Appendix 1

ENFORCEMENT
AND
SERVICE STANDARDS:

PRIVATE HOUSING

Epping Forest
District Council

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Enforcement Standards

The quality of the home has a substantial impact on health and a warm, dry and secure home is associated with better health. In addition to these basic housing requirements, other factors that help to improve well-being include the neighbourhood, security of tenure and freedom from anti-social behaviour. In 2015 the Building Research Establishment (BRE[1]) has calculated that overall poor housing costs the NHS at least £1.4 billion per year.

The aim of the Private Housing Team is to ensure that residents have a safe and affordable place to rent that contributes to their wellbeing and that no person living in, working in, or visiting the area suffers significant adverse health effects or nuisance from noise, defective drainage, accumulations, pests or antisocial behaviour.

A number of statutory duties that impact on the role of the Private Sector Housing (Technical) Team, in general these are (but are not limited) to:

- Keep the housing conditions in their area under review with a view to identifying any action that may need to be taken under various specified pieces of legislation.
- Where the Local Authority considers it appropriate inspect any residential premises in their district with a view to determining whether any category 1 or 2 hazard exists on those premises.
- Inspect the Local Authority area from time to time to detect statutory nuisances, investigate complaints of statutory nuisance related to private sector housing and in prescribed circumstances take enforcement action in relation to those inspections.
- To consider licence applications in relation to Park Homes, Holiday Caravan Sites and Houses in Multiple Occupation.

To fulfil these duties the Private Sector Housing (Technical) Team investigate service requests, undertake proactive work, provide advice and take enforcement action relating to:

- Poor housing conditions.
- Statutory nuisance relating to property defects.
- Filthy and verminous properties.
- The condition of empty properties and bringing them back into use.
- The House in Multiple Occupation (HMO) Licensing Scheme.
- The Park Homes Licensing Scheme.
- Harassment and illegal eviction

[1] The cost of poor housing to the NHS, Simon Nicol, Mike Roys, Helen Garrett, BRE [2015]

Service Standards

We will normally respond to all service requests by:

Contacting the complainant, normally by telephone, advising who will be dealing with their case, the process, legal position and possible outcomes.

We will take evidence as necessary and consider this in line with the Council's Corporate Enforcement Policy and this document.

Wherever possible all parties will be kept informed of the action being taken and the process ahead.

Where resources permit and it is appropriate, contact will be confirmed in writing and information/publications provided to both tenant and landlord, including any relevant documentation.

Illegal Eviction & Harassment

Generally cases of illegal eviction are passed on to us from the Housing Options Team where they have dealt with initial matters informally, including giving advice and mediation between landlord and tenant but where this has proved unsuccessful.

1) For illegal eviction and harassment cases we will aim to contact the complainant ideally on the same working day but where this is not possible by the end of the next working day. Where the case requires and it is appropriate we will aim to contact the landlord to progress the case as soon as is practicable and in line with the severity of the case.
2) In the case of illegal eviction we will also liaise with the Housing Options Team to determine rehousing options and availability
3) Where complaints come directly to us we will give advice and attempt to mediate between landlord and tenant and we will refer to the Housing Options team where appropriate. We will not be responsible for the tenant regaining possession.
4) Rights, duties and expectations will be explained and co-operation sought to resolve matters amicably.

Poor Housing conditions and public health

1) Where the risk to the tenants is likely to be imminent we will aim to contact the complainant ideally on same working day but where this is not possible by the end of the next working day. For all other cases we will aim to contact the complainant within three working days.
2) Where the case requires and it is appropriate we will aim to contact the landlord to inform them of the complaint, ascertain what actions they are undertaking and any additional information they might provide.
3) Following this initial contact, a risk assessment should be undertaken and if appropriate a visit made to the property as necessary in line with this assessment.
4) We will then consider the correct course of action, whether formal or informal, in line with any legal requirements and our Corporate Enforcement Policy.
5) In severe cases (where re-housing is required) the Housing Options Team will be contacted to determine re-housing options and availability.

Houses in Multiple Occupation (HMOs)

1) Except were we are already satisfied that the property is free from Category 1, we will inspect all properties which require a licence or renewal of a licence under the Councils licensing scheme and all properties where we receive a request for service regarding poor housing conditions or poor management
2) We will set up and maintain a database of identified HMOs and undertake risk assessments on them.
3) We will inspect all HMOs yet to be inspected as part of this programme and where resources permit re-inspect at a frequency determined by the risk assessment.
4) We will work with landlords and owners of properties to ensure HMOs meet with the Council's standards. Where landlords do not meet these standards or fail to license their property, where it is licensable, formal action will be instigated in accordance with the enforcement policy.
5) Where a property is reported to be a HMO we will aim to contact the complainant within five working days to obtain additional information and advise them of the next steps.

Interim Management Orders (IMO)

1) The Council must make an IMO in respect of a licensable HMO which is not licensed if it is satisfied that there is no reasonable prospect of the property being licensed in the near future or it is necessary to protect the health, safety or welfare of occupiers of the property or properties in the vicinity.
2) An IMO is in force for 12 months and allows the Council to manage the property with all the rights of a landlord and to collect rent and expend it on work to the property.
3) An IMO ceases to have effect if a licence is granted. There are provisions to vary, revoke and appeal against an IMO.

Final Management Order (FMO)

1) The Council must make FMO where, on expiry of an IMO, the property requires it to be licensed but the Council considers it is still unable to grant a licence.
2) A FMO is similar to an IMO in that the Council continues to manage the property with all the rights of the landlord, but they must be reviewed from time to time.
3) There are provisions for varying, revoking and appealing the making of a FMO.

HMO and Caravan Site Licensing

1) Where requested (or deemed necessary) we will aim to send out an application pack within 3 working days.
2) Upon receipt, the application will be assessed, where incomplete they will be returned to the applicant requesting this additional information.
3) Where able we will offer our assistance to the applicant in making their application (a charge may apply to recover costs for this assistance).
4) The licence or refusal will be issued within 6 weeks of receiving a complete and proper application.

5) A fee will be charged reflective of the costs incurred in processing the application, the application will not be considered complete until the fee is received.
6) The Council has standard site licence conditions for Residential Park Home Sites, Holiday Caravan Sites and Gypsy Roma and Traveller Sites and the sites are inspected at a frequency dependent on risk to ensure compliance with licence conditions.

Empty Properties

1) We will inspect all properties known or reported to be empty.
2) We will set up and maintain a database of identified empty properties and undertake risk assessments on them.
3) We will work with landlords and owners of empty properties to ensure that they are brought back into use and where the landlord is unable or unwilling to do so take enforcement action in accordance with the enforcement policy.
4) Where a property is reported to be an empty property we will aim to contact the complainant within five working days to obtain additional information and advise them of the next steps.
5) The Council's Empty Property Strategy details more fully the Council's approach to bringing empty properties back to use.

Requests for Immigration Inspections

1) We will aim to respond to requests for inspections by contacting the resident within 5 working days.
2) We will explain the procedure and what documents he/she will be required to produce and that a fee will be charged reflective of the costs.
3) On receipt of the fee we will inspect the property with the person requesting the inspection by arrangement and advise of our findings.
4) Within 7 days of the inspection we will produce the required documentation and send it to the relevant body.

Specific considerations

Housing Health & Safety Rating System (HHSRS)

HHSRS is the current method of assessing risks to the health and safety of occupiers posed by poor or substandard housing. The system has 29 specific hazards which if present are banded as Category 1 or Category 2 (depending on the seriousness of the risk).

The Council has a duty to take appropriate enforcement action where Category 1 hazards are found and has a power to take action where Category 2 hazards are present.

The decision on whether to take action under HHSRS is a three-stage process:

1. Determine if hazards are present and assess the hazard ratings under the HHSRS;
2. Determine whether the Council has a duty or power to take action; and

3. Determine the most appropriate course of action to deal with the hazard, having regard to Statutory Enforcement Guidance and the Council's Enforcement Policy and any associated guidance note.

Where a specified hazard exists, the formal courses of action available to the Council are:

- Serve an Improvement Notice;
- Make a Prohibition Order;
- Suspend the Improvement Notice or Prohibition Order;
- Take Emergency Action[1];
- Serve a Hazard Awareness Notice;
- Make a Demolition Order[2];
- Declare a Clearance Area[2];

[1] Not available for Category Two hazards
[2] Available for Category Two hazards only in prescribed circumstances.

The Enforcement Guidance Housing 2004 Act ('the Act') states that the action chosen must be *the most appropriate course of action in relation to the hazard in all the circumstances* and sets out the general factors relevant to the decision. In deciding the most appropriate course of action consideration will normally be given to the views of owners, landlords and tenants. It may also be appropriate to consider the regeneration and renewal programmes and approved Housing Strategy for the District.

Every notice or order must specify why that enforcement action was taken over the other options and must also clearly state what is required to remedy the hazard, and when it has to be done by, the possible consequences of non-compliance and the appeal process.

Where there are concerns about a vulnerable person, it may also be appropriate to consult other agencies involved with the care for that person.

For **Category 1** hazards the Council will carry out its statutory duty to resolve all such hazards identified and take the appropriate enforcement action.

HHSRS is designed to deal with <u>all</u> hazards which arise from deficiencies in and around the home. Therefore, even minor category 2 hazards need not go un-addressed if the Council considers that it is appropriate in all the circumstances to take action in relation to those hazards. For Category 2 hazards the Council will generally take action according to risk, additional factors that will be taken into account when deciding whether to take formal action are (but are not limited to):

- The vulnerability of the occupier to the hazard present.
- The presence of multiple category 2 hazards.

Option Appraisal

Typical reasons why one enforcement option may be chosen over another are considered below. Although it is possible to take two different types of enforcement action on the same property it is not possible to take more than one action for the same hazard. However if the option chosen has not proved satisfactory the Council may consider another course of action (or the same action again).

The Act places a duty to set out a statement of reasons for their decision to take a particular course of action which must accompany the notice or order.

A Hazard Awareness Notice draws the attention of the person responsible for the works of the desirability of remedial action although the person responsible is under no legal obligation to remove or reduce the hazard. It may be considered to be the most appropriate course of action in relation to the hazard where:

- The occupier is aware of the risks posed by the hazard(s) but expressed a desire to remain in the property and for the works not to be undertaken
- The property is occupied solely by the owner and his/her immediate family and there is no imminent risk associated with the hazards identified.
- In cases relating to overcrowding –
    - Where the family have no desire to move e.g. due to local care arrangements and the occupiers are not at serious risk or
    - Where the overcrowding has been caused by a natural/invited increase in family size *and* occupiers are not at serious risk.

An **Improvement Notice** requires the relevant person to undertake prescribed works to the property prescribed by the Notice. It could be considered to be the most appropriate course of action in relation to the hazard where:

- Once the improvements are completed it can be expected that the hazards within the property will be reduced to an acceptable level and the works can take place whilst the tenants are in occupation; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

A Prohibition Order prohibits the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants). It could be considered to be the most appropriate course of action in relation to the hazard where:

- The cost of the improvement works is likely to be prohibitive, bearing in mind the value of the property; or
- The landlord is unable to bear the cost of the refurbishment and the property is vacant; or
- The extent of the works is such that undertaking remedial action is likely to be a lengthy process and/or it would not be possible to complete them with the tenants in occupation.
- The property is not suitable for the number of people occupying it and a Prohibition Order can be made to limit the numbers to an acceptable level.

Emergency Remedial Action involves undertaking works to the property prescribed by the Council in default of the owner (which may be undertaken without prior service of notice) and is only available in relation to Category one hazards. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; and
- Once the improvements are completed it can be expected that the hazard(s) within the property will be reduced to an acceptable level and the works can take place whilst the tenants are in occupation; and

- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has also expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

An Emergency Prohibition Order immediately prohibits the use of the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants) and is only available in relation to Category one hazards. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; or
- The cost of the improvement works is likely to be prohibitive, bearing in mind the reduction in risk and the value of the property; or
- The extent of the works is such that undertaking emergency remedial action is likely to be a lengthy process exposing the occupier to an unacceptable risk; or
- Due to the nature of the hazard the Council do not consider any works are appropriate and practical in relation to the hazard(s) found at the property.

Suspended Improvement Notice or Prohibition Order This would involve no actions until a trigger event occurs, typically a change of tenancy or a defined period of time. A suspended notice is required to be reviewed at intervals of no greater than 12 months from the date of service. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The tenants are aware of the hazards within the dwelling and have expressed a desire to remain in residence at the property without the disturbance of the works; or
- The works required to remove or reduce the hazards to an acceptable level cannot be completed with the tenants in place and the occupier is currently unwilling/unable to vacate the premises; or
- The tenant is not in imminent risk and does not want to leave until a suitable property in a suitable location has been located.

Powers to charge for enforcement action for actions under the Housing Act 2004

The Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred in:

- serving an Improvement Notice;
- making a Prohibition Order;
- serving a Hazard Awareness Notice;
- taking Emergency Remedial Action;
- making an Emergency Prohibition Order;
- making a Demolition Order.
- reviewing a suspended Notice or Order.

The expenses are in connection with inspection of the premises, subsequent consideration of action and the service of notices. Where notices are served under the Housing Act 2004 the approved charge will be made. No charge will be made in relation to the service of a Hazard Awareness Notice due to the informal nature of it and that there is no right of appeal against it.

The charge is not punitive in nature but to cover the Council's enforcement costs, it may only be waived with agreement of the Team Manager.

House in Multiple Occupation offences

Licensable properties

It is an offence for a person having control of or managing an HMO which is required to be licensed not to have one or, where a licence exists a person having control of or managing knowingly permits another person to occupy the house and this results in the house being occupied by more households or persons than is authorised by the licence.

Management Regulations

The Management of Houses in Multiple Occupation (England) Regulations impose duties on managers of all types of HMOs and must be complied with at all times. The duties that are imposed include (but are not limited to) ensuring the communal areas are kept clean and in good repair at all times and fire safety measures are maintained in good order and repair. A person commits an offence if they fail to comply with any Regulation under this section. Where breaches of the Regulations have been identified, action will be taken against the manager in accordance with the Council's Corporate Enforcement Policy.

The Regulations also impose duties on the occupants to conduct themselves in a way that will not hinder the manager in carrying out his responsibilities and abide by the reasonable instructions of the manager whilst living in the premises.

Fit and proper person test

Before granting an HMO Licence the Council must be satisfied that the licence holder, manager and any other person involved in managing the HMO are fit and proper. In deciding whether the person is fit and proper, the Council must have regard, amongst other matters:

- to any previous convictions relating to violence, sexual offences, drugs or fraud;
- whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues;
- whether the person has been found guilty of unlawful discrimination practices;
- whether the person has managed HMOs otherwise than in accordance with any Approved Code of Practice.

It is a matter for the Council to determine the relevance of these considerations (or other matters it considers to be relevant) in deciding whether or not the person is fit and proper. It may be a requirement of application that reference is made to the Disclosure and Barring Service (DBS) in relation to the proposed licence holder. The level of disclosure the Council may require is described as 'enhanced disclosure'.

Empty Properties

A range of powers exist to help deal with the problems caused by empty properties and bring the property back into use. The main enforcement options are discussed below.

Enforced Sale

Enforced sale is strictly speaking a procedure for Local Authorities to recover debt by forcing the sale of a property and in doing so it often brings the property back into use. Where a property has debts (owed to the Council) secured against it as a local land charge or caution with the Land Registry this might be considered an appropriate option.

In all cases the Council should first attempt to recover this debt informally following the relevant procedure and if this debt is not cleared they then need to serve a formal notice (section 103 Law of Property Act 1925) giving the owner 12 weeks to pay. If the notice isn't complied with the property can then be sold (normally at auction). The money from the sale (less costs) is then passed onto the owner.

Not all debts may be secured as a local land charge or caution with the Land Registry, on these 'person' debts such as Council Tax debt, the Council can apply to the County Court for an interim charging order. If successful the Council may then apply for a final charging order and order the sale of the property.

Although the Enforced Sale procedure may be used for debts that are up to 12 years old it is better practice to act sooner and it does not enhance the local authorities case if it is perceived that no action was taken in relation to the debt for several years. It may be used for debt of any size but naturally smaller debts are more likely to be repaid and to force the sale of a property over a small debt may appear to be over zealous.

Compulsory Purchase

Where a Local Authority can make a compelling case in the public interest for a property to be compulsorily purchased, and that other methods of returning the property[2] to use have been tried and have failed Compulsory Purchase might be considered a suitable option.

Where this is the case the Council may apply to the Secretary of State for an order to be made, in making the application the Council must show (among other things) a clear intention for the use of the property/land, and be able to show that it has the necessary resources available to follow through with the CPO.

Where an owner is not willing to sell by agreement an application may be made under Section 17 of the Housing Act 1985, it allows for land/property to be acquired for residential purposes if there is a general housing need in the area. If using this provision the Council must also demonstrate a qualitative or quantitative increase in the Housing Stock.

Section 226 of the Town and Country Planning Act 1990 allows local authorities to acquire land or buildings if its acquisition will allow improvements or redevelopment to take place that contributes to the promotion/improvement of economic, social or environmental wellbeing. It could be appropriate to acquire empty properties that adversely affect the street scene because of their condition.

Owners of properties that are compulsory purchased may be entitled to compensation for the loss of their property at a level equivalent to the open market value and may be entitled to additional compensation under certain circumstances. These additional

[2] Property includes land and empty non-residential property where appropriate.

payments are not due if the owner has been served with and failed to comply with certain statutory notices requiring works to the property.

In order to obtain a CPO an application must be made to the Secretary of State and will only be successful where:

1. it can be proven that the public benefit outweighs the private loss
2. that we are able to show we have clear intentions for the land/property and
3. that the necessary resources are in place.

The process is not without financial risk and the Council should first attempt to acquire the land through negotiation and approval by Cabinet.

Empty Dwelling Management Orders (EDMO)

Two forms of EDMOs exist, an interim EDMO and a final EDMO. An interim order should be considered the final opportunity in bringing about a voluntary solution to returning the property back into use and must be approved by Cabinet prior to making the application to the First Tier Tribunal (Property Tribunal).

Amongst other matters the Tribunal must be satisfied:

- that it is not exempt
- that the owner has been notified that the Council are going to apply for an EDMO
- that the Council attempted to ascertain what steps the owner is taking to bring the property back into use (and those details)
- that the property must also have been empty for at least 2 years
- that there is no reasonable prospect of the dwelling being occupied in the near future
- that by granting by order there is a reasonable prospect of the property being brought back into use
- that the dwelling has been causing nuisance to the community
- that the community supports the making of the EDMO

If these matters are satisfied the Tribunal will then balance the rights of the owner against those of the wider community in making their decision.

The exemptions prescribed by the Act and include (but are not limited to):

- a dwelling where the owner is temporarily resident elsewhere
- where the owner is receiving or providing care
- absent as a result of serving with the armed forces
- a holiday home
- genuinely on the market for sale or letting
- properties undergoing repairs of renovation

Once granted the Order lasts for a maximum of 12 months during which time the Council must take such action as they consider appropriate to ensure that the dwelling becomes (and continues) to be occupied, this may include creating tenancies with the permission of the owner. They must also take such other steps as they consider appropriate and where no such steps exist which are appropriate in order to secure the occupation of the dwelling, the Council must either make a final EDMO or revoke the interim order.

No application to the Tribunal is required to make a final EDMO but he may appeal to the Tribunal against the decision to make such an order. The order must set out:

- the extent of cost of any works required
- the expected income
- any compensation payable to third parties
- where the rent payable is less than the open market rent how this will be made up

It must also include details of how any surplus is to be paid to the owner (after deductions), how any surplus is to be carried over to a subsequent final EDMO or how any deficit is to be recovered in a subsequent EDMO.

The Order may last up to seven years but the Council may revoke the order if it considers it is appropriate to do so. Circumstances include:

- that there are no steps that it can make to secure occupation of the dwelling
- that it will be or continue to be occupied after revocation
- the dwelling is to be sold
- another EDMO has been made to replace it

that revocation is required to prevent it interfering with the rights of a third party in consequence of the order
If the property is occupied at the time of revocation it cannot be revoked without the permission of the owner and the Local Authority may make the revocation subject to payment of any expenditure not yet recovered. However if an EDMO cease to have effect and a deficit exists the Council may not under most circumstances recover the relevant sums.

Whilst a final EDMO is in force the Council effectively becomes the landlord and may carry out renovation/maintenance work, create tenancies and will be responsible for the management of the property. Both interim and final EDMOs allows a Local Authority to collect rent and other payment from the occupant of a property and use it to meet any expenses incurred.

It is important to consider the likely income from the property against the expenses likely to be incurred in bring the property up to a habitable standard and in managing the property through an EDMO. In some circumstances the expenses incurred by a Local Authority may exceed the income and although the Council may still proceed with an EDMO, it would result in the Council being unable to recover all of its expenses in relation to the property.

As most empty homes require some repair works in order to make them habitable and suitable for letting, generally up front capital expenditure will be required prior to recovering these costs through the rental income. An EDMO might be suitable where the cost of the works to bring the property up to standard are not significant and may be recovered in the period of the Order.

Compliance Notices: Residential Park Home Sites

The Mobile Homes Act 2013 allows a Local Authority, where it considers that a park owner is failing or has failed to comply with a site licence condition to serve a Compliance Notice on the park owner listing the steps that need to be taken, within a specified time period, to comply with the requirements of the site licence.

Unsecured buildings

Where an empty property is found to be vulnerable to unauthorised access the Council can require the owner to board up a property to prevent such access and if necessary to carry out the work in default of the owner.

Smoke and carbon monoxide alarm (England) Regulations 2015

Where the Local Housing Authority has reasonable grounds to believe that:

- There are no or insufficient number of Smoke Alarms or Carbon Monoxide Detectors in the property as required by the Regulations or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence.

The Council must serve on the Landlord in a method prescribed by the Regulations a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. If after 28 days the Landlord has not complied with the Remedial Notice the Local Authority must issue a penalty charge levied through a Penalty Charge Notice (PCN).

Where the Council is satisfied that a Landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the Landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In most circumstances, battery operated alarms will be installed as a quick and immediate response. The maximum amount of penalty is £5000.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

A property is below the minimum level of energy efficiency and is defined by the Regulations as sub-standard where the EPC rating is below an E (i.e. it is an EPC rating of For G)

For new tenancies started or renewed after 1 April 2018 and for *all* tenancies after 1 April 2020, landlords must not let a sub-standard domestic property, unless:
a. all relevant energy efficiency improvements have been made (or that there are none that can be made), the EPC remains below E, and the exception has been registered on the Exemptions Register; or
b. no improvements have been made but a valid exemption applies and has been registered on the Exemptions Register

Where the Council believes that a landlord may be letting a sub-standard property or may have been doing so at any time in the past 12 months, the Council may serve a compliance notice that requests information from that landlord to help officers decide whether that landlord has in fact breached the requirements. A compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

The Regulations allow councils to impose a financial penalty up to maximum limits set by the Regulations:
a) Where the landlord has let a sub-standard property for a period of less than 3 months, a financial penalty of up to £2,000.

(b) Where the landlord has let a sub-standard property for 3 months or more, a financial penalty of up to £4,000.
(c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, a financial penalty of up to £1,000.
(d) Where the landlord has failed to comply with compliance notice, a financial penalty of up to £2,000.

Where penalties are imposed under more than one of the, the total amount of the financial penalty may not be more than £5,000. This maximum amount of £5,000 applies per property, and per breach of the Regulation. This means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations, a landlord proceeds to unlawfully let a substandard property on a new tenancy; the Council may again levy financial penalties up to £5,000 in relation to that new tenancy.

Redress scheme

Persons who engage in letting agency work or property management work to belong to a redress scheme that has been approved by the Secretary of State or that has been designated as a government administered redress scheme. It excludes persons who engage in certain types of activity from the requirement to belong to such a scheme. This will mean that tenants and landlords dealing with agents in the private rented sector and leaseholders and freeholders dealing with agents in the residential leasehold sector will be able to complain to an independent person about the service they have received.

The Council can impose a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme has not done so.

The Council will give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.

At the end of the 28 day period the Council will decide, having taken into account any representations received, whether to impose the fine and, if so, must issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.

Non Compliance Options

Where a person knowingly fails to comply with the requirements of a statutory notice, the Council will always consider further legal action to secure compliance.

The Options available are

- Works in default
- Prosecution of the person responsible for noncompliance
- The use of a fixed penalty notice
- Simple Caution

In considering what course of action is most appropriate regard will be given to the enforcement policy, the relevant legislation applicable and the following.

Works in default

It should be noted that undertaking Works in default of the owner is not mutually exclusive to the other options. It may be considered the most appropriate response where it is unlikely that the person responsible will undertake the works within a reasonable timeframe and the occupiers will be exposed to an unacceptable level of risk.

It may be undertaken with or without the agreement of the person responsible. The need to act with agreement may arise where a serious hazard(s) exists and remedial action is required without undue delay but the owner is not in a position to carry out the works (perhaps due to a lack of funds) but is otherwise willing to undertake the works. In these circumstances the works are undertaken at the expense of the person and should be secured as a charge against the property. Where the works are undertaken without the agreement of the person reasonable expenses may be recovered along with the cost of the works (typically 30% of the cost of the works). Interest[3] may be charged and the total cost should be registered as a charge on the property and recovered in line with the Act under which the notice was served.

Fixed penalty notice

Fixed penalties notices may be used as an alternative to prosecution where certain 'relevant housing offences' have been committed if it is the most appropriate and effective sanction in a particular case. In general a Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed but if they have been issued in the past to the same offender and they have not acted as a deterrent then greater consideration should be given to undertaking a prosecution.

A "relevant housing offence" means

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (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)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

The level of fines are set out in Appendix A and in setting those fines we have considered the following factors to help ensure that the civil penalty is set at an appropriate level:

[3] Typically 8% plus the Bank of England base rate: https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt

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.

Any income received through a fixed penalty notice can be retained by the local housing authority provided that it is used to further the Local Authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations. The Financial Penalty Matrix at Appendix A explains how the level of fine shall be determined which shall not be in excess of £30,000 per offence.

Rogue landlord database

The Secretary of State has established and operates a database of rogue landlords and property agents to which Local housing authorities are responsible for maintaining the content of the database, and are able to edit and update it for the purpose of carrying out their functions.

If a banning order has been made against that person a local housing authority has a duty to make an entry and maintain it for the period during which the banning order is in force on the database.

A local housing authority may make an entry on the database in relation to a person if that person has been convicted of a banning order offence and was a residential landlord or property agent at the time at which the offence was committed. A Local Authority might, for example, decide to make an entry in the database rather than apply for a banning order in a case where a person's offences are slightly less serious and the Local Authority considers that monitoring of that person through the database is more appropriate than seeking a banning order at this stage. An entry may also be made if a person has incurred two civil penalties in respect of banning order offences within the last 12 months.

An entry in the database is required to be maintained for the period set out in the Local Authority's decision notice and then removed at the end of that period or, as the case may be, any reduced period. The Secretary of State is to publish guidance setting out criteria to which local housing authorities must have regard when deciding whether to include a person in the database and how long their entry must be maintained for.

Banning Orders

A banning order is an order made by the First-tier Tribunal, which has the effect of banning a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;
- engaging in property management work that relates to housing in England; or
- doing two or more of those things;
- being involved in a body corporate that carries out activities from which the person is banned.

It is an offence to breach a banning order i.e. to undertake or be involved in activities that the person is banned from. A person who is convicted of breaching a banning order under subsection (1) is liable to a term of imprisonment or a fine or both. Where a breach of a banning order continues after conviction the person commits a further offence and is liable on conviction to a fine not exceeding one tenth of the level 2 fine on the standard scales for each day or part of a day on which the breach continues (this would currently equate to a fine of up to £50 per day).

Housing Act 2004 allows interim and final management orders to be made in cases where a banning order has been made and, where a banning order has been made against a person, they are not considered a fit and proper person for the purposes of the HMO licensing requirements.

A local housing authority may apply for a banning order against a person who has been convicted of a banning order offence. Where a banning order application is made in relation to a body corporate, the local housing authority must also make an application for a banning order against any officer of the body corporate who was convicted of the same offence as the body corporate. Before applying for a banning order, the authority must give the person in relation to whom it is proposed to make a banning order a notice of intended proceedings, informing them that the authority is proposing to apply for a banning order for a specified period of time and explaining why, and inviting them to make representations during a 'notice period', which must not be less than 28 days.

The authority must consider any representations made during the notice period and wait until this period has ended before applying for a banning order. A notice of

intended proceedings must be given within 6 months from the date on which the person is convicted of a banning order offence.

Rent Repayment Orders

A rent repayment order (RRO) is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. An application may be made by the Local Authority or a tenant and the rent is repaid to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to them and where the rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority with a maximum amount of rent capped at 12 months.

A RRO may be applied for when the landlord has committed[4] one of the following offences:

- 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; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

Where a landlord has been convicted of the offence to which the order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at 12 months).

Where a landlord has not been convicted of the offence to which the order relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:

a. **Punishment of the offender**. Rent repayment orders 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;

b. **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;

[4] Whether or not a landlord has been convicted of one of the offence, an application for a RRO where the landlord has not been convicted of the offence (for which the application is being made) the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

c. **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.

d. **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.

Any income received through a rent repayment order can be retained by the local housing authority provided that it is used to further the Local Authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations.

Level of Fines and Charges

The level of fines and charges shall be set by the Resources Select Committee, prior to consideration by the Finance and Performance Management Cabinet Committee.

Appendix A: Penalty notices for certain offences

FINANCIAL PENALTY MATRIX : Housing and Planning Act 2016			
Offence under Housing Act 2004	Fixed Penalty Notice (FPN)	Multiplier based on severity of offence	Discounts and accelerators
Failure to comply with an Improvement Notice s.30	Equivalent to 4 months LHA income for each Category 1 Hazard affecting each dwelling		Discount of 50% where FPN paid in full within 28 days Double the penalty charge where a 2nd FPN is served on the landlord within 12 months
	Equivalent to 2 months LHA For each Category 2 Hazard		
Failure to comply with an Overcrowding Notice s.139	Equivalent to four times the LHA rate for the number of rooms the property is short (according to the Epping HMO Amenity standard) for the period of the contravention, minimum of six months and a maximum of 12 months.		Discount of 50% where FPN paid in full within 28 days
Failure to licence a licensable HMO s.72	Equivalent to twice the LHA rate for the entire property for the period it was not licenced – minimum 6 months and up to 12 months		Discount of 50% where FPN paid in full within 28 days
Failure to comply with an HMO licence condition	Equivalent to twice the LHA rate for the entire property per breach of condition	X 2 for breach of **major** condition (as specified in the HMO licence) X 1 for breach of **minor** condition (as	Discount of 50% where FPN paid in full within 28 days

s.234		specified in the HMO licence)	
Failure to comply with HMO Management Regulations s.234	Equivalent to twice the LHA rate for the entire property per breach of Regulation	X 0.5 (Regulation 3): providing information to occupiers X 2 (Regulation 4): taking safety measures, including fire safety measures X 1 (Regulation 5): maintaining the water supply and drainage X 1 (Regulation 6): supplying and maintaining gas and electricity, including having it regularly inspected X 1 (Regulation 7): maintaining common parts (defined in regulation 7(6)), fixtures, fittings and appliances X1 (Regulation 8): maintaining living accommodation X 1 (Regulation 9): providing waste disposal facilities	Discount of 50% where FPN paid in full within 28 days
The above matrix applies to a first offence. If, within the next 12 months, the same landlord commits **any** subsequent offence included within this Financial Penalty Matrix, the maximum penalty of £30,000 will be charged.			

For example:

Failure to comply with an Improvement Notice

1. The charge for a 2 bed property (£830 pcm) with 1 category one hazard and 3 category two hazards:

(830 x 4 x1) + (830 x 2 x 3) = £8,300 reduced to £4,150 if paid within 28 days.

2. The charge for a 4 room HMO (£300 pcm per room) with 1 category one hazard and 3 category two hazards would be (assuming the hazards affect all rooms):

(300 x 4 x 4 x 1) + (300 x 4 x 2 x 3) = £12,000 reduced to £6,000 if paid within 28 days.

Failure to comply with an Overcrowding Notice

1. The charge for an overcrowded HMO that is two rooms short (£300 pcm per room) with evidence that this level of occupation has continued for 9 months:

(300 X 2 X 9 X 4) = £21,600 reduced to £10,800 if paid within 28 days

Failure to licence an HMO

1. The charge for operating a 5 room HMO (£300 pcm) without a licence for 6 months:

(300 X 5 X 6 X 2) = 18,000 reduced to £9,000 if paid within 28 days

Failure to comply with a licence condition

1. The charge for failing to comply with 2 'minor' conditions and 1 'major' condition in a 4 room HMO (total £1200 pcm):

(1 X 2 X 1200) + (2 X 1 X 1200) X 2 = £9,600 reduced to £4,800 if paid within 28 days

Failure to comply with the Management Regulations**:**

1. The charge for a 4 room HMO (total £1200 pcm) with the following breaches -1 x Regulation 3, 4 x Regulation 4 and 1x Regulation 6:

(0.5 X 1 X 1200) + (2 X 4 X 1200) + (1 X 1 X 1200) X 2 = £22,800 reduced to £11,400 if paid within 28 days

Failure to comply with a second offence within 12 months of **any** previous penalty subject to this financial penalty matrix:

1. For example, the charge for breaching a Management Regulation within 12 months of receiving a penalty charge for failing to comply with an Improvement Notice is £30,000

Appendix 2: HMO Licence Fees and Charges 2018-19

HMO LICENCE FEES AND CHARGES 2018-2019

Basic fee for up to 5 units of accommodation:	£809
For each unit of accommodation over and above 5 units there is an additional charge of:	£32
(For example: A licence holder of a property consisting of 7 units of accommodation will need to pay £873)	
Licence Renewal fee for up to 5 units of accommodation – risk rating high	£735
For each unit of accommodation over and above 5 units there is an additional charge of:	£32
Licence Renewal fee any size HMO – risk rating low	£439
For example: A licence holder of a property consisting of 7 units of accommodation where there has been concerns regarding poor management, breach of licence conditions or other issues to give a high risk rating, the fee will be £799. Where there have been no concerns during the previous licence period and the Council has confidence in the management of the property the fee will be £439	
There is no additional charge for any application to Vary an HMO licence. This may include: • a change in licencee address or new manager appointed • a change in the number of households or persons	
There is no additional charge for any application to Revoke the licence at the landlords request (where the property is no longer a licensable HMO)	
Any proposed change of licensee requires a new application. The licence fee will generally be the full fee for a new licence but may be reduced at the Council's discretion, for example where the existing licence had only recently been approved and the property already met all licence conditions.	
A refund of the fee will be made where: • a duplicate application is made • an application is made by mistake for a house that is not an HMO or is not an HMO that requires a licence Our fees are not connected to the length of a licence. If you cancel your licence before it expires, we cannot give you a refund for any unused time.	

The licence period is for a maximum of 5 years and will be dated from when a full and proper application has been made, the fee paid, and the HMO is generally compliant with property standards.

However, the period of the Licence may be reduced with no reduction in the cost of a licence in the following circumstances:

	Maximum licence period reduced to
Failure to apply voluntarily for licence.	1 year
Failure to comply with HMO management regulations.	1 year
History of substantiated complaints at the property	1 year
Failure to comply with previous licence conditions (for renewals)	1 year

Payment Options: If the application is made on-line please follow the instructions to pay on-line. Alternatively,

Pay by BACS using sort code 600739; account no. 56340001, ref: property and email confirmation to privatesectorhousing@eppingforestdc.gov.uk; or

Pay by telephone payment 01992 564000 ext. 2051; or

Please note that HMO Licensing fee charges will be subject to annual review from the 1st April each year.