will be referred for Prosecution as an alternative to issuing a civil penalty where there has been;
- serious neglect of their responsibilities as a landlord/agent, or
 - significant harm as a result of their criminality, or
 - where there have been previous criminal convictions or out of court disposals particularly for similar offences, or
 - Poor history of compliance with housing and associated legislation, or
 - the criminality has had significant adverse effects on tenants or other victims, or
 - Issuing a Financial Penalty is not likely to change perpetrator behaviour or housing conditions.
- 2.16 Whether or not the Authority issues a civil penalty or refers the case for a prosecution, in both instances they must be satisfied the case meets the tests set out in Crown Prosecution Service 'Code for Crown Prosecutors' and that there is a 'realistic prospect of conviction'.
- 2.17 The Council may also, and in addition to other action, seek to obtain a Rent Repayment Order (RRO) from the offender to recover up to 12 months of Housing Benefit/Universal Credit that was paid to them by their tenant/s.
- 2.18 Where financial penalty, RRO and/or charges are not repaid civil action will be taken to recover outstanding debt and other charges incurred.
- 2.19 In cases where breaches of housing law and other public health legislation are witnessed, but the public interest test is in question, a simple caution may be offered. This may mean criminal landlords repaying Haringey's legal and enforcement costs.
- 2.20 All information obtained will be treated in confidence and in accordance with

the Data Protection Act 1998 and the EU General Data Protection Regulation (GDPR) 2018. However, it must be recognised that the Council operate secure mechanisms to share information with other internal and external agencies and law enforcement bodies, there will be circumstances where shared or complimentary enforcement action may be taken with other agencies to help target resources and activities and minimise duplication.

- 2.21 To reduce the likelihood of retaliatory eviction, enforcement action will continue until the property is brought up to a satisfactory condition, whether or not the original tenant remains in the property.
- 2.22 To ensure consistency and adherence to the enforcement policy, internal procedures will be put in place to ensure legal actions are monitored and reviewed.
- 2.23 A list of enforcement options and outcomes can be found in **appendix 1**.

3. Complaints, Feedback or Compliments

- 3.1 Those persons and individuals who are regulated by this department should expect that they will be dealt with professionally and in a manner in accordance with the Council's code of conduct for officers.
- 3.2 In the event that an individual or company is not satisfied with the service or if not in agreement with the action taken by the investigating officer or wish to give feedback about the service they have received, they should first contact the Team Manager.
- 3.3 If you wish to make a compliment you should also contact the Team at Email: environmentalhealth.andhousing@haringey.gov.uk
- 3.4 If this does not resolve the complaint, the Council also has a formal complaints system. Please visit <https://www.haringey.gov.uk>
- 3.5 Please note you can still make a complaint in cases where the Council has instigated legal proceedings. However, making a complaint will not stop any impending legal action.
- 3.6 Where statutory notices have been served, making a complaint does not replace your statutory rights of appeal or you right to make representation. Nor does it allow you extra time to comply with any notice.
- 3.7 If you disagree with a statutory notice then you should take action specified in the notice to make an appeal, if any exists. Please read the notes that accompany the notice for more detail.
- 3.8 If a summons or directions have been issued by a Court or Tribunal you must continue to follow these. As with all cases where legal action is being

taken, it is strongly recommended that you seek legal advice.

4. Charging and Compensation

- 4.1 There will be a charge for Notices served and Orders made under the Housing Act 2004, excluding management regulations. More information can be found within the Notice Charging procedure.
- 4.2 The proposed recipient of any charging notice can make representations as to their personal circumstances. The charge will only be waived in exceptional circumstances following consideration of the particular merits of any such representations received. If there is an appeal against the Notice or Order, then the charge will not be applied until the appeal is resolved and if the notice or order is upheld.
- 4.3 There is no right of appeal against a charging notice; only to the notice or order to which the charging notice relates.
- 4.4 Where works in default are completed an administrative charge of 30% will be added to the works cost.
- 4.5 We may also seek a contribution to our costs if a simple caution is issued. These costs will be reasonable and a schedule of costs will be produced on request.

5. Publicity

- 5.1 We will work with various media organisations and persons to promote and inform people about our enforcement regime. We also will look to publish certain prosecutions on the Greater London Authority (GLA) watch list and the Dept. Communities and Local Government (DCLG) statutory database. Media coverage will normally be sought in the following cases:
 - The offence is a serious one or has significant factors such as the risk to health of tenants, visitors or neighbours, the exploitation of tenants, anti-social behaviour or an issue affecting the wider area or private rented sector.
 - Coverage will assist in securing compliance by others or is in the public interest to demonstrate the Council's actions and to help inform issues in the wider housing sector.
 - To draw attention to a particular issue or set of hazards;
 - To provide potential renters and tenants with information that will enable them to check whether a landlord has a poor operating history. It will seek to ensure the private rented housing market operates in a

fairer and more transparent way, and that tenants are protected from exploitation by unscrupulous landlords and letting agents.

- A press release will also be issued about convictions where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors, as well as the borough's environment.

6 Further Information

- 6.1 If you would like more information on our service, please go to the webpage at <https://www.haringey.gov.uk>
- 6.2 If you are a Landlord and would like training and support on property management matters such as Housing Benefit rules, possession proceedings and changes in housing legislation you should visit Haringey's Landlord Accreditation page at <https://www.haringey.gov.uk>

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Appendix 1

Enforcement Options

Action Circumstances

No	Action	Circumstances
1.	No Action	<ul style="list-style-type: none">• Complaints or allegations of housing legislation breaches or statutory nuisances are of minor or low risk to health and the landlord has not been informed by the complainant, or allegations are unsubstantiated and unwitnessed.

		<ul style="list-style-type: none"> • Formal action is inappropriate in the circumstances.
2.	Advisory notices and letters	<ul style="list-style-type: none"> • Where conditions are evidenced to justify action and investigation and it is appropriate to give opportunity to landlords and tenants to make representations, provide information or effect change to meet compliance. • No health impacts are present which poses a risk to health or nuisance.
3.	Formal Notices or Orders	<ul style="list-style-type: none"> • The defect/conditions presents a risk to health and/or a nuisance. • There are previous failures of statutory requirements. • Previous advisory notices/letters ignored or action was not taken in a timely manner or to the correct standard. • There is a lack of confidence in the individual or management i.e. the willingness to respond to an informal approach • The Council is legally required to serve a statutory notice.
4.	Financial Penalties of (up to £30,000)	<ul style="list-style-type: none"> • Non-compliance with an improvement or overcrowding notice. • Failure to obtain a property licence • Significant and/or repeated breaches of HMO management regulations. • Breaches of the conditions of the property licence. • Amount of penalty decided by financial penalty Matrix Used as alternative to a prosecution.
5.	Works in Default- Emergency Remedial Action & Emergency Prohibition Order	<ul style="list-style-type: none"> • There is an imminent risk to health and safety to the occupant and/or public • Awaiting the service of a notice or a prosecution would not adequately protect the public interest. • However this does not rule out subsequent action being taken in conjunction with a prosecution, financial penalty, RRO or other legal action.
6.	Works in Default-non-compliance with a notice	<ul style="list-style-type: none"> • We may choose to carry out works required by a notice if they have not been completed within the permitted time or are not likely to be completed within the permitted time. • This may be taken in conjunction or followed with a prosecution or financial penalty and/or RRO.
7.	Reducing the term (length) of an additional HMO Licence.	<ul style="list-style-type: none"> • When assessing a Property Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policies, we may reduce the term of the licence. • A Licence holder may continue to stay on a 1 year licence if they still are a 'Cause for Concern'. E.g not fulfilling the training requirement, poor management etc;
8.	Adding new property licence	<ul style="list-style-type: none"> • When assessing a Property Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policies, we may add further conditions to remedy poor landlord behaviour or standards e.g. not fulfilling the training requirement, poor

		management etc.;
9.	Formal (Simple) Caution	<ul style="list-style-type: none"> • This will be offered as an alternative to a financial penalty or a prosecution for very low level offending where it is appropriate to do so in line with the Home Office Guidance on Simple Cautions and The Code of Crown Prosecutors.
10.	Refusal to grant a property licence and Revocation of property licences and approvals	<ul style="list-style-type: none"> • Where the Licence application is not made in accordance with the Council's application requirements; or • Where the Licence application is not accompanied by the appropriate fee; or • Where the proposed manager/licence holder is not a 'fit and proper' person; or • Where the proposed manager/licence holder is not the most appropriate person to hold a licence; or • Where the proposed manager/licence holder is not the person or an agent of a person who has control of the property; or • Where the proposed management arrangements are not satisfactory; or • Where the property is not reasonably suitable of occupation in regards the number of persons or households. • Where the Council consider that the licence holder or any other person has committed a serious breach or repeated breaches of a condition of the licence. • Or a combination of the above.
11.	Prosecution	<ul style="list-style-type: none"> • This will be considered for the more serious cases which satisfy the legal tests under the 'Code for Crown Prosecutors' in that it passes the i) evidential stage and ii) public interest stage. At the charging stage, there must be 'a realistic prospect of conviction'. • Once the case is issued in Court, if the case is contested, the Authority must prove the case 'beyond reasonable doubt'. • See section 2.15 for more detail.
12.	Rent Repayment Orders (RRO)	<ul style="list-style-type: none"> • RRO will be considered after every successful prosecution for failure to comply with an Improvement Notice (section 30); Prohibition Order, including Emergency Prohibition Orders (section 32); Offences in relation to licensing of HMOs (section 72) and in relation to licensing of houses under Part 3 of the Act (section 95). • Where a landlord fails to licence a licensable property and they received a significant amount of Housing Benefit, a RRO application may be made to the First Tier Tribunal.
13.	Banning Order	<ul style="list-style-type: none"> • The Council may decide to seek a Banning Order following the breach of 'banning order offences' by landlords and agents. A banning order last for a minimum of 12 months and prevent landlords or agents from letting

		their own properties or being involved in the lettings and property management industry across England.
14.	Proceeds of Crime Act	<ul style="list-style-type: none"> • Where landlords or others have benefited from the proceeds of a criminal activity we will work with Trading Act Standards colleagues and other internal departments as necessary to consider applications or legal proceedings under the Proceeds of Crime Act 2002 or other associated legislation.

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Appendix 2

Consequences of a Civil Penalty

Financial Penalties are an alternative to criminal proceedings and unless withdrawn and the Council determines that in the public interest a prosecution for the ordinal offence is the preferred option, then a landlord cannot be prosecuted for the same offence once the penalty has been paid and the matter concluded.

Should a civil penalty be imposed on a landlord it will not automatically prevent the Council from granting a licence under Part 2 or 3 of the Housing Act 2004. The Council will consider each case on its merits including the reasons for the penalty and the extent of the person's involvement in any property under consideration.

Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, a

Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, a Council will have regard to any guidance issued by the Secretary of State and best practice available.

Section 2 -Determining the Level of the Civil Penalties

When considering the severity of any offence Section 143(1) Criminal Justice Act 2003 states “In considering the seriousness of any offence the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably caused” It also considers harm as encompassing those offences where harm is caused but also those where neither individuals nor the community suffer harm but a risk of harm is present.

In order to set the level of the penalty the following steps will be considered by the Council:

Step 1– the Council will determine the level of penalty based on:

- the culpability and track record of an offender and
- the level of harm to the tenants

Step 2- the Council will make adjustments to the initial determination of that level of penalty having regard to:

- any aggravating or mitigating circumstances
- the totality of that level
- that the level is fair and proportionate but in all instances act as a deterrent and removes any gain

Step 3 – the Council will make adjustments to the final determination should the offender provide written information/proof to demonstrate the impact of the level fine would be unfair and disproportionate.

Appendix 2

Section 3 Setting the initial determination

Step1 - Culpability and track record of an offender

The level of culpability of a person will depend upon a number of factors:

High level of culpability

A person will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law:

- They have a history of non-compliance
- Despite a number of opportunities to comply they have failed to do so
- Have been obstructive as part of the investigation
- Failure to comply results in significant risk to individuals

- Are a member of a recognised landlord/letting agency association or accreditation scheme
- Are a public figure who should have been aware of their actions
- Are an experienced landlord/agent with a portfolio of properties failing to comply with their obligations
- Serious and/or systematic failure to comply with their legal duties

Medium level of culpability

A person commits an offence through an act or omission a person exercising reasonable care would not commit.

- It is a first offence – with no high level culpability criteria being met i.e. a member of an accreditation scheme
- Failure is not a significant risk to individuals
- The landlord/agent had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.

Low level of culpability

A person fails to comply or commit an offence with little fault:

- No or minimal warning of circumstances/risk
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

The above examples are not exclusive and other factors may be taken into account when considering the level of culpability. 2) **Level of harm to the tenant**

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

High

A high level of harm could constitute:

- Serious effect on individual(s) or widespread impact

Appendix 2

- Harm to a vulnerable individual
- High risk of an adverse effect on an individual
- Serious level of overcrowding

Medium

A medium level of harm could constitute:

- Adverse effect on an individual – not high level of harm
- Medium risk of harm to an individual
- Low risk of a serious effect
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Low

A low level of harm could constitute:

- Low risk of harm or potential harm
- Little risk of an adverse effect on individual(s)

The above examples are not exclusive and other factors may be taken into account when considering the level of harm.

What is meant by a vulnerable individual?

The statutory guidance states that the harm caused and vulnerability of the individual are important factors in determining the level of penalty.

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Financial Penalty Notice Matrix

Factors	Score 1	Score 5	Score 10	Score 15	Score 20	Total
1. Deterrence & Prevention (Pick only one box to the right)	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence.	Medium confidence that a financial penalty will deter repeat offending. Minor informal publicity required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter offending (e.g. no contact from offender). Some informal publicity will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Likely informal publicity will be required to prevent similar offending in the landlord community	Very little confidence that a financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community.	
2. Removal of Financial Incentive (Pick only one box to the right)	No significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large profit made by offender.	
3. Offences & History (Pick only one box to right)	No previous enforcement history. Single low level offence	Minor previous enforcement. Single offence	Recent second time offender. Offence has moderate severity or small but frequent impact(s)	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a very severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offences	
4. Harm to Tenant(s) (Weighting x 2) (Pick only one box to the right)	Very little or no harm caused. No vulnerable occupants. Tenant provided no information on impact.	Likely some low level health/harm risk(s) to occupants. No vulnerable occupants. Tenant(s) provides poor quality information on impact	Likely moderate level health/harm risk(s) to occupants potentially exposed. Tenant(s) provides some information on impact but with no primary or secondary evidence.	5. High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. 6. Vulnerable occupants more than likely exposed. 7. Small HMO (3-4 occupants). Multiple occupants exposed.	Obvious high level health/harm risk(s) and evidence that tenants are badly and /or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants).	Double Score

				8. Tenant(s) provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	Multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).	
Final						

Score Range	Fees
1-5	£250
6-10	£500
11-20	£750
21-30	£1,000
31-40	£2,500
41-50	£5,000
51-60	£10,000
61-70	£15,000
71-80	£20,000
81-90	£25,000
91-100	£30,000

Scoring Regime –

- Each row should be scored in order with only one option being chosen for each row.
- Allow MUST be scored
- Note the score in the Total column.
- Factor 4 – Harm to tenants has an additional weighting, which will double the selected score.
- In the final cell at the bottom of this column insert the final total.
- The score should then be compared to the sliding scale of enforcement fee to be levied.

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