

# Private Sector Housing Enforcement Policy

JULY 2018

## Table of Contents

Introduction.....	2
Aim of the Policy .....	2
Our enforcement powers and our approach .....	2
Relevant Legislation and Regulations .....	3
How we will deal with matters.....	4
Requests from private tenants.....	4
Requests from owners and landlords .....	5
Requests from leaseholders .....	5
Action initiated by the council .....	6
Situations where we may not provide a service .....	6
Tenants of Registered Social Landlords (Housing Associations).....	7
Council Tenants. ....	7
Lettings and Managing Agents .....	7
Empty Properties.....	7
Enforcement Options.....	7
No Action / Informal Action .....	8
Statutory Notices .....	8
Energy Efficiency Enforcement Notices.....	9
Fees Charged for Notices .....	10
Fire Safety.....	10
Works in Default.....	10
Simple Cautions .....	11
Prosecution .....	11
Civil penalties and other fines.....	12
Rent Repayment Orders .....	12
Homelessness Prevention.....	13
How do we investigate? .....	13
Publicising Offences .....	13
Other Miscellaneous.....	14
Right to information .....	14
Giving evidence in private court cases .....	14
Service standards .....	14
Future Developments (as of July 2018).....	15
Complaints and Feedback.....	15
Appendix 1 Fees and Charges (2018/19).....	16
Appendix 2 Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 .....	20
Appendix 3 – Civil Penalties and Rent Repayment Order Policy.....	24
Appendix 4 – Houses in Multiple Occupation Licencing Policy.....	37

## Introduction

This policy provides details of the council's approach to regulating private sector housing standards in Lambeth. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from us.

### Aim of the Policy

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

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

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

**Fair and objective**, based on the individual circumstances of the case, taking all available facts into account.

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

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

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

**Coordinated**, taking a shared approach where there are complementary responsibilities across different departments or agencies.

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

In certain instances 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.

### Our enforcement powers and our approach

The council's Property Standards and Enforcement Service (PSE) is responsible for enforcing a wide range of statutory provisions relating to housing conditions in privately owned and rented property.

We will adopt a balanced approach to enforcement based on advice, education and support to landlords, with formal action being taken in appropriate circumstances. Fair and consistent regulation benefits service users, local businesses, landlords, agents and property owners, by helping to maintain a “level playing field”

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

By adopting a positive and proactive approach, we aim to help landlords understand their legal obligations, achieve higher compliance rates and reduce the need for reactive enforcement actions.

## Relevant Legislation and Regulations

This policy sets out the way in which we will approach our powers and responsibilities as a Housing Authority under the following Acts and Regulations made thereunder:

- The Housing Act 1985
- The Housing Act 2004
- The Building Act 1984
- The Environmental Protection Act 1990 (as amended)
- The Public Health Act 1936 (as amended)
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Prevention of Damage by Pest Act 1949
- Protection from Eviction Act 1977
- Deregulation Act 2015
- The Housing and Planning Act 2016
- The Energy Efficiency (Private Rented Property (England & Wales) Regulations 2015
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

In addition to our powers as a local housing authority there are further powers available to us as the local planning authority and through Trading Standards and the regulation of letting and managing agents.

- Enterprise and Regulatory Reform Act 2013
- Redress scheme for Letting Agency Work and Property Management Work (England) Order 2014
- Consumer Rights Act 2015
- Town and Country Planning Act 1990 (as amended)

The Planning Enforcement Protocol is available on the following link:

[https://www.lambeth.gov.uk/sites/default/files/pl-planning-enforcement-protocol-nov2017\\_0.pdf](https://www.lambeth.gov.uk/sites/default/files/pl-planning-enforcement-protocol-nov2017_0.pdf)

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

We have a legal duty to take action against certain conditions; these include statutory nuisances and those assessed as 'category 1 hazards'.

There may be circumstances where shared or complementary enforcement action is undertaken with other agencies. In these cases, the decision on enforcement will have regard to the relevant policies and procedures of our partners, and we will ensure a co-ordinated approach.

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

We will take particular care to work with small landlords and businesses, and charitable organisations so that they can meet their legal obligations without unnecessary expense, where practicable. However we will not compromise on health and safety standards.

We will expect all landlords in the private rented sector to have a good understanding of the standards that they are required to meet in terms of the condition and management of the homes they rent out and shall expect landlords to refer to the council's guide to minimum property standards and to liaise with Council officers or other professionals to ensure that they comply with their duties.

## How we will deal with matters

Following the receipt of a service request or complaint about poor housing conditions or landlord / agent harassment, an initial risk assessment will normally be carried out. Any follow up advice or action will depend on the outcome of the initial assessment, which may not always involve a visit to the property. The council will take further action to deal with health and safety concerns or issues which cause a statutory nuisance. For less serious issues, such as delays to other repairs we will provide support to advise tenants of their rights and practical steps they may wish to follow.

### Requests from private tenants

Except in emergency situations, tenants of the private rented sector should inform their landlord of the problem (preferably in writing) and allow them an opportunity to resolve it. We will normally direct tenants to contact their landlord first, but will investigate a complaint where private tenants are dissatisfied with the response or action undertaken by their landlord.

This is because landlords can only carry out their legal obligations once they have been made aware of the problem. The law covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property.

In certain situations tenants will not be expected to contact their landlord first, e.g.:-

- the tenant has received notice to leave the accommodation
- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened eviction/poor management practice;

- where the tenant appears to be vulnerable or where there are vulnerable members of the household;
- where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- where the property is a House in Multiple Occupation which appears to fall within the council's HMO Licensing Scheme.

Tenants are responsible for keeping us informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the council is taking or considering taking.

We will normally make an appointment with the occupier to gain access to investigate conditions.

Tenants have a right to invite us into the property for the purpose of inspection or investigation without the need to inform the landlord or require their permission. In many cases the tenant does not want the landlord to be present during our visits. For these reasons we do not, as a matter of course, give prior notification to landlords when we have arranged inspections.

In appropriate circumstances, a Notice of Intended Entry will be served or an application made to the Magistrates' Court for a warrant to enter, e.g. if the premises is vacant or access is refused or it is reasonably anticipated will be refused.

Council officers have powers to enter premises in order to perform the council's statutory functions. Anyone who obstructs an authorised officer from entering a premise in accordance with their powers is committing an offence.

We may also seek a warrant where the giving of notice would be counterproductive, for example in investigations concerning overcrowding complaints.

### **Requests from owners and landlords**

Landlords will be supported through this process to explore what their legal obligations are, how the repairs will be undertaken and whether there is any financial support that can help. We will provide free general advice and guidance regarding standards required and legal requirements. We may be able to provide detailed assessments of specific properties, (such as confirming the work that would be required to let a property in multiple occupation; or providing specific details of work required to reduce significant hazards at a property) where an owner is proposing to let a property, but we will charge a fee for this advice. We will deduct this fee in the event of an HMO Licence being issued within 6 months.

Information on Environmental Health fees and charges for 2018/19 can be found in Appendix 1.

### **Requests from leaseholders**

Other than in exceptional cases, the council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves.

Leaseholders may be able to get advice about how to settle a dispute about repair problems from the:

Leasehold Advisory Service –  
31 Worship Street,  
London E2CA 2DX,

Telephone 020 7374 5380  
info@lease-advice.org.uk

Leaseholders will normally need to consult a solicitor specialising in leasehold law.

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

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

This list is not exhaustive and each case will be considered on its merits.

Our Home Improvement Agency may be able to assist elderly or disabled clients with carrying out repairs, and can provide information about any grants or loans which are currently available.

### **Action initiated by the council**

The council has a duty to review local housing conditions to identify any action that may be required.

We will seek to identify HMOs that require a mandatory licence and properties where category 1 hazards exist. We will also proactively target empty privately owned properties to encourage owners to bring them back into use, and use enforcement powers where appropriate to achieve this.

We will target those landlords who deliberately or persistently break the law. Where poor conditions are identified in a privately rented property, we will seek to identify and inspect other properties owned or managed by the same individual or company.

Post Grenfell the requirements for local housing authorities to intervene in the fire safety of private blocks is still an area of developing government policy.

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

There may be occasions where an investigating officer cannot substantiate the complaint. When this arises, the council will not take any further action.

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

- the tenant(s) are, shortly to move out of the property by their own choice.
- the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, in order for works to be carried out,
- the tenant(s) have, in the opinion of the council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair,
- a tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Property Standards and Enforcement Service is to secure rehousing,
- the tenant(s) have failed to keep an appointment and not responded to a follow up letter or appointment card;

- Where the tenant unreasonably refuses to provide the council with relevant documentation, e.g. a tenancy agreement or notice seeking possession.
- the tenant(s) have been aggressive, threatening, verbally or physically abusive or shown racist behaviour towards officers.

### **Tenants of Registered Social Landlords (Housing Associations)**

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

We will only assist tenants if the property contains a Category 1 Hazard, a statutory nuisance, or is a House in Multiple Occupation which does not comply with current fire safety and amenity standards, and where the Housing Association's own procedures have not resolved the issue.

### **Council Tenants.**

We have no formal powers to deal with Council-owned dwellings. Complaints relating to the council's own stock are redirected to the appropriate Housing Management Team. We will investigate complaints relating to conditions in former council-owned properties that have been sold.

Council tenants are advised to contact their area Housing Office directly.

### **Lettings and Managing Agents**

In addition to the powers to tackle 'rogue' agents under the Housing and Planning Act 2016 there are additional powers for local authorities to regulate letting agents, currently enforced by the Trading Standards team. Letting agents are required to:-

- Join a redress scheme
- Transparently publish their fee tariffs
- Declare whether they are a member of a client money protection scheme

### **Empty Properties**

The council will take action to ensure that privately owned empty dwellings in the borough are brought back into use. Where owners are not willing to engage with the council we will use appropriate enforcement powers. We will carry out any works to remedy any defects affecting neighbouring properties or which may be considered to be a nuisance or a danger to the public. The council will consider the use of Enforced Sale in appropriate cases to facilitate bringing a property back into use and may use Compulsory Purchase Orders in exceptional circumstances. The high cost of property in Lambeth usually means that the council lacks the necessary resources to purchase empty homes.

### **Enforcement Options**

Enforcement action will generally reflect the severity of the offence or breach, the harm actual or potential this entailed and the landlord's compliance history. However we will take all necessary action to adequately protect the occupants' interest and provide an appropriate deterrent to offenders.



There are several types of action that can be taken in relation to any given case, and different action may be necessary as a case progresses. Each case will be considered on its own merits.

When deciding whether to take enforcement action we adopt a balanced approach and will,

- comply with relevant legislation,
- be transparent, consistent and accountable
- have regard to the Enforcement Concordat and the Regulators' Compliance Code,
- adopt a positive and proactive approach to support and protect private tenants,
- help landlords understand their legal obligations, achieve higher compliance rates and reduce the need for reactive enforcement actions,
- take a co-ordinated approach where there are shared or complementary enforcement actions,
- take proportionate decisions to prosecute based on the risks involved or seriousness of any breach,
- as far as the law allows, we will take account of the circumstances of the case and the conduct of the owner or agent when determining action,
- have regard to various courses of remedial action and consider what is 'reasonably practicable',
- endeavour to take care to work with small landlords and businesses, and charitable organisations so that they can meet their legal obligations where practicable without compromising health and safety standards.

Outlined below are the main enforcement options available to officers. We take the approach that offenders should pay the cost of enforcement work, and that they should not profit from poor or criminal behaviour.

### **No Action / Informal Action**

Where we are unable to identify any actionable problem we will take no action.

In most cases, upon receipt of a complaint regarding housing conditions, the council will seek to contact the landlord to highlight the alleged deficiencies and request that the complaint be investigated and remedial action taken as necessary. A visit may be made at the outset in cases where the initial complaint indicates that an immediate investigation by a Council officer is warranted.

Where that investigation suggests that the matter is not sufficiently serious to warrant formal action, or where formal action is not considered to be an appropriate course of action, we will pursue informal approaches to secure a resolution.

This may include offering advice, verbal and written warnings and request for action and the issue of informal notices. Where written advice is provided, suggested timescales will normally be included to undertake any specified works or actions. In some instances, informal action will not be an option as the council may have a legal duty to take action. Equally where informal action does not produce the desired result we will always reserve the right to escalate our approach accordingly.

### **Statutory Notices**

Statutory notices will be issued under any of the following circumstances:

- Where the council has a duty to serve notice.
- Where statutory requirements have been breached.
- Where there is a serious risk to residents or the public.
- Where immediate remedial action needs to be taken.
- Where there is a history of non-compliance or a lack of confidence in the effectiveness of an informal approach.

In most cases we will contact the owner or agent and give them an opportunity to remedy any problems before a statutory notice is served. However in some circumstances the council has a legal duty to serve a Notice, for example where a statutory nuisance exists.

Realistic time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served.

In cases where there is an imminent risk to public health, notices may require immediate compliance.

An extension of time limits will only be granted where there are legitimate reasons for doing so. For example, prolonged bad weather delaying external works. Requests for extensions should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include an officers contact details.

The time limits given on statutory notices not requiring works such as notices requiring information will generally be no more than the minimum statutory period allowed.

Having regard to the relevant statutory power, and where the law allows, a charge may apply when we issue a statutory notice. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the council's agreed charges having regard to a written record assessing costs reasonably incurred. In all cases the council will instigate debt recovery action for any and all outstanding costs.

Where a Notice is served, information relating to the appeals process will accompany the notice.

Where the requirements of a notice is not complied with, formal action may ensue, including the imposition of a civil penalty (where available) or the instigation of prosecution proceedings.

## **Energy Efficiency Enforcement Notices**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018 and all tenancies from April 2020.

The current domestic regulations (as of June 2018) are based on a principle of 'no cost to the landlord', this means that landlords of F or G rated homes will only be required to make improvements to these properties where they can do so entirely using third party finance from one or more sources. However, the government has announced an intention to change this so that landlords are expected to meet the costs of improving energy efficiency, subject to a cap. This is an area of enforcement policy we will keep under review.

Where a valid exemption applies, landlords are required to register this on the national PRS Exemptions Register.

Where properties do not meet the minimum level of energy efficiency we may issue a compliance notice requesting information. Where we are satisfied that a property has been let in breach of the regulations we may impose financial penalties.

We will generally give the landlord an opportunity to improve the condition of the homes they let before taking more formal action.

Action is particularly appropriate where it is linked to a hazard under the housing and health safety rating system. We will also take proactive action against landlords who own a number of homes with below standard energy efficiencies.

## **Fees Charged for Notices**

The Housing Act 2004 permits the council to charge and recover expenses incurred in respect of certain enforcement action. These include improvement notices (sections 11 & 12), prohibition and emergency prohibition orders (sections 20, 21 and 43), emergency remedial action (section 40) and demolition orders (section 265, Housing Act 1985).

In some cases, the council has the power to charge for serving a notice. We will advise the owner or agent if this is the case. Provided the owner or agent agrees the extent of the works and completes these works, within an agreed timescale, no charge will be levied for serving the notice. If the works required by the notice are not completed within the time period specified/agreed, a fee will be charged.

We will make a charge for serving a statutory notice if a landlord fails to comply with the notice within an agreed time period. If there is an appeal against the Notice then the charge will not be applied until the appeal is resolved and if the notice is upheld. The current charges as at 1 April 2018/19 are included in appendix 3 of this policy.

## **Fire Safety**

Under the Smoke and Carbon Monoxide Alarms (England) regulations, private sector landlords are required to must ensure that smoke alarms and carbon monoxide alarms (if required) are installed and then checked at the start of any new tenancy. Where the council has reasonable grounds to believe a landlord is breach of these requirements we have a duty to serve a remedial notice. Further details are provided in Appendix 2.

Licensable HMOs are subject to separate, and more stringent, regulations under the Housing Act 2004.

## **Works in Default**

In some circumstances, failure to comply with a notice may result in the council arranging for the necessary works to comply with the notice to be carried out (work in default). Should the council need to carry out work on a dwelling in default of the responsible person, we will charge the full cost of the works plus an administration fee of 17%. This is to cover the officer time involved.

Where works in default have been carried out, the council may register this as a Financial Local Land Charge. The council will then seek to use the enforced sale procedure under the Law and Property Act 1925 to recover payment. This allows the council to force the sale of their property in order to recover its costs. A court order is not necessary.

This is a discretionary power and in all cases the council's ability to use it is dependent on sufficient financial resources being available. We will approach each case on its merits,

where the budget is limited it will be prioritised for cases which present a significant and imminent health and safety risk.

## Simple Cautions

The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence but the public interest does not require a prosecution. It may be used for cases involving first time, low-level offences. Decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging.

Before a Simple Caution can be given, it is important to try to establish:

- The views of the victim about the offence (normally the occupiers),
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances,
- Whether the offender has made any form of reparation or paid compensation

A Simple Caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record.

If the offender refuses to accept a Simple Caution, the option to pursue the offender by other means, i.e. to prosecute remains.

The fact that the offender has received a caution can be cited in court if the same person or organisation, within three years of the original offence. This information may also be used to inform future enforcement decisions if incidents arise involving that same person or organisation.

## Prosecution

Where there is a breach of a legal requirement and we consider that formal action is required we may seek to prosecute the offender. Although we will judge each case (and our response) on the merits of each individual case, prosecution will generally be reserved for the most serious cases. These include failures to provide documentation on information requested to determine interested parties and the occupancy of premises. Any decision to prosecute will be taken in accordance with the Regulators Code, this policy and the Code for Crown Prosecutors.

The following factors will be taken into account in any such decision:

- The seriousness of the offence, including the risk and harm (actual or potential) this breach entailed);
- The previous compliance history of the subject concerned;
- The willingness of that party to prevent a recurrence of the problem;
- Whether the issuing of a simple caution would be more appropriate or effective;
- Whether the offence was committed deliberately;
- Any evidence of the obstruction of the officers or threats made to them or others involved in the investigation; and
- The financial benefit obtained from the alleged offending.

## Civil penalties and other fines

The council may as an alternative to prosecution, serve notices imposing Civil Penalties of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Offences relating to the licensing of Houses in Multiple Occupation (HMOs)
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order

The council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above. Examples of situations in which a decision to prosecute would normally be taken includes where the breach is considered particularly serious and /or the offender has committed similar offences in the past.

In circumstances where the council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty will be calculated in accordance with the details set out in the attached Appendix 2 (Civil Penalties and RRO policy).

## Rent Repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a HMO licence for a property that was required to be licensed as such. The Housing and Planning Act 2016 extended this power to now cover a much wider range of offences, set out below:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of residential occupiers (section 1 of the Protection from Eviction Act 1977)

Rent repayment orders can be granted to either the tenant or the council. If the tenant paid their rent themselves, then this must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent is repaid to us. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, the rent is repaid on an equivalent basis.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence but only after the relevant appeal period has passed.

If we impose a civil penalty in a case, we must consider whether to make a rent repayment order. In most cases we will make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. We will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

## Homelessness Prevention

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

An illegal eviction is where a landlord evicts a residential occupier without following the correct procedure. Most occupiers are entitled to notice and a court order before they have to leave. The Deregulation Act 2015 has introduced a number of requirements on landlords of private tenants, including the requirement to provide an energy performance certificate, Gas Safety certificate, and a copy of the 'How to Rent' guide before a tenancy starts.

Failing to do so means that they would not be able to evict using a section 21 notice, the so called "no fault" eviction procedure. The Deregulation Act 2015 also provides protection for tenants who make a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice.

The council has strengthened the advice provided to all those who approach us who are threatened with homelessness as part of our new responsibilities under Part IV of the Homelessness Prevention Act 2018. We will always take appropriate action to prevent homelessness where landlords have not followed the correct procedures or attempt a retaliatory eviction.

Harassment is where a landlord tries to make a residential occupier leave. This could be an act or threats of violence or withdrawing services.

### How do we investigate?

If a complaint of harassment or illegal eviction is made before 4pm, we will respond on the same day and will ring the landlord or agent, or write if unable to contact the landlord by phone.

We aim to resolve matters by mediation. The investigating officer looks into allegations as impartially as possible. We would normally only institute formal proceedings when there is no possibility of getting the information or where there has been a wilful refusal or unreasonable delay. When responding to a complaint our first role is to consider whether it is appropriate to resolve the problem through mediation. This may include providing information to both parties on good practice and their respective legal obligations.

If the occupier has been illegally evicted, we will explain their rights to re-enter the premises.

If an offence is more serious or cannot be resolved we will make a formal investigation. Only after a formal investigation and in conjunction with an authorising manager would a formal decision to prosecute take place. Each case will be decided on its merits by considering the following:

- Code for Crown Prosecutors – (especially public interest considerations)
- The weight of the evidence obtained (Police and Criminal Evidence Act 1984)
- If harassment is used, the nature of this, such as physical threats of violence
- The behaviour of the parties
- The balance of the relationship - i.e. is the landlord a commercial company
- The likelihood of the offence being committed again

## Publicising Offences

Media coverage will normally be sought in the following circumstances:

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

Details of successful prosecution cases brought by the council and in some circumstances CPNs will be entered onto relevant public databases

## Other Miscellaneous

### Right to information

There are a number of potential offences under the Landlord and Tenant Acts relating to the provision of information and rights of leaseholders. Due to resource constraints the council does not currently investigate complaints concerning a breach of these offences.

### Giving evidence in private court cases

Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. In order to prevent the appearance of the council taking sides in such disputes, officers will usually only attend court in response to a witness summons.

### Service standards

If you send us an email, or write to us we will

- Aim to respond within 10 working days
- Update you on progress and advise you when we can respond if we are unable to respond in full
- Provide well-structured responses, using plain language responding to all the points raised.

If you call one of our advertised telephone numbers we will:

- Aim to answer your call within five rings
- Divert our phone to a colleague or voicemail if we are unavailable
- Tell you our department and give you our name when we answer
- Return your phone calls within two working days or when you ask us to
- Provide a telephone interpreting service if you are hard of hearing, deaf or speak a different language.

We receive a large number of requests for assistance and will assess the urgency of each case. We aim to contact you within 24 hours for urgent matters such as a blocked drain, and within 10 working days for other cases.

Personal callers should normally make an appointment as case officers are out of the office for most of the day, and are unable to see callers without a prior appointment.



## **Future Developments (as of July 2018)**

The Tenant Fees Bill is currently working its way through parliament and will prohibit the charging by landlords or letting agents of fees.

The government has also announced its intention to strengthen consumer redress in the housing market. The government is considering the removal of the 'no cost to landlord' principle and a 'landlord funding contribution' to meeting minimum energy efficiency standards in privately rented properties.

These moves are welcomed by the council. We will amend our approaches to private sector enforcement accordingly as the new legislation / regulations are introduced, in keeping with the principles outlined in this document.

The government has announced that they will release a Housing Green Paper later in 2018. This is likely to details of the government's plans to improve fire safety including the enforcement role envisaged for local authorities and private owned blocks.

## **Complaints and Feedback**

We welcome feedback about your experience of dealing with us.

If you are dissatisfied with the action that an officer has taken, then a manager will investigate your concerns. The council also has a formal complaints procedure.

The Property Standards and Enforcement Service

London Borough Lambeth

PO Box 734 Winchester

SO23 5DG

**Email:** [PSE@lambeth.gov.uk](mailto:PSE@lambeth.gov.uk)



## Appendix 1 Fees and Charges (2018/19)

Section 49 of the Housing Act 2004 provides the council with a power to make such reasonable charge as it considers appropriate as a means of recovering certain administrative and other expenses incurred in connection with its enforcement activities under the Act.

Service	Charge as at 1 April 2018/19
Service of Statutory Notices Housing Act 2004	
Improvement Notice	£550.00 for property with up to 10 rooms, plus £10.00 per additional room.
Emergency Remedial Action Notice	
Prohibition Order	
Emergency Prohibition Order	
Demolition Order	
Suspended Improvement Notice, Suspended Prohibition Order, or Serving copies of the authority's decision on such a review	£250.00 review, £60.00 for copy only.
Failure to Comply With Enforcement Action	
Works in Default , For works undertaken by the council For Failure to Comply with an Enforcement Notice	17% management charge
Administrative fee for Enforcement Action	£250.00
Advisory Visits /Inspections	
Request for a House in Multiple Occupation (HMO) Advisory Visit, Includes, An Initial Site Visit And Inspection of the Property, Consultation With the London Fire Brigade, And Two Site Visits To Ensure That Works Are Compliant With The council's and Housing Act Standards. (Vacant Premises Only). Cost Deducable on Licensing.	£350.00
Request for An Inspection Under The Housing Health and Safety Rating System (HHSRS) and Report In and Out of the Borough, Exclusive of Travel	Charge Per Officer Time Per/ Hour and Per Mile
Request For An Immigration Inspection Under The Housing Health and Safety Rating System (HHSRS) Including A Report And Letter To The Relevant Authorities	£158.00

Service	Charge as at 1 April 2018/19
Document Requests	
Drawing floor Plans For a 3 storey House in Multiple Occupation (HMO), Each Additional Storey Is Then Subject To £50.00.	£250 to a maximum of £500
Request For Replacement Copies Of Documents, Including Letters, Notices and Licences.	£63.00
Copying of Fiche documents	Approximately £5 flat fee plus 10p a sheet for Black and white and 20p for colour.
Home Improvement Agency Services	
Request For A Home Improvement Agency Survey and Report	£350.00
<b>HMO Licensing</b>	
Interim Management Order	Based on individual costs incurred
Variation Notices	Not Subject To A Charge Unless Additional Rooms/Units Are Occupied, HMO Licensing Fee Would Apply
Revocation Notices	No Charge
Change of Licence Holder	A New Licensing Application Will Be Required
Sale Of Licenced HMO	HMO Licensing Fee is not refundable
Renewal of Application Following Expiry of Reduced Licence Term i.e. Less Than 5 Years	Subject to A New Application Fee

The costs for a HMO licence depend on the number of rooms, and whether the applicant is accredited (20% discount) or a registered charity (50% discount). Renewal of a licence after the initial 5 year period is at a reduced rate compared to the initial application.

Initial License Application (non-accredited) £273 per Letting / Room

Number of bedrooms / bedsits	Fee
1	£273
2	£546
3	£819
4	£1,092
5	£1,365
6	£1,638
7	£1,911
8	£2,184
9	£2,457
10	£2,730
Max	£4,368

Initial License Application (accredited, 20% discount) £218 per Letting / Room

Number of bedrooms / bedsits	Fee
1	£218
2	£437
3	£665
4	£874
5	£1,092
6	£1,310
7	£1,529
8	£1,747
9	£1,966
10	£2,184
Max	£3,494

Initial License Application (registered charity, 50% discount) £137 per Letting / Room

Number of bedrooms / bedsits	Fee
1	£137
2	£273
3	£410
4	£546
5	£683
6	£819
7	£956
8	£1,092
9	£1,229
10	£1,365
Max	£2,184

Renewal Licence Application (non-accredited) £170 per Letting / Room

Number of bedrooms / bedsits	Fee
1	£170
2	£340
3	£510
4	£680
5	£850
6	£1,020
7	£1,190
8	£1,360
9	£1,530
10	£1,700
Max	£2,720

Renewal Licence Application (accredited) £136 per Letting / Room

Number of bedrooms / bedsits	Fee
1	£136
2	£272
3	£408
4	£544
5	£680
6	£816
7	£952
8	£1,088
9	£1,224
10	£1,360
Max	£2,176

Renewal Licence Application (registered charity) £85 per Letting / Room

Number of bedrooms / bedsits	Fee
1	£85
2	£170
3	£255
4	£340
5	£425
6	£510
7	£595
8	£680
9	£765
10	£850
Max	£1,360

## Appendix 2 Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

### Introduction

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

### Purpose

The council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge.

The council may revise its statement of principles at any time, but where it does so, it must publish the revised statement.

When deciding on the amount to be applied as a penalty charge, the council will have regard to the statement of principles in force at the time the breach occurred.

### The duties

The regulations impose the following duties on certain landlords<sup>1</sup> of a residential property of a specified tenancy<sup>2</sup>, namely to ensure that:

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

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

### The legal framework

Where the council has reasonable grounds for believing that a landlord is in breach of one or more of the above duties, we have a duty to serve that person with a Remedial Notice within 21 days detailing the actions that must be taken to comply with the Regulations.

For the purposes of this provision, ‘reasonable grounds’ may include being informed by a tenant, letting agent or officer that the required alarms are not installed. The regulations do not require that the council enter the property or prove non-compliance in order to issue a remedial notice, however, the council will aim to visit such properties to confirm that the required works have not been undertaken.

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<sup>1</sup> Part 2 of the Regulations explains that a “relevant landlord” is the immediate landlord of the premises. A registered provider of social housing (as to which see section 80(2) of the Housing and Regeneration Act 2008) is not a “relevant landlord”.

<sup>2</sup> A “specified tenancy” is a tenancy, licence, lease, sub-lease or sub-tenancy of residential premises which grants one or more persons the right to occupy the premises as their only or main residence in return for the payment of rent. The Schedule to the Regulations excludes certain categories of letting arrangement where the accommodation is shared with the landlord or falls outside of the traditional private rented sector.

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

- Arrange (where the occupier consents) to undertake the remedial action specified in the Notice within 28 days; and
- Require the landlord to pay a penalty charge of such amount as the authority may determine but which must not exceed £5000.

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

- The primary purpose of the council exercising its regulatory power is to promote and protect the public interest.
- The primary aims of financial penalties are to: -
- lower the risk to tenants health and safety by ensuring that the property has a safe means of escape in the event of a fire
- eliminate any financial gain or benefit from non-compliance with the regulation
- reimburse the costs incurred by the council in enforcing the regulations
- change the behaviour of the landlord and deter future non-compliance
- penalise the landlord for not installing alarms in line with the Regulations and after being required to do so, under notice
- proportionately address potential harm outcomes and the nature of the breach.

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

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

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

The Department of Communities and Local Government conducted an impact assessment prior to the introduction of the Regulations. That assessment suggested that the cost of the requirements imposed on landlords (i.e. the purchase of smoke detectors and carbon monoxide alarms) was £25 and estimated that the provision of smoke alarms would, over ten years, prevent 231 deaths and 5860 injuries, accruing a saving of almost £607.7 million, and that the provision of Carbon Monoxide Alarms would, over the same period, prevent a total of six to nine deaths and 306 to 460 injuries, accruing a saving of almost £6.8 million.

The council considers that compliance with the Regulations do not place an excessive or unreasonable burden on a landlord. The cost of the alarms is low and in many cases can be self-installed without the need for a professional contractor. The risk and impact on occupiers resulting from a fire or carbon monoxide poisoning event far out-weighs the cost

of compliance. While the imposition of the maximum potential fixed penalty charge of £5,000 may present an excessive financial burden on some landlords, this has to be balanced against the risk, the low cost of compliance, the fact that the offender will have been given all reasonable opportunity to comply prior to any penalty charge being levied and the offenders statutory rights of appeal.

For all of the above reasons, and so as to ensure that there is an effective incentive for landlord's to comply with the Regulations, the council proposes to impose a penalty charge of £5,000 for non-compliance with a Remedial Notice, with a reduction of 50% where payment is received within 14 days of service of the penalty charge notice.

Notwithstanding the above, the council may, following a representation made by the landlord, exercise discretion and reduce the penalty charge further if it considers there to be extenuating circumstances.

This discretion will not however apply when:

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

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

If a landlord disputes the issue of a penalty charge notice, they can make a request to the council for it to be reviewed. This request must be in writing and within the time period specified in the penalty charge notice. Any representation received will be considered on its individual merit. Any extenuating circumstances will be considered by the council in deciding whether to reduce the level of the penalty charge levied. Potential mitigating factors –

- No previous convictions / charges
- Self-reporting, high level of co-operation with the investigation – where this goes beyond what would normally be expected
- The age health and other vulnerabilities of the offender
- Voluntary steps taken to address issue – submission of licence application

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if he can demonstrate that he has taken all reasonable steps to comply with the requirements of the remedial notice.

The council may, on consideration of any representation and evidence, chose to confirm, vary or withdraw a penalty charge notice and we are required to communicate that determination by issuing a decision notice on the landlord. If varied or confirmed, the decision notice must state that a further appeal can be made to a First Tier Tribunal on the following grounds:

- 1) the decision to confirm or vary the penalty charge notice was based on an error of fact;
- 2) the decision was wrong in law;
- 3) the amount of penalty charge is unreasonable; or
- 4) the decision was unreasonable for any other reason

Where a landlord raises an appeal to the Tribunal, the operation of the penalty charge notice is suspended pending its determination or its withdrawal. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

### **Recovery of penalty charge**

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



## Appendix 3 – Civil Penalties and Rent Repayment Order Policy

### Introduction

The council is committed to supporting good, responsible landlords and ensuring that residents renting private accommodation in the borough live in homes that are safe, decent, well managed and properly maintained.

Although the majority of landlords in the borough operate lawfully and responsibly, a small minority of rogue landlords choose to operate outside the law, knowingly renting out (often to our most vulnerable residents) accommodation that is unlicensed, substandard and/or unsafe.

The Housing and Planning Act 2016 (the 2016 Act) introduced several measures designed to enable Local Authorities to deal more robustly with rogue landlords. These changes included:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences in the Housing Act 2004;
- Banning orders for the most serious and prolific offenders;
- The extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences;
- Powers to require the sharing of certain data held by the three main Tenancy Deposit Protection schemes to assist councils in identifying privately rented accommodation in their area; and
- A database of rogue landlords and property agents convicted of certain offences.

The Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government) has published Statutory Guidance for Local Housing Authorities in implementing the legislation under Schedule 9 of the 2014 Act (Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities) – hereafter ‘the Guidance’. The council has had regard to the Guidance in developing this policy and this document should be read in conjunction with the council’s Private Sector Housing Enforcement Policy.

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

### Purpose

This Policy outlines the way in which the council will use these powers, how it will decide when to prosecute or impose a civil penalty and, where the imposition of a civil penalty is considered to be a suitable alternative to a prosecution, how it will determine the amount of that penalty.

### Background – Relevant Offences

Section 126 and Schedule 9 of the 2016 Act provides Local Authorities with the power to impose a civil penalty of up to £30,000 as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to the licensing of Houses in Multiple Occupation (HMO’s) (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139) and
- Failure to comply with management regulations in respect of HMO’s (section 234).

Section 23 of the 2016 Act also extends a power to impose a civil penalty for the breach of a Banning Order. A Banning Order is an order by the First Tier Tribunal prohibiting a landlord from amongst other things, letting housing in England or engaging in English letting agency work.

## **General principles**

The council will conduct its private sector housing enforcement activities (including the exercise of its new powers) in a manner that is consistent with its obligations under the Regulators Code and in accordance with the Private Sector Housing Enforcement Policy, that is to say in a manner which is targeted, proportionate, fair and objective, transparent, consistent and accountable.

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

A civil penalty is intended to provide an alternative to prosecution. The council cannot impose a civil penalty and pursue a prosecution for the same offence. Moreover, if a person has been convicted or is currently being prosecuted for a relevant offence, that would preclude our issuing a civil penalty for that conduct. Likewise where a civil penalty has been imposed on a person for an offence that would preclude our prosecuting that person for that offence.

Whilst only one civil penalty can be issued for each of the first 4 offences in the list set out above, a civil penalty can be issued for each separate breach of the HMO Management Regulations (section 234).

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

## **Burden of Proof**

Although a Civil Penalty is intended as an alternative to prosecution, it should not be considered a lesser or easier option. In all cases where a formal sanction is being considered (whether that be by way of prosecution or the imposition of a civil penalty) the supporting evidence must rise to the criminal standard of proof and officers should be satisfied that the evidence is sufficient to demonstrate beyond reasonable doubt that the offence has been committed and such that, if the matter were prosecuted in the Magistrates Court, there would be a realistic prospect of conviction. The same considerations would apply where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal.

In determining whether the evidence meets this test, the council will have regard to the Crown Prosecution Service 'Code for Crown Prosecutors'. The Code sets out a two part test:

- I. The evidential test- this involves an objective assessment of all available evidence taking into consideration the admissibility, reliability and credibility of the evidence.
- II. The public interest test- this involves an examination of the seriousness of the offences, the level of culpability of the offender, the impact of the offence on victims and the community, the age of the offender, whether a prosecution is a proportionate response and the need to protect sources of information.

## Decision making - When to prosecute

The council will determine, on a case by case basis, whether to instigate prosecution proceedings or issue a civil penalty, taking into account all the evidence available and the circumstances of the offence and offender.

In general, prosecution will be reserved for those cases deemed particularly serious or where the offender has committed a similar offence in the past. This does not however mean that civil penalties will not be used where serious offences have been committed and in such cases [for what the Guidance refers to as 'the worst offenders'] the council reserves the right to apply the maximum civil penalty where this is considered to be an appropriate and effective sanction.

Prosecution may be appropriate in a case where a strong zero-tolerance message is necessary and where publicising a conviction will serve as a deterrent to the offender and other rogue landlords. A prosecution may also be pursued where this will enable the council (on the back of a conviction) to apply for a Banning Order under Section 15 of the Housing and Planning Act 2016. Note that the issue of a civil penalty is not generally a matter of public record (although see paragraph below on rogue landlords database).

A prosecution may also be pursued in the following (non-exhaustive) instances:

- Where the offence is not one for which a Civil Penalty may be imposed.
- Where the case involves external agencies such as LFEPA, internal colleagues such as Planning or Trading Standards or other local authorities, where this supports regional or sub-regional activity – such as London Lockdown.
- Where an individual or company has imperilled the health, safety or wellbeing of occupiers, visitors or members of the general public;
- Where an individual or company has deliberately, negligently or persistently breached their legal obligations;
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices /orders or no reasonable progress has been made in relation to the carrying out of the requirements;
- Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

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

## Reviews

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

## Civil Penalties - Factors determining the level of penalty

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

factors that should be taken into account so as to ensure that the penalty is set at an appropriate level, namely:

**a) Severity of the offence.**

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

**b) Culpability and track record of the offender**

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

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

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

**d) Punishment of the offender**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

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

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

**f) Deter others from committing similar offences**

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

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

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

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

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

In order to ensure that we exercise this power in a consistent and transparent manner, the council has developed a framework for determining the level of penalty to be applied in any individual case. That framework entails 4 separate stages and has been developed in accordance with, and having regard to, the Guidance, the Code for Crown Prosecutors, the Sentencing Council Guidance for Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences (Definitive Guidelines (2016) and the council's Private Sector Housing Enforcement Policy.

## Stage 1 – Determining the offence category

### Culpability

When determining the culpability of the offender the council will have regard to the following factors:

<i>Very high (Deliberate)</i>	<p>Flagrant or intentional breach</p> <p>Offender is portfolio LL (&gt;5 properties) or professional letting agent</p> <p>History of non-compliance</p> <p>Offender given advice, assistance or warnings which have been ignored.</p> <p>For example repeatedly ignored reminders to apply for a HMO licence. Failure to comply with a correctly served Improvement notice. No attempt made to contact the local authority to discuss breaches.</p>
<i>High (Reckless)</i>	<p>Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken e.g. failure to comply with HMO Management Regulations.</p>
<i>Medium (Negligent)</i>	<p>Offence committed through act or omission which a person exercising reasonable care would not commit</p> <p>Some effort made to comply but insufficient for full compliance</p> <p>Failure to implement systems to control risk e.g. failure to complete all items on a schedule of works within the required timescale. Partially completed licensing application forms.</p>
<i>Low (Low or no culpability)</i>	<p>Offence committed with little (or no) fault e.g. significant efforts were made to address the risk although they were inadequate on this occasion.</p> <p>There was no warning/circumstance(s) indicating a risk.</p> <p>Failings were minor and occurred as an isolated incident.</p> <p>Failings attributable mainly to obstruction by tenant or tenant damage.</p>

The table below contains factors relating to both actual harm and risk of harm:

<p><i>Category 1 – High Likelihood of Harm</i></p>	<p>Serious adverse effect(s) (actual or potential) on individual(s) and/or wider community.</p> <p>Risk of serious injury or fatality, risk of long term adverse effect on individual(s) – including where persons are vulnerable</p> <p>Housing defect giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example Housing Health and Safety Rating System (HHSRS) imminent category 1 hazards such as danger of electrocution, carbon monoxide poisoning, serious fire safety risk or excess cold with vulnerable resident.</p>
<p><i>Category 2 – Medium Likelihood of Harm</i></p>	<p>Adverse effect on individual(s) (not amounting to Category 1)</p> <p>Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect</p> <p>The council and/or legitimate landlords or agents substantially undermined by offender's activities</p> <p>The councils work as a regulator to address risks to health is inhibited</p> <p>Tenant misled to their prejudice</p> <p>The housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example HHSRS category 1 hazards, multiple high category 2 hazards such as falls between levels, excess cold, asbestos exposure.</p>
<p><i>Category 3- Low Likelihood of Harm</i></p>	<p>Low risk of an adverse effect on individual(s)</p> <p>Public misled but little or no risk of actual adverse effect on individual(s). The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example low category 2 hazards under the HHSRS, localised damp and mould</p>

#### Offence Category

The relationship between the level of culpability and harm is then used to determine which category the offence falls into:

Culpability	Harm category 1	Harm category 2	Harm category 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Having determined where the offence sits in the category, the appropriate level of civil penalty within that category will be assessed from the starting point for that category, adjusted, where necessary, by reference to the relevant considerations set out in the Guidance (reproduced above), the cost of enforcement and any other relevant aggravating or mitigating factor relevant to the case, including the offender's ability to pay – detailed at stages 2 – 4 below.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability before adjustment.

Band	Civil Penalty Range	Starting point (£)
1	£0 to £4,999	2,500
2	£5,000 to £9,999	7,500
3	£10,000 to £14,999	12,500
4	£15,000 to £19,999	17,500
5	£20,000 to £24,999	22,500
6	£25,000 to £30,000	27,500

## Stage 2 – Aggravating and mitigating factors

Once the starting point has been determined, the council will then go on to consider whether the circumstances of the offender or offending discloses the presence of one or more mitigating and aggravating factors. Where the council identifies such factors are present in a case, it may apply an adjustment of (£1000) for each factor. This will be by way of a reduction where the factor is mitigating and an increase where aggravating. Where it is considered appropriate and the circumstances warrant it, the council reserves the right to deviate from this approach and to apply a greater adjustment for each factor. The maximum total adjustment that may be applied in respect of any one offence shall be capped at whatever is the minimum or the maximum penalty specified for that offence, i.e. for a Band 2 offence this would be £5000 or £9,999.

The following is a list of non-exhaustive factors that will be considered for this purpose:

### Aggravating Factors:

- 1) Previous convictions – having regard to offence and time elapsed since commission
- 2) Whether offending motivated by financial gain
- 3) Obstruction of investigation
- 4) Deliberate concealment of activity/evidence

- 5) Number of non-compliances –the greater the number, the greater the potential aggravation
- 6) Record of non-compliance/breaches
- 7) Record of letting sub-standard accommodation
- 8) Record of poor management/inadequate management supervision
- 9) Lack of a tenancy agreement/rent paid in cash

Mitigating factors:

- 1) No previous convictions
- 2) Self reporting, high level of co-operation with the investigation – where this goes beyond what would normally be expected
- 3) The age, health and any vulnerabilities of the offender
- 4) Voluntary steps taken to address issue – submission of licence application

### **Stage 3 – Review of assets and Income – Is the penalty justified and proportionate?**

The council must ensure that the penalty is set at a level to ensure that it has an appropriate impact on the offender whilst being proportionate to the severity of the offence. This is a two stage process.

The first step requires consideration as to whether the penalty meets the objectives set out at Section 142 of the Criminal Justice Act 2003 and the Guidance, namely punishing the offender, deterring the offender and other potential offenders, reform of that offender, protection of the public, reparation by the offender of the victim and wider community and the removal of any gain derived from the commission of the offence.

The second step is to consider whether the assessed penalty is proportionate and will have the appropriate impact on the offender.

In each case, the council shall request financial information from the offender and the response shall be taken into consideration where it is considered sufficient and reliable. In assessing that question (or where such information is not forthcoming), the council shall, as far as reasonably practicable, use its powers to determine an offender's means. That may involve an examination of all of that person's assets and income (not just rental income) they receive. Equally where this is not considered a proportionate exercise, (i.e. where the penalty is at Band 2 or below) the council may instead draw reasonable inferences as to the offender's means from the evidence in its possession and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty. It is noteworthy that Part 6, Schedule 6 of the Crime and Courts Act 2013 permits the value of assets owned by an offender, such as rental properties, to be taken into account when assessing an offender's ability to pay.

Having regard to an offender's means, the council may then adjust the penalty upwards or downwards, so as to ensure that the penalty conforms to the sentencing principles set out above and has sufficient impact in the individual case.

### **Stage 4 - Totality Principle**

At this stage – the council will need to 'step back' and reflect on the determined penalty to ensure it fulfils the sentencing aims set out above and otherwise as detailed in the Guidance. In short, the fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived from the commission of the offence.

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



The total financial penalty is inevitably cumulative.

The council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the council.

The council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved.

For example:

Where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the council must be careful to ensure that there is no 'double-counting'.

## Discounts

The council will apply the following discounts to any imposed penalty:

Where an offender a) addresses the identified breach **[i.e. completes outstanding works to the satisfaction of the council or applies to licence a previously unlicensed address] before the Notice of Intent expires**, e.g. 28 days from service, and b) pays the civil penalty in full within 14 days of the 'Final Notice', a reduction of 20% will be applied to the assessed penalty.

Where an offender satisfies the requirements specified at either a) **or** b) above and does so by the stipulated timeframe for the same, a discount of 10 % will be applied to the assessed penalty.

**A discount will not be applied where the Landlord has a rental portfolio comprising more than one property and/or has a history of non-compliance in the past.**

## Recording decisions

Recording will be undertaken by a designated officer as appointed by the council (i.e. Investigations Officer/Environmental Health Team Manager) within the PSE Team

## Process for issuing a civil penalty

The investigating officer will produce a prosecution case file, presenting evidence to show that the criminal burden of proof has been satisfied. This must be prepared within 6 months of the offence being uncovered. The officer will discuss the case with the [Team Leader] and agree the most appropriate disposal of the matter with reference to this policy and the Private Sector Housing Enforcement Policy.

Where a civil penalty is considered the most appropriate sanction, the investigating officer will;

- Cost all enforcement activity.
- Identify the civil penalty justified on the facts of the case.
- Record their reasons for the level of penalty determined including any adjustments applied
- Refer case to the Environmental Health Team Manager for authority to proceed to apply a civil penalty.
- Serve notice of the council's proposal to impose a financial penalty ('Notice of Intent').

The Notice of Intent must be given no later than 6 months after the council has sufficient evidence of the conduct to which the penalty relates or at any time when the offending conduct is continuing and should set out:

- the amount of the proposed financial penalty;
- reasons for proposing to impose the penalty; and
- information about the landlord's right to make representations.

NOTE: Where a civil penalty is issued for a Section 30 offence – failure to comply with an Improvement notice, the offence is considered discharged at that point. However if the defects identified in that Notice Persist, a further improvement Notice may be serviced and may be enforced if it is not complied with.

A landlord that receives a Notice of Intent may make written representations to the council seeking a review of that decision within 28 days beginning from the date the notice was served.

The written representation should be sent to:

The London Borough of Lambeth

Property Standards and Enforcement Services

The Environmental Health Team Manager

PO Box 734 Winchester SO23 5DG

The council may confirm, vary or withdraw a charge based on the information provided in the representation.

Information which will be considered will include but not be limited to;

- The number of properties owned
- Level of cooperation with the council
- Period of time the property has been let
- Personal financial circumstances
- The Landlords compliance history
- Membership of a professional body
- Efforts made to comply
- Any reason that indicates that the penalty has been made or assessed unreasonably

After the end of the period for representations, the council must decide whether to impose a penalty and, if so, the amount of that penalty.

If the council decides to impose a financial penalty, it must give the landlord a notice requiring that the penalty is paid within 28 days ('Final notice'). That Notice must set out:

- the amount of the financial penalty;

- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

The council may at any time:

- withdraw a notice of intent or final notice; or
- reduce the amount specified in a notice of intent or final notice.

## Appeals

A person who receives a final notice may appeal to the First-tier Tribunal against:

- the decision to impose a penalty; or
- the amount of the penalty.

The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed, or to cancel the civil penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000. Appeal rights are contained within Schedule 13A to the Housing Act 2004. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

## Database of Rogue Landlords

Where a landlord receives two or more civil penalties over a 12 month period, the council may include that person's details in the national database of rogue landlords and property agents.

The purpose of the database is to enable local housing authorities to record information about, and target enforcement action against, any landlord who has:

- received a banning order under the Housing and Planning Act 2016;
- been convicted of a Banning Order offence; or
- received TWO or more civil penalties over a 12 month period.

## Banning Orders

A banning order is an order made by the First-Tier Tribunal banning an individual or corporate body from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

It can also ban a person from (i) acting as an officer of or (ii) directly or indirectly taking part in or being concerned in the management of any corporate body which carries out those activities.

A person subject to a banning order is also unable to hold a licence for a HMO and their property may also be subject to a management order under part 4 of the Housing Act 2004. The breach of a banning order is a criminal offence punishable by an unlimited fine or a term of imprisonment of up to 6 months. It may also be dealt with by way of the imposition of a CPN.

The council will where appropriate consider applying for a Banning Order where a landlord has been convicted of one or more of the offences specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. We will ensure that we reserve this option for the most serious offenders.

Where we are satisfied that the offence of breaching a Banning Order has been committed, this would normally result in the institution of prosecution proceedings. Where it is determined to be appropriate to impose a civil penalty for this offence, the penalty would normally be set at the maximum level of £30,000 so as to reflect the seriousness of the offence. When considering applying for a Banning Order, the council will have regard to all applicable Government Guidance and shall ensure that all statutory requirements are met. Consideration will be given to any evidence of housing offences(s) committed by the landlord in other Local Authority areas. We will record any subject against whom a banning order has been made on the national Rogue Landlord Database.

### Rent Repayment Orders

The Housing Act 2004 initially introduced rent repayment orders to cover situations where a landlord had failed to obtain a HMO licence for a property that was required to be licensed as such under that Act. Section 40 of the Housing and Planning Act 2016 extended this power so that the First Tier Tribunal may now make rent repayment orders for a much wider range of offences including:

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order (made under section 21 of the Housing and Planning Act 2016)
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of a residential occupier (under section 1 of the Protection from Eviction Act 1977).

Rent repayment orders can be granted to either the tenant or the local housing authority. If the rent was paid by Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on the same basis. In all other cases, the rent must be repaid to the tenant.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, **but only at a time when there is no prospect of the landlord appealing against that penalty.**

The council must consider making a rent repayment order after a person is the subject of a successful civil penalty and in appropriate cases the council will normally make an application for a rent repayment order to recover sums paid as housing benefit or through the housing element of Universal Credit. The council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

If a landlord has been convicted of an offence for which a RRO can be made and the offence was committed in the borough, the council must consider applying for a RRO. In such cases, the council will, where it is considered appropriate, normally pursue a RRO (where the council has paid housing benefit or the housing element of Universal Credit)

and the First Tier Tribunal must order the maximum amount of rent be repaid in such cases (12 months).

Where there is a sufficient evidence to the criminal standard of the commission of a qualifying offence for the purposes of a RRO and housing benefit/UC paid to landlord over the relevant period, but the matter has not been prosecuted and/or conviction secured, the council may consider applying for a rent repayment order. In such cases the council must take into account the following factors when considering how much rent to recover:

**Punishment of the offender** – RROs should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;

**Deter the offender from repeating the offence** – The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;

**Dissuade others from committing similar offences** – Rent Repayment Orders are imposed by the First Tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

**Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

## Appendix 4 – Houses in Multiple Occupation Licencing Policy

### Definition

Defined by the Housing Act 2004 a 'House in Multiple Occupation' is a building or part of a building (e.g. a flat) which:

- is occupied by more than one household and has more than one household sharing an amenity (or the building lacks an amenity) such as a bathroom, toilet or cooking facilities; or,
- is occupied by more than one household and is a converted building which does not entirely comprise self contained flats (whether or not there is also a sharing or lack of amenities); or
- comprises entirely of converted self contained flats and the standard of conversion does not meet, at a minimum, that required by the 1991 Building Regulation and more than one third of the flats are rented out -

HMOs which are three storeys or more and occupied by five or more persons who form two or more households and share basic amenities are required to have a license under the Housing Act 2004.

From **October 2018**, all HMOs with 5 or more people living in two or more households will be subject to mandatory licensing, regardless of the number of storeys.

Local Housing Authorities (LHAs) also have the discretion to extend licensing to other privately rented properties. Although additional or selective licensing may be considered in future, the council has yet to exercise this power and so, at this point, this policy only sets out the position with respect to mandatory licensing.

The Housing Act 2004 allows the council to charge a fee for an HMO licence, although this must reflect the costs of administering and enforcing this function. The breakdown of how the fee is structured is given in Appendix 1, page 17.

This policy sets out how the council will apply its powers in respect to the licensing of HMO's. This policy will ensure that the council takes a fair, considered, consistent and transparent approach in relation to the licensing process. This policy contributes to the council's overall housing strategy and corporate outcomes to provide better homes.

### Applying for a licence

A licence holder can be either the owner of the property ('landlord') or a responsible person nominated by the landlord who has the responsibility for managing the property on the landlord's behalf ('agent'). Any conditions applicable to the licence holder will also apply to the person(s) nominated by the owner to manage the property on their behalf including any penalties or sanctions.

To hold a licence, the landlord/agent must be a 'fit and proper person'. Relevant issues which will be considered by the council include:

- Criminal offences involving: Fraud, Dishonesty, Drugs, Schedule 3 of the Sexual Offences Act 2003
- Practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in connection with a business
- Contravention of any provision of housing and/or landlord and tenant law
- Contravention of any Approved Code of Practice
- Any criminal offence or subject to any other proceedings brought by a local authority or other Regulatory Body

An unspent conviction or other failure is not necessarily automatic grounds for refusing a licence and other circumstances e.g. training undertaken by the landlord or subsequent co-operation with the council will be taken into account.

Where there is evidence of a problem, applicants will be invited to submit an explanation of their actions. The applicant will be required to account for the failure to comply with legislation and satisfy the council that this will not recur. The council may also require the applicant to complete a Standard Disclosure and Barring check by the Disclosure and Barring Service and provide details of the result as part of their HMO application.

### **Issue of licence**

A full licence, for a five year period, will be issued if the council is satisfied that the landlord/agent is a 'fit and proper person' and that the property meets all the conditions of the licence.

If there is any doubt on the part of the council that the landlord/agent is a 'fit and proper person' and/or that the property does not meet the conditions of the licence, the council may issue a conditional licence for a period of less than five years. For example where works are required to ensure the property meets the minimum HMO standards and/or to deal with any Category 1 Hazards identified under the Housing Health and Safety Rating System (HHSRS).

If the council has reason to believe that the landlord/agent is not a fit and proper person, or that the conditions of the property are such that they would be putting the tenants at risk, then Council may serve an Interim Management Order (IMO) for a period of twelve months. (Refer to Section on IMOs).

### **Information to be provided**

The application for an HMO licence will need to be completed in full by the landlord/agent for each individual property.

Current documentation of the following must be provided with the application:

- Gas safety certificate;
- Fire safety risk assessment
- Annual maintenance record for fire detection and emergency lighting system;(where installed)
- Electrical installation and Portable appliance certificates ;
- Floor plans;
- Annual buildings insurance
- Documentation relating to the management of the property (procedures for reporting repairs and maintenance matters and for detailing with complaints).

### **Temporary Exemption Notice (TEN)**

The landlord/agent may apply in writing for a Temporary Exemption Notice (TEN) where they intend to take steps to remove the property from the licensing requirements. The council may grant a TEN where it is satisfied that the property will not be licensable within three months of the date of receiving the written notice. This may be where it is proposed to convert a property back to a single family house and planning is involved or it is proposed to sell the house in the immediate future, perhaps because the cost of compliance is considered too great. Appeal provisions apply. We will expect an applicant to provide sufficient evidence to demonstrate the steps that they are taking, such as proof the property is being actively marketed. If a temporary exemption notice is served under this section, the house is not required to be licensed during the period for which the notice is in force.

This notice, where granted, will be for three months. The Landlord or Agent may apply for a second three month TEN, however, although the council will consider each application on its merits, a second TEN will generally only be given in exceptional and unforeseen circumstances.

It would be inequitable if a landlord could use this provision to circumvent or delay formal licensing. An assessment of risk would also be required where the building is occupied.

Temporary Exemptions Notices will only be reissued in exceptional circumstances. In these circumstances, the minimum standards of the Housing Health and Safety Rating System will apply.

### **Interim / Final Management Orders**

If the council is not able to serve either a full or conditional licence, and it is necessary for the purposes of protecting the health, safety or welfare of persons occupying the property, the council may issue an Interim Management Order (IMO).

The council will administer a fee for this activity, which will be reclaimed through rental income.

If work is required to the property in order to meet the licensing conditions, the council will carry these out as 'works in default' and will reclaim this cost, with interest, by placing a charge on the property registered with Local Land Charges.

An IMO will last for a period of 12 months. After this has elapsed, the council will either require the landlord/agent to obtain a full licence for the property, or serve a Final Management Order (FMO). Any FMO served will be for a period no greater than 5 years and must be agreed by the First Tier Tribunal.

### **Revocation of licences and approvals**

We may revoke a HMO licence where there is clear evidence that the manager is not a 'fit and proper person' or where there is a serious breach of licensing conditions, and poor standards of management. Licence Holders can also apply to the council to revoke HMO Licences under certain circumstances.

### **Fees**

The fees charged for HMO licensing are purely for cost recovery, and only cover the costs that are directly related to licensing. There is no 'profit' built into these costs, and fees are not intended as part of any subsidy.

The 2018 fees are set out in Appendix 1. The level of fees charged is reviewed periodically.

If a licence is revoked, the landlord / agent will be subject to the full charge of a new licence when they reapply. There are no refunds should a licence not be required for the full five years.

### **Licence details.**

A licence will normally last for 5 years. It cannot be granted for a longer period, but may be granted for a lesser period.

A copy of the licence will need to be displayed in the property and will include the following details:

- Licence period;
- Maximum number of occupants;
- Maximum number of households;
- Confirmation of fit and proper person;



- The size, sharing ratio and number of amenities;
- Management arrangements in case of emergency.

## Space and other Standards

A summary of the required space standards, cooking facilities and bath / shower requirements is included at the end of this document on page 42.

## Penalties and Sanctions

A landlord/agent who, without reasonable excuse, manages or lets a property which ought to be licensed under Part 2 or 3 of the Housing Act 2004, and is not licensed, commits an offence and can face an unlimited fine. The Local Authority can also in this instance (amongst others) apply to the First Tier Tribunal FTT) for a Rent Repayment Order.

A Rent Repayment Order (RRO) is a financial penalty that can be imposed upon a landlord/agent who has been convicted of one of several offences including operating a unlicensed HMO. A local authority may also pursue an RRO where it is satisfied that the offence has been committed even though the landlord has not been prosecuted for that offence. This can be for an amount equivalent to any rent received for the period during which the offence was committed up to a maximum of 12 months

The council may apply for an order where Housing Benefit (Local Housing Allowance) or Universal Credit has been paid to that landlord during any period when such an offence was or was being committed. Occupiers, (including former occupiers), are also permitted to make an application to the FTT for an RRO where an order has already been granted to the council in respect of the same property or where the landlord has been convicted of the offence. (Any order made in favour of an occupier cannot relate to any sums paid by means of Housing Benefit). Any sum ordered to be paid under a RRO is also recoverable as an ordinary civil debt. Sums owed to the council under a RRO are local land charges.

If the property cannot or is not licensed when it should be, then the council can serve an Interim Management Order (IMO) and take management control of the property.

## Planning

The Lambeth Local Plan (2015) sets out the council's planning policies with regard to HMOs, in Policy H9 as outlined below. See [www.lambeth.gov.uk/localplan](http://www.lambeth.gov.uk/localplan) for further details.

a) The council will support proposals for new hostels and houses in multiple occupation (HMOs) where it is demonstrated that the accommodation:

- (i) does not result in the loss of housing suitable for occupation by families, in accordance with policy H6;
- (ii) would meet an identified local need;
- (iii) will be suitable for the intended occupiers in terms of the standard of facilities;
- (iv) will be accessible to public transport, shops, services, community facilities and social networks appropriate to the needs of the intended occupiers;
- (v) will not have an unacceptable impact on parking conditions and traffic congestion in the area (see policy T7);
- (vi) is on a site and in a location suitable for that particular use, having regard to amenity, transport and other environmental impacts; and
- (vii) contributes to creating a mixed, balanced and inclusive community.

(b) The loss of existing hostels and houses in multiple occupation will be resisted unless it can be demonstrated that:

- (i) the accommodation is no longer needed and the new accommodation will instead meet another identified priority local need; or

- (ii) the property is incapable of meeting modern standards; or
- (iii) the existing accommodation will be adequately re-provided to an equivalent or better standard on-site or elsewhere in the borough.

The Planning Department will consult with Private Sector Housing on any applications for conversions into self-contained flats to confirm the history of the property.

HMOs which have no current planning permission should apply for a 'Lawful Development Certificate' from the Planning Department. There will need to be proof that the property has been operating as an HMO for at least ten years, and drawings of the layout will need to be submitted. If the property has not been operating as an HMO for at least ten years, then retrospective Planning approval should be sought.

The Planning Department will be looking for any evidence to support whether the property has been operating as an HMO for at least 10 years.

Where Private Sector Housing have concerns around the use and/or management of established HMOs we will liaise with the Planning Department to determine any application submitted for consideration as to their future use and occupation.

## Enquiries

Applications for a HMO licence can be made to the Private Sector Housing Unit by either:

In writing to: Private Sector Housing Unit, London Borough of Lambeth, PO Box 734, Winchester SO23 5DG

By telephoning: 020 7926 4444

By email: [hmolicensing@lambeth.gov.uk](mailto:hmolicensing@lambeth.gov.uk)

## SUMMARY OF STANDARDS FOR FLATS & HOUSES IN MULTIPLE OCCUPATION

		BEDSIT TYPE ACCOMODATION	SHARED HOUSES / FLATS	HOSTEL / B&B TYPE ACCOMODATION	SELF-CONTAINED FLATS				
SPACE STANDARDS	<ul style="list-style-type: none"><li>Cooking facilities in room 1 person – 13m<sup>2</sup> 2 persons – 17m<sup>2</sup></li><li>Cooking facilities in separate room 1 person – 9m<sup>2</sup> 2 persons – 14m<sup>2</sup></li></ul>	1 person – 9m <sup>2</sup> 2 persons – 14m <sup>2</sup>	<ul style="list-style-type: none"><li>Cooking facilities in separate room 1 person – 6.5m<sup>2</sup> 2 persons – 10.25m<sup>2</sup> 3 persons – 15m<sup>2</sup> or more 4 persons – 19.5m<sup>2</sup> 5 persons – 24m<sup>2</sup> or more</li></ul> <p>Where cooking facilities are in the room a minimum of 3.5m<sup>2</sup> to be added to the above relevant minimum floor area</p>	Minimum room sizes for new build & conversions					
				1 Bed 1 person <sup>1</sup>	1 Bed 2 persons	2 Bed 3 persons	3 Bed 4 persons	4 Bed 5 persons or more	
COOKING FACILITIES	Exclusive use for each letting in room or separate kitchen. Cooker with 2 burners, oven grill for single person lettings Otherwise 4 burners' oven and grill.	2 – 5 persons, 1 set of cooking facilities. 6 – 10 persons, 2 sets of cooking facilities	Exclusive use for each letting where practicable. Where shared 1 set of cooking facilities : 5 persons	Main bedroom (double)	---	12.0m <sup>2</sup>	12.0m <sup>2</sup>	12.0m <sup>2</sup>	12.0m <sup>2</sup>
				Single bedroom	7.0m <sup>2</sup>	---	7.0m <sup>2</sup>	7.0m <sup>2</sup>	7.0 m <sup>2</sup>
				Living Room	12.0m <sup>2</sup>	12.0	13.0	14.0	15.0m <sup>2</sup>
				Dining Room	---	5.0m <sup>2</sup>	6.0m <sup>2</sup>	6.0m <sup>2</sup>	7.0m <sup>2</sup>
				Living/Dining	---	15.5m <sup>2</sup>	17.5m <sup>2</sup>	18.5m <sup>2</sup>	8.0m <sup>2</sup>
				Kitchen	6.0 m <sup>2</sup>	6.0m <sup>2</sup>	8.0 m <sup>2</sup>	8.0m <sup>2</sup>	8.0m <sup>2</sup>
				Kitchen diner	10.5m <sup>2</sup>	10.5m <sup>2</sup>	12.5m <sup>2</sup>	12.5m <sup>2</sup>	13.0m <sup>2</sup>
				Bathroom/wc combined	3.5m <sup>2</sup>	3.5m <sup>2</sup>	3.5m <sup>2</sup>	3.5m <sup>2</sup>	3.5m <sup>2</sup>
				Overall floor area	37m <sup>2</sup>	45m <sup>2</sup>	60m <sup>2</sup>	70m <sup>2</sup>	85m <sup>2</sup>
				BATHS/ SHOWERS	Exclusive use for each letting or minimum ratio of 1 bath/shower : 5 persons	2 – 5 persons : 1 bath /shower 6 – 10 persons: 2 bath /shower	1 - 5 persons : 1 bath/shower 6 – 10 persons : 2 bath/shower 11 – 15 persons : 3 bath/shower	Each dwelling shall have its own exclusive cooking facilities.	
Each dwelling shall have its own exclusive bathing facilities.									