

**PRIVATE SECTOR HOUSING  
ENFORCEMENT POLICY  
2019 - 2022**



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## **1. Introduction**

This policy relates to how the Council enforces legislation in relation to housing issues. It has been developed following national guidance to ensure that enforcement does not overburden businesses, is fair and transparent. This policy provides the framework within which enforcement action is taken by Officers in Private Sector Housing.

## **2. Scope and Purpose of the Policy**

This document applies to all private sector housing functions and supplements the overarching Enforcement Policy for Civic Pride. All decisions on enforcement action within Private Sector Housing shall be made following consideration of this policy.

This document sets out what owners, landlords and others being regulated can expect from the London Borough of Redbridge enforcement officers. It commits the Council to good enforcement policies and procedures.

The primary function of central and local government enforcement work is to protect the public, the environment and specific groups such as tenants and consumers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. The London Borough of Redbridge is committed to ensuring that all persons living in the borough are housed in dwellings that meet the standards set down in legislation.

The effectiveness of legislation in protecting tenants or other sectors of society depends on the compliance of those regulated. We recognise that in most cases landlords want to comply with the law. We will, therefore, take care to help landlords and others to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution and civil penalties where appropriate, against those who disregard their obligations under the law or act irresponsibly.

The Hampton Review highlighted the importance of risk assessment to the effectiveness of enforcement activity. This enforcement policy has been developed by considering the impact of taking enforcement action under each of the provisions under the Housing Act 2004. This includes consideration of the impact of taking such action not only on the individual, but also on business and the local housing market and in maintaining the economic value of the area and the individual asset.

The Private Sector Housing Team will follow the guidance set out in the Crown Prosecution Service Code for Crown Prosecutors<sup>1</sup> when deciding whether to prosecute an offender. The Code has two stages:

- I. the evidential stage and
- II. the public interest stage,

both must be met to issue a civil penalty or institute prosecution proceedings.

## **3. General Principals in Relation to Enforcement**

Private Sector Housing has developed a clear set of standards, which sets out levels of service, and performance that users of the service can expect to receive.

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<sup>1</sup> <https://www.cps.gov.uk/publication/code-crown-prosecutors>

In line with good practice and to ensure we use Council resources on the more serious cases we will encourage the tenant to contact the landlord directly before we investigate their complaint formally. However we recognise that this is sometimes not practical for example where the landlord/tenant relationship has broken down and in these cases we will investigate the issue without the need for the tenant to have tried to deal with the issue themselves in the first instance.

## **4. Decision Making - Enforcement Panel**

To ensure consistency and transparency a panel of at least two senior officers will review the evidence to determine if formal action is required and set the penalty fine. All cases where there is evidence of a breach of legislation will be made at the panel.

This panel will also review any representations made following the service of a notice of intent to issue a civil penalty. The panel will also make decisions related to Temporary Exemption Notices and where the circumstances are particularly complex.

### **4.1 Register of Decisions**

Decisions made at the Panel will be recorded and a record kept in the decisions register.

### **4.2 Officer Competence**

Officer training is assessed using a gap analysis against a competency matrix. (Appendix A) To protect the financial and reputational risks to the Council, Officers will be assessed to ensure they are competent to sign Statutory Notices and issue property licenses

It should be noted that although competent Officers will be able to sign Notices and licenses it is expected that under normal circumstances a second Officer will check the documents for accuracy before they are signed.

Before Officers are able to use this power they will be shadowed by a Competent Officer on at least 2 inspections to ensure the inspection and recording procedures are followed. Officers will be expected to produce at least two Notices or licenses to be evaluated for accuracy before they are able to use this power.

### **Check list Notices**

- Is the notice served on the right person at the right address
- Has the correct legislation been used
- Has the enforcement leaflet been included with the Notice
- Are all dates correct
- Is the appeals process included in the paperwork
- Is there an authenticated copy of the Notice on file
- Has the 'Preparation of Notices Served Under the Housing Act 2004' procedure been followed
- Has the CIVICA record been updated using the Notices module and the original service request record been closed
- Have all documents and certificates been received
- Has the HHSRS been completed and all issues resolved
- Has the fee been charged in full

## 4.3 Officer Delegations

The provisions of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the "Regulations")<sup>2</sup> sets out the functions of the Council which by law cannot be exercised by the Executive. These functions will be exercised by officers through its scheme of delegations. Powers to

## 5. Rogue Landlords

The Housing and Planning Act part 2 gives local authorities additional powers to deal with rogue landlords. These include;

- Database of rogue landlords/property agents
- Banning orders for most prolific offenders
- Civil penalties of up to £30,000
- Extension of Rent Repayment Orders
- Tougher fit and proper person test for landlords of licensed properties

The Act also introduces;

- New mechanism allowing landlords to legally recover abandoned properties without needing to go to court; and
- Powers on electrical safety and client money protection

The Council will make full use of these provisions with the aim of driving criminal landlords from the borough. In recognition that criminal landlords operate across London we will participate in any national or local scheme to share intelligence.

## 6. Informal Enforcement Options for Housing Act Offences

Enforcement options that are available, having considered all relevant information and evidence are:

### 6.1 No Action

If no action is required following an inspection the landlord will be informed and recorded on the database.

### 6.2 Informal Action

Officers will always try and resolve the issues informally in the first instance. In deciding what course of action to take the following will be taken into consideration:

- Whether the act or omission is serious enough to warrant formal action.
- Whether past history with the local authority indicates that informal action can be expected to achieve full compliance.
- Whether officers' confidence in the premises management is high.
- Whether the consequences of non-compliance will pose a significant risk to the occupants or the public as a whole.

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<sup>2</sup> <http://www.legislation.gov.uk/uksi/2000/2853/made>

Informal action to secure compliance with legislation may be given in the form of:

- Verbal Advice/Warnings
- Written requests for action or advice
- Issuing a Hazard Awareness Notice

### **6.3 Verbal Advice**

Advice or verbal warnings may be given when an infringement is not considered sufficiently serious to require written warning, formal caution or prosecution.

Details of the warning will be entered by the officer in his/her notebook and a file note made on the database of the premises concerned.

All verbal warnings or requests for action, at the time of inspection will be confirmed in writing.

### **6.4 Written Advice/Warnings**

Where the inspecting officer feels it is appropriate to put requests for action in writing legal requirements and recommendations will be clearly differentiated.

### **6.5 Hazard Awareness Notice**

A hazard awareness notice may be a reasonable response to a less serious hazard, where the authority wishes to draw attention to the desirability of remedial action.

A hazard awareness notice is also a possible response to a category 1 hazard as long as no management order is in place.

There may be circumstances where works of improvement, or prohibition of the use of the whole or part of the premises, are not practicable or reasonable, in which case a hazard awareness notice might be appropriate.

A hazard awareness notice must specify:

- the nature of the hazard and the residential premises on which it exists;
- the deficiency giving rise to the hazard;
- the authority's reasons for deciding to serve the notice, including their reasons for deciding that serving the notice is the most appropriate course of action;
- the details of any remedial action which the authority considers would be practicable and appropriate to take.

There is no sanction for not complying with a Hazard Awareness notice, consequently there is no provision for appeal, and a Hazard Awareness notice is not registered as a Local Land Charge.

## **7. Formal Enforcement Action Options**

Should the informal approach fail to prompt action by the owner, then the next stage will be statutory action.

Should it become necessary for the local authority to serve a Housing Act 2004 notice, reasonable costs based on certain administrative charges and other expenses incurred by the Local Authority, as set out in the Housing Act 2004, will be charged in the following circumstances:

- The Owner/landlord has not started work within a reasonable time following informal action.
- The property is in such a poor condition that urgent action is required to protect the safety of the tenants.

The charges will be in line with our current fees and charges.

### **7.1 Civil Penalties/ Penalty Charges**

Officers will make full use of any provision to issue civil penalties and penalty charges as an efficient way to deal with non-compliance.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.

The maximum penalty of £30,000 demonstrates that serious offences can be dealt with by way of a civil penalty. Councils may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

Guidance produced in relation to setting the level of fine in the Housing and Planning Act makes it a requirement to take into consideration the following factors in individual cases:

- Severity of the offence;
- Culpability and track record of the offender;
- The harm caused to the tenant;
- Punishment of the offender;
- Deter the offender from repeating the offence;
- Deter others from committing similar offences; and
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

To allow some consistency and transparency in setting the level of fine, a decision matrix has been produced and can be found at Appendix A in the cabinet report, which is based on DCLG guidance. This matrix is for guidance only and is not intended to fetter the discretion of the Council

The process governing the issue of a civil penalty begins with the Service of a Notice of Intent. The notice of intent must set out:

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



A person who is given a notice of intent may make written representations to the local housing authority about the intention to impose a financial penalty. Any representations must be made within 28 days from when the notice was given.

After the end of the period for representations, the local housing authority must decide whether to impose a penalty and, if so, the amount of the penalty. If the local housing authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

The final 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.

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 can quash the civil penalty or reduce the amount. Their decision will be based on the evidence provided which must meet a criminal standard of proof.

### **7.2 Improvement Notices**

Improvement Notices will not be issued for minor technical infringements of the HHSRS; hence they will be issued when one or more of the criteria below apply:

- there are Category 1 or significant Category 2 hazards as identified by a HHSRS assessment
- if a property is in such a condition, renovation can be demonstrated to be the most suitable course of action, and
- one or more of the criteria below apply:
  - I. The owner/landlord/agent /manager /occupier etc. has failed to respond to the informal approach.
  - II. The owner/landlord/agent/manager/occupier etc. has failed to demonstrate his willingness to co-operate with the local authority.
  - III. There is a history of non-compliance.
  - IV. Where high category 2 hazards exist for excess cold, fire, or entry by intruders.

Improvement Notices will only be issued by officers who have been properly authorised to do so. The officer who personally witnessed the contravention will prepare and sign the notices. A schedule of work detailing the required remedial action will be attached to the notice.

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Should the notice recipient propose an alternative scheme to that contained in the schedule of works he/she will need to forward the details to the officer who served the notice. In deciding whether the alternative works are reasonable the following will be taken into account:

- Will the alternative works meet the relevant standards?
- Will the alternative works meet current Building Regulation and Planning approval?
- How long the alternative works will take to complete?
- Will the alternative works cause undue disturbance to the occupier?
- Will the alternative works mean that the occupier has to move out?

Once the request for alternative work has been considered the recipient will be advised of the decision within a reasonable timescale. The reasons for that decision will be explained and the necessary works confirmed.

Realistic time scales will be placed on statutory notices, preferably agreed with the owner/landlord/agent /manager /occupier, although the final decision will rest with the officer.

If the Notice is served following a prolonged informal stage then officers should consider if a shorter compliance period is appropriate.

When allowing an extended informal period the officer needs to consider the provisions in the Deregulation Act 2015 which prevents an eviction notice being served if a Housing Act notice is in force. Unnecessary delays can put the tenants in danger of a retaliatory eviction following a complaint to the service about the condition of their rented property.

Consideration for an extension of time to comply with an Improvement Notice will be given if the proprietor has a genuine reason for requesting one. When deciding on a request for an extension the following will also be taken into account:

- the risk to the public as a whole or the occupants' health associated with the fault if an extension was granted;
- the reason for the request;
- the remedy involved;
- the past record of co-operation; and
- any temporary action which the recipient proposes to take to remedy the defect.

The recipient will be advised at the time of service of the notice that any request for an extension of the time limit should be made in writing before the expiry date of the notice.

Once the request for an extension of time has been considered the recipient of the notice will be advised of the decision, the reasons for the decision and any new time limits, in writing.

All notices that are served will be placed on the Authority's public register as prescribed by the relevant legislation.

Failure to comply with the Improvement Notice will result in a civil penalty or a referral for a prosecution. Where there are risks to the tenant or there are vulnerable people in the property then Work in Default may be considered.

If the property becomes empty during the course of the investigation, the works contained in the notice will still be required to be completed.

### **7.3 Prohibition/Demolition Orders**

Local Authorities can serve the following Orders:

- A Prohibition Order to close premises or a part of the premises,
- An Emergency Prohibition Order
- A Demolition Order to demolish a premises

A Prohibition/Demolition Order will only be considered in one or more of the following circumstances:-

- The consequences of not issuing a Prohibition/Demolition Order to protect the occupants' or public health would be unacceptable.
- The risk of injury can be demonstrated. If Category 1 hazards present an imminent risk of serious harm to the health or safety of any of the occupiers of the property or any other residential premises then an Emergency Prohibition Order may be considered

If there is a current occupier their views and circumstances should be taken into account when deciding the most appropriate course of action. As this course of action has the effect of making current occupiers homeless, advice should be sought from the Homeless Prevention Team.

### **8. Suspension of Notices**

As long as there is no immediate risk to the health, safety and welfare of the occupants or the public, the most appropriate action may be to serve a Suspended Improvement Notice /Prohibition Order. Serving a suspended notice on the responsible person gives the local authority more time to consider the property's long-term future.

### **9. Written Warnings**

Officers can choose to send a formal warning where there is evidence that an offence has been committed but it is not in the public interest to take prosecution proceedings. The letter will include:

- Details of the alleged offence;
- Confirmation that no further action is to be taken by the authority;
- Advice that further offences could result in legal proceedings.

### **10. Formal (Simple) Caution**

These can be offered for minor offences where there is no previous history of non-compliance. More details related to Simple Cautions is contained in the Civic Pride Enforcement Policy

## 10.1 Work in Default

The local authority always has the discretion whether or not to carry out works in default. The decision is not taken lightly and is based on the circumstances of each case laid out in the policy below.

Non-compliance with a Notice will not automatically result in the instigation of works in default. If it becomes necessary to carry out default work consideration should be given to whether a prosecution is appropriate.

The circumstances, which are likely to warrant works in default being carried out, may be characterised by one or more of the following criteria:

- There is a flagrant breach of law such that the occupants or the public health, safety or well-being is put at risk, or there is a serious offence under HHSRS;
- A failure by the offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.

Any work in default work will be subject to the approval of one of the Head of Service

Emergency Remedial Action may be taken for a category one hazard where there is imminent risk to health of one or more of the occupiers, and that risk can be reduced or eliminated by carrying out emergency works, such as repairing a leaking gas pipe. In these instances notice will be given to the owner within seven days of the works commencing. The Council will seek to recover its costs if it carries out remedial action.

## 11. Special Provisions for Licensable Properties.

The Council has additional powers to ensure adequate standards are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence HMOs.

Mandatory licensing applies to higher risk HMO's which are those occupied by five or more people, comprising two or more households and sharing amenities.

Redbridge Council has also approved an Additional licensing scheme in the whole of the Borough. These relate to all other HMOs that do not come under the mandatory scheme. A Selective licensing scheme has also been approved in 14 designated wards in the Borough. These properties are occupied by single family households.

The 'fit and proper person' test required as part of both mandatory and discretionary licensing provides Councils with the opportunity to improve the management of rented properties.

Operating a licensable property without the required licence and failing to comply with licence conditions are criminal offences. Civil penalties are also available for failure to licence a licensable property, and other Housing Act offences.

### 11.1 Refusing a Licence

The Local Authority may refuse to issue a licence if it is not satisfied that the specific criteria are met for a licence to be issued. Where the Local Authority determines that they cannot issue a licence a Notice of Refusal will be sent to the applicant and copied to the relevant parties.

## 11.2 Varying Licence Conditions

The Local Authority may vary a licence:

- if they do so with the agreement of the licence holder, or
- if they consider that there has been a change of circumstances including the discovery of new information since the time when the licence was granted.

Redbridge has adopted conditions that address specific problems associated with privately rented properties.

## 11.3 Revocation of Licenses

The Local Authority may revoke a licence with the agreement of the licence holder or in the following circumstances:

- where the Authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;
- where the Authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and
- where the Authority no longer consider that the management of the property is being carried on by persons who are in each case fit and proper persons to be involved in its management.

Or

- where the property to which the licence relates ceases to be licensable;
- there are structural reasons why if the application were made at this time it would not be granted;
- in any other circumstances prescribed by regulations made by the appropriate national authority.

A revocation does not come into force until it becomes operative.

## 11.4 Varying the Licence Term

The legislation states the maximum licence term of a licence is five years, however it is at the discretion of the Council to reduce this term. This Council will consider issuing one year licenses where:

- the existence of an unlicensed property comes to the attention of the Council and the responsible person has not made an attempt to make an application;
- the responsible person has not completed a licence application or fails to supply documentation requested by the Council within a reasonable timescale to enable a licence to be issued;
- the property is or will be operating in contravention of planning legislation.

## 12. Special Powers in Relation to Houses in Multiple Occupation (HMOs)

### 12.1 Interim Management Order (IMO)

The Local Authority has a duty to make an interim management order (IMO) in respect of a licensable property which is not licenced if it is satisfied that there is no reasonable

prospect of the property being licensed in the near future with appropriate conditions or it is necessary to protect the health, safety or welfare of occupiers of the property or properties in the vicinity.

An IMO is in force for 12 months and allows the Local Authority to manage the property with many of the rights of a landlord and to collect rent and expend it on work to the property.

The Local Authority may delegate the management of the property to another organisation. An IMO ceases to have effect if a licence is granted. There are provisions to vary, revoke and appeal against an IMO.

### **12.2 Final Management Order (FMO)**

The Local Authority must make a FMO where, on expiry of an IMO, the property requires to be licensed but the Local Authority considers it is still unable to grant a licence.

An FMO is similar to an IMO in that the Local Authority continues to manage the property with many of the rights of the landlord, but they must be reviewed from time to time. The Council may delegate the Management of the property to another organisation. As with IMOs, there are provisions for varying, revoking and appealing against the making of a FMO.

### **12.3 Management Regulations**

Management Regulations made under the Housing Act 2004 imposes duties on landlords and managers of HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations<sup>3</sup> but the Local Authority can prosecute or issue a financial penalty for breach of the regulations, and will do so where a premises exhibits contraventions.

### **12.4 Overcrowding Notices**

Overcrowding notices apply to all non-licensable HMO's which do not have an IMO or FMO in force. A person who contravenes an overcrowding notice commits an offence and may be prosecuted or issued with a financial penalty. An overcrowding notice must either prohibit new residents or limit the number of people sleeping in the property.

## **13. Enforcement in Relation to Letting Agents**

Procedures for Enforcement and the issue of Notices and Penalties for failure to comply with the requirement to have membership of a Redress Scheme & for breaches of the Consumer Rights Act 2015<sup>4</sup>

The Council is concerned to ensure that its residents have access to accommodation appropriate to their needs. The Council further recognises that Letting Agents play an important role in the provision of private sector rented homes to tenants and in enabling landlords to have their premises occupied. To this end, the legislation that requires letting agents to maintain good professional standards, and inform all parties as to their charges, enable protection of funds and be members of redress schemes will be robustly enforced.

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<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2006/372/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

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The legislation is now well established and known throughout the letting agency sector. Information as to compliance is freely available from Government and the enforcement authorities. The Council expects all letting agents, whether established, or new businesses setting up, to be aware of and compliant with the legislation at all times. Lack of knowledge of the requirements will not be a factor that the Council will consider in undertaking its enforcement activity.

The Council will follow and implement the Guidances<sup>5</sup> issued by the Ministry for Housing Communities and Local Government when enforcing the legislation and considering representations

The Enterprise and Regulatory Reform Act 2013 makes provision to require letting agents to be members of a statutory redress scheme. Regulations under the Act, The Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014<sup>6</sup> provides the requirement for letting agents to be a member of one of the two statutory redress schemes:

- PRS – The property redress Scheme
- TPO - The Property Ombudsman

The Consumer Rights Act 2015 imposes three further requirements for letting agents in that they shall:

- Display a list of their fees and charges on their premises
- Display a statement as to whether they are, or are not a member of a client money protection scheme
- Display a statement as to whether they are a member of, and the name and contact details of a redress scheme.

The three requirements relating to display of notices at premises also apply to a letting agent's website, if they have one.

The Council has a duty to enforce the Regulations and the Act and may impose a financial penalty up to a maximum of £5,000 for each or any of the breaches.

The Council's Authorised Officers will undertake inspections of premises and websites operated by letting agents. Where any officer has reasonable grounds to consider that a breach of any of the provisions is found, they shall in all cases issue an on-the-spot Notice of Intent to issue a financial penalty for each breach found at the maximum £5000 permitted under the legislation, following the Guidance that 'The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.'

Authorised Officers of the Council will collate evidence of any breach including the inspection and capture websites for letting agents, using appropriate software applications.

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<sup>5</sup>

<https://www.dashservices.org.uk/Media/Default/Docs/Guidance%20for%20Local%20Authorities%20on%20The%20Letting%20Agents%20redress%20scheme.pdf>

<sup>6</sup> <https://www.legislation.gov.uk/ukdsi/2014/9780111116821>



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Notices of Intent to issue financial penalties will be served in accordance with the requirements of the legislation.

In undertaking its duty to enforce the legislation, the Council will follow the Statutory Guidance issued by the Department for Communities and Local Government, including expectation is that the Notices of Intent are issued at the permitted maximum i.e. £5,000 per breach, with scope to reduce the penalty following any representations made.

Any Notice of Intent (NOI) will be signed and served in person by the Officer, who will at that time provide guidance detailing the requirements and how to secure compliance. Where possible, letting agents will be directed to DCLG Business guidance for Letting Agents and Property<sup>7</sup> or to the Chartered Trading Standards Institute 'Business Companion'

Where a Notice of Intent is issued, the recipient will be informed as to how representations in writing to the Council can be made, including possible grounds for representation. A copy of any Notice of Intent will be sent to the registered office where the letting agency is a limited company. The notice will give 28 days following the day after it is issued to receive representations.

Where no representations are received within 28 days, a Final Notice will be issued within 2 working days, imposing the financial penalty detailed within the Notice of Intent.

Notices of Intent will not be withdrawn simply because the letting agent subsequently becomes compliant. Any breach will relate to the date and time on which that the notice is served.

Where representations are received then a Lettings Panel comprising of The Head of Consumer Protection & Licensing and the Trading Standards & Licensing Manager will convene and consider those representations. The Authorised Officer who served the notice of intent will attend to present facts and to discuss the representations.

Where the recipient of a financial penalty represents that the fine should be reduced for financial reasons and/or it would impact their business, this will be disregarded unless additional financial evidence including accounts and bank statements.

Representations that a recipient of a financial penalty was unaware of the legislation will be disregarded and will not be accepted as a reason to vary or withdraw the notice of intent.

Minutes of the Lettings Panel will be made, detailing the matters considered the Panel decisions and where appropriate, the reasons for those decisions. Minutes will be agreed and authorised by the Head of Consumer Protection & Licensing.

Within 2 working days of the Lettings Panel determinations, the Authorised Officer will issue a Final Notice to the letting agent with a copy to the registered office if this differs from the local trading address.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/731549/Lettings\\_Agents\\_and\\_Property\\_Managers\\_redress\\_scheme.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731549/Lettings_Agents_and_Property_Managers_redress_scheme.pdf).



The Final Notice will include:

- the amount of the financial penalty (including detail as to how the penalty has been determined and the matters taken in to account in reaching that determination)
- the reasons for imposing the penalty
- information about how to pay the penalty
- information as to rights of appeal to the First Tier Tribunal.

Where a letting agent appeals to the First Tier Tribunal the Council will comply with directions and agree to the manner of hearing as directed which may be a paper hearing or a hearing in person. The Council will comply with, or pursue any decision of the First Tier Tribunal.

## **14. Enforcement Action in Relation to Empty Properties**

It is a priority of this council to bring long-term empty properties back into occupation. These are properties that have been empty for 12 months or more.

There are several options available to officers to deal with long-term empty properties and these are detailed in the Empty Properties Strategy and are summarised below.

### **14.1 Enforced Sale**

The Council is able to consider forcing the owner to sell the property in certain circumstances and where the legislation allows. If the council is owed money following non-payment of Council tax, or where the council has needed to take action due to the condition of the property and the legislation allows us to recover the costs, it will consider forcing the sale of the property in order to recover its costs.

### **14.2 Empty Dwelling Management Order (EDMO)**

The Housing Act 2004 introduced Empty Dwelling Management Orders (EDMO) in order to unlock the potential of empty houses and to get them back into use as houses as quickly as possible. EDMOs are designed as a backup to voluntary leasing arrangements and an alternative to enforcement action under other legislation.

There are two types of order, Interim EDMO and Final EDMO. An EDMO allows the Council to secure the occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period (at least six months).

### **14.3 Interim EDMOs**

In order to make an interim EDMO the Council must apply for authorisation from the First Tier Tribunal (FTT). The property must have been empty for at least six months and there must be a reasonable prospect that the property will become occupied if an interim EDMO is made.

An Interim EDMO comes into force as soon as it has been authorised and can last for 12 months. Once an Interim EDMO is in force the Council must take steps to secure occupation and proper management of the property. However the Council may only grant a tenancy with the consent of the owner.

### 14.4 Final EDMO

The Council may make a Final EDMO to replace an interim EDMO or a previous Final EDMO if the Council considers the property would otherwise remain unoccupied.

The Council does not need to obtain authorisation from the FTT to make a Final EDMO. Once a Final EDMO is in force the Council must review its operation and take steps to secure occupation of the dwelling. Subject to any appeal, a Final EDMO comes into force no earlier than the day after the period for appealing against it has expired, and lasts for the period specified in that order.

These provisions are rarely used because of the financial risks involved.

### 14.5 Compulsory Purchase Orders (CPOs)

Compulsory Purchase Orders enable Local Authorities, when appropriate, to apply to the Secretary of State to compulsorily purchase properties that have been empty for a minimum of 6 months.

Circumstances where this action may be taken include:

- Where the property has been empty for 3 years or more and there is little prospect of it being brought back into use.
- The condition of the property is having an adverse effect on adjoining properties.
- Where the property attracts significant anti-social behaviour or illegal activities.
- Where the property has been squatted and there is a real risk of this re-occurring.

## 15. Land Compensation Act

Section 29 of the Land Compensation Act 1973 refers to home loss payments. Where a person is displaced from a dwelling on any land in consequence of the making of a housing order that person shall, subject to certain provisions, be entitled to receive a home loss payment from the Authority who made the order. Schedule 15 to the Housing Act 2004 amended the Land Compensation Act such that the making of a housing order now includes a Prohibition Order under Section 20 and 21 of the Housing Act 2004.

Certain conditions need to be met to be entitled to compensation under this legislation. The tenant has to;

- leave home permanently, and
- move as a result of certain enforcement action including housing orders, and
- has lived in the property for at least a year

The Council will ensure that there is a process to receive these applications.

## 16. Publicizing Sentencing Outcomes

In 2011 the Home Office produced guidance for public authorities regarding publicising information (including via the internet) about individual sentencing outcomes within the current legal framework. In general verdicts and sentences in criminal cases are given out in open court and are a matter of public record.

The guidance states that there should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:

- reassure the public;
- increase trust and confidence in the Criminal Justice System (CJS);
- improve the effectiveness of the CJS;
- discourage offending and/or re-offending.

The service will work with the relevant communications and legal teams to ensure that we comply with this guidance. The service will also comply with any requirements to register convictions

### **17. Rent Repayment Orders (RRO)**

A Rent Repayment Order is a penalty that can be imposed upon a landlord by the First Tier Tribunal requiring the repayment of rent that has been paid during the preceding 12 months. It applies to a landlord who, without reasonable excuse has committed certain offences including failing to licence a licensable HMO, and eviction using violence.

The Housing and Planning Act 2016 makes it a duty for Housing Authorities to consider applying for a RRO where relevant offences have been committed. Councils can now assist tenants to apply for a RRO and to take joint action where Housing Benefit has been paid and the tenant has paid the difference between that payment and the actual rent.

Redbridge Council will co-operate with tenants and provide the necessary information for them to pursue a claim. The justification for a decision not to pursue an RRO will be recorded

### **18. Illegal Eviction and Harassment**

The Council receives a significant number of service requests related to an illegal eviction or harassment, however this is likely to a small proportion of offences because tenants may be too frightened to complain.

When such events occur they will have a severely disruptive effect on the households, possibly resulting in homelessness and needing temporary accommodation. This has a financial impact on the Council due to the costs of providing temporary accommodation. The law protects people living in residential properties against unlawful eviction and / or harassment in two ways;

- by making unlawful eviction and / or harassment a criminal offence, and
- by enabling someone who is being unlawfully evicted and / or harassed to claim damages through the civil courts.

The only way a landlord can force a tenant / licensee to leave a property is by following the relevant legislation and procedures detailed in the Housing Acts to ensure that the eviction complies with the legislation.

Local Authorities have the power to carry out investigations into allegations of unlawful eviction and / or harassment. They can also take criminal proceedings if satisfied that there is sufficient evidence to prove that an offence has been committed and that it is in the public interest to prosecute.

Where the harassment is as a result of the landlord not undertaking repairs and the property is in poor condition, local authorities also have powers under the Housing Act 2004 (by using the Housing Health & Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property. These are outlined in this policy in relation to Housing Act enforcement.

Retaliatory eviction is where a landlord evicts a tenant who complains about repairs or poor conditions in the property. Most private landlords are keen to keep their properties in good condition, but a few refuse to spend time and money maintaining their properties. Most private tenants have an assured shorthold tenancy. It is legally straightforward to evict tenants from this type of tenancy, and so some landlords ask tenants to leave if they complain about repairs or poor property conditions.

Adoption of this Policy will make clear that the Council will actively investigate any allegation it receives regarding harassment and / or unlawful eviction. It is hoped that landlords / agents will be prompted to ensure that they do not take any action that could constitute harassment or unlawful eviction and will be deterred from following such courses of action.

## 18.1 What is Harassment?

There are two separate offences of harassment, one where the accused is the victim's landlord (or an agent of the landlord) and the other where the accused is some other person. The offence of harassment comprises two elements: Culpable Behaviour, "**The Guilty Act**", and Intention, or "**The Guilty Mind**".

**The Guilty Act:** doing anything to interfere with the peace and comfort of a residential occupier (tenant / licensee) or members of their household and includes:

- Making threats to persuade a tenant / licensee to leave
- Cutting off services such as gas, electricity or water
- Preventing access to shared kitchens and bathrooms
- Entering a tenant's / licensee's room / property without giving reasonable notice / permission
- Not carrying out essential repairs

**The Guilty Mind:** where the landlord or his agent knows or has reasonable cause to believe that the conduct is likely to cause the residential occupier to:

- Give up their occupancy of part or all of the property
- Refrain from exercising any right in respect of the whole or part of the premises (e.g. applying for a fair rent), and
- Refrain from pursuing any remedy in respect of the whole or part of the premises (e.g. taking court action to get repairs done)

In addition to being an offence under the Protection from Eviction Act 1977, harassment may also be an offence under the Protection from Harassment Act 1997. Under that Act, a person has committed an offence if their conduct "amounts to harassment of another" **and** "which he knows or ought to know amounts to harassment of the other".

## 18.2 Unlawful Eviction

To gain possession of a property a Landlord must:

- Give the proper legal written notice
- Get a court order for possession, and
- Get a bailiff's warrant for possession.

If the tenant / licensee and landlord share living accommodation, the landlord does not have to get a court order to evict the tenant / licensee, but must give the correct written notice.

Unlawful or unlawful eviction occurs when the landlord, the landlord's agent or someone acting on their behalf unlawfully deprives a tenant / licensee of all or part of their home, or where any other person forces or attempts to force a tenant / licensee to leave the accommodation without following the correct legal procedure and serving the proper notice(s) under the relevant Housing Acts. Unlawful Eviction and Harassment are criminal offences and the maximum penalty in a Crown Court is;

- an unlimited fine and
- two years' imprisonment.

The Council will also take a proactive approach in supporting the rights of residents and tenants in relation to unlawful eviction and / or harassment. This will include assisting the tenant / licensee to regain entry to their home and the possible prosecution of any person, organisation or agency who are acting unlawfully.

The Council recognises the rights as well as the responsibility of landlords, and will actively encourage all tenants / licensees to observe their legal obligations as tenants / licensees, including being a considerate tenant and neighbour.

### **18.3 Relevant legislation**

There are three main pieces of legislation that deal with unlawful eviction and harassment:

#### **i. Protection from Eviction Act 1977**

The law makes it an offence for a landlord, landlord's agent or any person to: carry out acts likely to interfere with the peace or comfort of a tenant / licensee or anyone living with him or her; or to persistently withdraw or withhold services for which the tenant / licensee has a reasonable need to live in the premises as a home, with the intention of causing the tenant / licensee to give up occupation of the whole or any part of the property, or to refrain from exercising any right or pursuing any remedy, or knowing or having reasonable cause to believe that the tenant will do so.

A person will not be guilty of an offence if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services

It is also an offence for any person to unlawfully deprive a tenant / licensee of the whole or any part of premises he or she occupies or attempt to do so. The landlord has a defence if he can prove that he believed or had reason to believe that the tenant / licensee had ceased to occupy the property.

#### **ii. Criminal Law Act 1977**

This Act provides that if someone enters a person's home using, or threatening to use violence, they are committing a criminal offence. Specifically the Act states that it is an offence for any person, without lawful authority, to use or threaten violence for the purpose of securing entry into any premises provided that:

- S/he knows that there is someone on those premises at the time, who is opposed to the entry which the violence is intended to secure; and
- the person using or threatening the violence knows that is the case

### **iii. Protection from Harassment Act 1977**

This Act creates four criminal offences:

- harassment
- putting another person in fear of violence
- breach of restraining order
- breach of an injunction

A landlord commits an offence if they, or someone acting on their behalf carries out a course of conduct which amounts to harassment of the tenant / licensee and they know that the conduct amounts to harassment.

Harassment includes alarming a person or causing a person distress. A course of conduct involves speech and must involve conduct on at least two occasions.

The Council has the legal power to investigate and prosecute offences under the provisions of the Protection from Eviction Act 1977.

We will work with the Housing Options team to share intelligence and ensure evidence is obtained as soon as possible after the alleged offence.

### **19. Caravan Site Licensing**

The Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013 (MHA) , authorises local authorities to issue licenses in respect of 'relevant protected sites' and to require applications for such licenses to be accompanied by a fee fixed by the authority.

The MHA 2013 was introduced in order to provide greater protection to occupiers of residential park homes and caravans as the existing legislation had not been updated for more than 50 years. This Act introduces some important changes to the buying, selling or gifting of a park home and the pitch fee review process.

A relevant protected site is defined in the act as any land to be used as a caravan site other than one where the application for a licence is:

- For holiday use only, or
- Subject to restrictions or conditions which limit the times of the year when the site may be used for stationing caravans for human habitation (e.g. planning conditions)
  
- Relevant protected sites to which the legislation applies are typically known as residential parks, mobile home parks and Gypsy Roma and Traveller sites.
- This policy will not apply to the following:
  - Sites that are owned by the local authority.
  - Use incidental to a dwelling house within the same curtilage
  - Individual permanent residential mobile homes ( see below)
  - Touring sites



- Holiday sites
- Caravans occupied by seasonal workers
- Sites where caravans are stationed solely for workers employed in building or engineering operations on that or adjacent land
- Sites used by travelling showmen who are members of a relevant organisation.
- Sites occupied by organisations holding a certification of exemption

The Mobile Homes Act 2013 has introduced the ability for Local Authorities to serve enforcement notices and to carry out works in default to remedy breaches of site licence conditions. The council is entitled, and will seek, to recover expenses incurred in carrying out enforcement action involved in the service of a compliance notice. These expenses include costs incurred in deciding whether to serve a notice, site inspections, preparing the notice and obtaining expert advice. Where appropriate, the council will also seek to recover expenses incurred:

- In taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
- In taking emergency action where there is an imminent risk of serious harm to any person on the site as a result of the site owner's failure to comply with licence conditions.

The council will also be able to register any of the debts to be recovered for enforcement actions as a local land charge against the site.

### **20. Other General Legislation**

Officers in Private Sector Housing are able to use various other pieces of legislation to deal with specific issues related to property conditions. These include Environmental Protection Acts, Building Acts, Local Government Miscellaneous Provisions Acts, The Housing and Planning Act 2016 and the Prevention of Damage by Pests Act 1949. Officers will always use the most relevant legislation in line with Government Guidance.

### **21. Referral to Other Regulatory Bodies**

Where it is necessary i.e. in the case of a wider regulatory interest, relevant information will be referred to other regulatory bodies e.g. the HSE in the case of gas safety within residential private sector dwellings and the Fire Authority in the case of high risk HMOs.

### **22. Accountability – How to Make a Complaint about our Service**

The legislation used often includes the provision to appeal to the first tier tribunal (property chamber) as further scrutiny on how the Council uses its powers.

We want to resolve complaints as soon as possible. If following a discussion with the Officer or their manager the customer wants to make a formal complaint they can do so by;

- filling in our on-line complaint form
- e-mail us at [customer.cc@redbridge.gov.uk](mailto:customer.cc@redbridge.gov.uk)

### **23. Publicity and Review Arrangements**

- The enforcement policy summary will be readily available via the Council's website.
- A leaflet summarising this policy will be sent whenever enforcement action is considered or taken.

## Private Sector Housing Enforcement Policy

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- The policy shall be reviewed every 3 years and any developments incorporated.



## Appendix A Competency Matrix

Competency		Enforcement Staff	Processing Staff
<b>Self-awareness and control</b>	Self-awareness	Y	Y
	Self-discipline and organisation	Y	Y
	Integrity	Y	Y
	Priority management	Y	Y
	Commitment and effort	Y	Y
	Time management	Y	Y
<b>Personal effectiveness and self-development</b>	Flexibility, adaptability and creativity	Y	Y
	Assertiveness and influence	Y	Y
	Innovation	Y	Y
	Decisiveness	Y	Y
	Self-development and continuous learning	Y	Y
	Assisting and supporting colleagues	Y	Y
	Awareness of risk management issues	Y	Y
	Open mindedness/ non judgmental	Y	Y
<b>Analysis and judgement</b>	Information gathering and recording	Y	Y
	Problem analysis	Y	Y
	Problem solving	Y	Y
	Judgement	Y	Y
<b>Interpersonal skills</b>	Sensitivity to others	Y	Y
	Teamwork	Y	Y
	Equality and diversity awareness	Y	Y
	Spoken communication	Y	Y
	Written communication	Y	Y
	IT supported communication	Y	Y
<b>Organisational awareness and joined up thinking</b>	Organisational awareness/ service links with corporate vision and values	Y	Y
	Working across boundaries and services	Y	Y
	Awareness of relevant external agencies	Y	Y
	Understanding customer needs and expectations	Y	Y

<b>Customer/Client orientation Using/Managing resources</b>	Awareness of equality and diversity issues in service delivery	Y	Y
	Providing valued services	Y	Y
	Commercially astute	Y	Y
	Effective use of Flare	Y	Y
<b>Working in partnership and managing contracts</b>	Developing and working in partnership with external agencies	Y	N
<b>Professional and technical</b>	Membership of CIEH (if required)	Y	N
	Housing Acts	Y	N
	HHSRS trained	Y	N
	HHSRS Understanding	Y	Y
	Building Acts	Y	N
	LGMPA	Y	N
	Housing and Planning Act 2016	Y	Y
	Rocktime	Y	N
	PDPA	Y	N
	Data Protection Act	Y	Y
	Human Rights	Y	N
	Taking evidence/ preparing a prosecution file	Y	N
	Serving Statutory Notices	Y	N
	Mental capacity awareness	Y	Y
	Safeguarding (CSE) awareness and procedures	Y	Y
	Use of equipment (damp meters)	Y	N
	Energy efficiency awareness	Y	N
	Electrical safety awareness	Y	N
	Gas safety awareness	Y	N
	Preparing for a RPT	Y	N
	Fraud awareness and reporting	Y	Y
Civica	Y	Y	
<b>Health and Safety</b>	H&S Risk Assessments	Y	Y
	Manual handling	Y	Y
	Redbridge driving policy	Y	N

	Multi agency exercise risk dynamic risk assessments	Y	Y
	Dealing with conflict situations	Y	Y
	Use of PPE	Y	Y
	Lone Working	Y	N
	DSE assessment and use	Y	Y

Appendix B Civil Penalty Matrix

<b>DETERENCE</b>				
<p><b>Deter the offender from repeating the offence.</b> 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.</p> <p><b>Deter others from committing similar offences.</b> 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;</p> <ul style="list-style-type: none"> <li>a) the local housing authority is proactive in levying civil penalties where the need to do so exists</li> <li>b) the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.</li> </ul>				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Very high level of confidence penalty will deter the offender from re offending	High level of confidence that penalty will deter repeat offending.	Moderate level of confidence that a moderate financial penalty will deter repeat offending	Little confidence that a higher financial penalty will deter repeat offending	*Very little confidence that a financial penalty will deter repeat offending.
Technical infringement.	Minor offence.	Moderate offence.	Serious Offence	Very serious offence
No benefit to publicising the penalty through informal channels.	Low level publicity through informal channels would deter others from offending.	Some publicity through informal channels would deter others from offending	Publicity through informal channels would deter others from offending.	Significant publicity through informal channels would deter others from offending.

<b>CULPABILITY</b>				
<b>Culpability and track record of the offender.</b> 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.				
<b>Score = 1</b>	<b>Score = 5</b>	<b>Score = 10</b>	<b>Score =15</b>	<b>Score = 20</b>
Offender not aware of the offence but ought to have known	No response to informal action	Moderate level of enforcement taken in the previous 12 months	High level of enforcement taken during the previous 12 months	*Multiple enforcement taken during the previous twelve months
No previous history	No previous warnings or civil penalties issued	A previous warning no civil penalties	More than one warning ignored and one previous civil penalty issued for minor offence	More than one warning ignored, previous civil penalty issued for serious offence.
Offender co-operative	Offender co-operative	Offender co-operative	Offender uncooperative	Offender uncooperative
Offence remedied	Offence remedied	Offence remedied	Continuing minor offence	Continuing serious offence.

<b>HARM/POTENTIAL HARM</b>				
<p><b>The harm caused to the tenant.</b> 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.</p> <p>The scoring in this section is doubled to highlight that harm to tenants has the highest weighting.</p>				
<b>Score = 2</b>	<b>Score = 10</b>	<b>Score = 20</b>	<b>Score =30</b>	<b>Score = 40</b>
<b>Potential</b> for low level of harm	<b>Potential</b> for harm to multiple occupants	<b>Actual</b> harm which results treatment by a GP. Potential for significant harm	<b>Actual</b> harm which results in hospital treatment tenant expected to recover completely	Significant <b>actual</b> harm which resulted in hospital treatment and could lead to a life long illness
One person at risk	Few people exposed to the risks	Few occupants affected	Multiple occupants including vulnerable occupants potentially exposed	
One occupant exposed	One vulnerable occupant	Multiple occupants potentially exposed		Multiple vulnerable occupants potentially exposed

**PUNISHMENT**

**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.

Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Small landlord 1 property	Medium Landlord 2-3 properties	Small portfolio landlord 4-10 properties Local managing agent	Medium portfolio landlord 11-99 properties Regional managing agent	Large portfolio landlord 100 or more properties National managing agent

**FINANCIAL BENEFIT**

**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.

Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
<b>No financial benefit</b> from operating illegally or substandard accommodation	<b>Some</b> benefit from operating illegally or substandard accommodation	<b>Moderate benefit</b> gained from operating illegally or substandard accommodation	<b>High level</b> of benefit gained from operating illegally or substandard accommodation	<b>Significantly high</b> level of benefit gained from operating illegally or substandard accommodation