

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY 2023

Version Control	
Date Implemented	21 st July 2023
Supersedes	February 2019
Next review date	October 2025
Policy Owner	Private Sector Housing Service



Contents

- 1. Introduction4
- 2. Scope and Purpose of the Policy.....4
- 3. Housing Health and Safety Rating System (HHSRS).....5
- 4. Tenure.....5
- 5. What is expected of Tenants?.....6
- 6. Retaliatory Evictions.....7
- 7. Situations where a service may not be provided7
- 8. Officer Delegations.....8
- 9. Rogue Landlords8
- 10. Enforcement Options for Housing Act Offences8
 - 10.1 No Action.....9
 - 10.2 Informal Action.....9
 - 10.3 Hazard Awareness Notice9
- 11. Active Formal Action9
- 12. Civil Penalties/ Penalty Charges..... 11
- 13. Option to Prosecute or Impose a Civil Penalty..... 12
- 14. Suspension of Notices..... 13
- 15. Simple Caution 13
- 16. Work in Default / Emergency Remedial Action..... 13
- 17. Property Licensing 14
 - 17.1 Refusing a Licence 14
 - 17.2 Varying Licence Conditions..... 15
 - 17.3 Licence Conditions 15
 - 17.4 Revocation of Licences..... 15
 - 17.5 Licence Duration / Varying the Licence Term 15
- 18. Fit and Proper Person Policy..... 16
- 19. Banning Orders..... 17
- 20. Special Powers in Relation to Houses in Multiple Occupation (HMOs) 17
 - 20.1 Interim Management Order (IMO)..... 17
 - 20.2 Final Management Order (FMO)..... 18
 - 20.3 Management Regulations 18
 - 20.4 Overcrowding Notices..... 18
- 21. Enforcement in Relation to Letting Agents..... 18
- 22. Proceeds of Crime Applications..... 21
- 23. Enforcement Action in Relation to Empty Properties 21
 - 23.1 Enforced Sale 22
 - 23.2 Empty Dwelling Management Order (EDMO) 22
 - 23.3 Interim EDMOs 22
 - 23.4 Final EDMO 22
 - 23.5 Compulsory Purchase Orders (CPOs) 23
 - 23.6 Problems Empty Properties..... 23
- 24. Rent Repayment Orders (RRO) 23
- 25. Other General Legislation..... 23

26. Referral to Other Regulatory Bodies..... 24

27. Accountability – How to Make a Complaint about our Service..... 24

28. Publicity and Review Arrangements..... 24

29. Appendix A: Civil Penalty Matrix..... 26

30. Appendix B: Housing Act 2004 Enforcement Charges..... 32

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 assist co-operating and compliant 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. Our enforcement activity will be:

- **targeted:** at properties and businesses* that pose the greatest risk, including businesses that evade regulation and those whose properties put people's health and safety at risk.
- **proportionate:** reflecting the nature, scale and seriousness of any breach or non-compliance.
- **fair and objective:** based on the individual circumstances of the case, taking all available facts into account.
- **consistent:** based on a transparent policy to ensure consistency in the interpretation and enforcement of legislation.

- **accountable:** undertaken in a responsible manner in accordance with legislation and Government guidance.

* the term “business” includes landlords, property agents, managing agents and letting agents unless otherwise specified.

The Private Sector Housing Service will follow the guidance set out in the Crown Prosecution Service Code for Crown Prosecutors¹ 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. Housing Health and Safety Rating System (HHSRS)

The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- Category 1 hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council will exercise its power to reduce category 2 hazards through appropriate action.

A range of enforcement powers is available under the Act to remove or reduce any hazards identified to an acceptable level.

4. Tenure

The Housing Health and Safety Rating System (HHSRS) applies all tenures of housing. Furthermore, it does not specify that approaches or solutions should be used based on ownership or the occupier’s status. All enforcement options are available to the Council regardless of whether the premises in question owner are occupied, privately rented, or belong to a Social Housing Provider. Generally, the Council considers that owner-occupiers are usually able to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities. However, in certain circumstances we may require works to be carried out or use emergency remedial action or serve an emergency prohibition order. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others outside the household, or where the condition of the dwelling is such that it may adversely

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

affect the health and safety of others outside the household. This may be because of a serious and/or dangerous deficiency at the property.

4.1 Social Landlords (Housing Associations)

Housing Providers exist to provide suitable and properly maintained accommodation for their tenants. Housing Providers normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will take formal action against Housing Providers where:

- It is satisfied that the problem in question has been properly reported to the Housing Provider and
- The Housing Provider has then failed to take appropriate action

5. What is expected of Tenants?

Tenant(s) will normally be required to contact their landlord about the problems (preferably in writing), allowing a reasonable time period for the landlord to make representation and repairs.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will continue to try to contact their landlord, even if this is after they have contacted the Private Sector Housing Service. Copies of correspondence between the landlord and tenant should be provided for Officers.

In certain situations, tenants, will not be required to write to their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent
- Where the property is a House in Multiple Occupation which appears to fall within HMO licensing

Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

6. Retaliatory Evictions

Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice. On 1st October 2015, a number of provisions in the Deregulation Act 2015 came into force. These provisions are designed to protect tenants against unfair eviction.

Where a tenant makes a genuine complaint about the condition of their property and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the 'no fault' eviction procedure (a section 21 eviction). The landlord is also required to ensure that the repairs are completed.

We will work with landlords to understand their obligations and the implications of this legislation and will work alongside the Council's Housing Options team and other advice agencies to provide support, advice, and guidance to the tenant in these circumstances.

7. Situations where a service may not be provided

Where any of the following situations arise, consideration will be given to not providing or cease to provide a service:

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
- Where the tenant's only reason for contacting the Private Sector Housing Service, in the opinion of the Council, is in order to pursue a position on the housing register or by means of a contrived homeless application. The Council will aim to bring their present accommodation up to standard as a first priority
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow-up letter or appointment card
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers
- Where there is found to be no justification for the complaint, on visiting the property
- Where the tenant unreasonably refuses to provide the Council with relevant documentation

Further information is available for tenants on the Council web site [Redbridge - Private tenant information](#)

8. Officer Delegations

The provisions of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the "Regulations")² 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. Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action.

9. Rogue Landlords

The Housing and Planning Act 2016, gives local authorities additional powers to deal with rogue landlords. These include;

- Database of rogue landlords/property agents
- Banning orders for those who have been convicted of a banning order offence
- Civil penalties of up to £30,000
- Extension of Rent Repayment Orders
- Tougher fit and proper person test for landlords of licensed properties

The Council will make full use of these provisions and any other provisions available to use with the aim of driving up standards or driving out criminal landlords from the borough. This is to ensure the private rented housing market operates in a fair, equal and open way. In order to prevent tenants from being exploited by dishonest landlords/letting agents, and to create a level playing field for the good, compliant landlords/agents.

10. Enforcement Options for Housing Act Offences

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 the law does/doesn't allow discretion in its implementation
- Whether past history with any local authority indicates that informal or formal action can be expected to achieve full compliance.
- Whether officers' confidence in the premises management or their associates is high.
- Whether the consequences of non-compliance will pose a significant risk of personal injury/harm/death to the occupants or members of the public.

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

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

10.1 No Action

Complaints or allegations of housing law breaches or statutory nuisances that are minor or low risk to health and the landlord has not been informed of the issue. Following an inspection there will be circumstances where a the situation does not warrant action, or it may be inappropriate. In such circumstances the landlord and tenant will be notified, and a record added on the database.

10.2 Informal Action

Informal action will be taken at the discretion of the investigating officer. It will normally be where there has been complaints of housing legislation breaches or statutory nuisances to the private sector housing team, which are of no health impact and the landlord has not been informed by the complainant. It is then appropriate to give opportunity to landlords / licence holders a short window of time to remedy minor / low risk issues before formal action is initiated.

10.3 Hazard Awareness Notice

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action for owner occupiers. The Council offers a package of Home Improvement grants for elderly and vulnerable residents who require the intervention of the Council to ensure their welfare is best protected.

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 if 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.

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.

11. Active Formal Action

Where the circumstances of the case and the legalities of the associated legislation justify it or require it, officers will take an active formal approach.

Circumstances where it is appropriate to take formal action include the following (this is not an exhaustive list, and each case is considered on its own merits):

- a) Category 1 Hazard/s present (HHSRS).
- b) Multiple or Serious Category 2 hazards present (HHSRS)
- c) There is an actionable risk to health and safety such as:
 - No heating in cold weather.
 - No hot water to wash and prepare food safely or bathe adequately.
 - Exposed electrical wiring which put people at a risk of electrocution.
 - Gas leak (Tenants should call National Gas Emergencies number immediately on 0800 111 999) or risk of fire.
 - Raw sewage surcharging into a neighbour's property.
- d) A responsible person fails to carry out works requested informally.
- e) There is a history of failure to meet requests to carry out legally required works.
- f) There is a history of a failure to manage a property to meet legal requirements.
- g) There is a record of criminal convictions for housing related offence(s) in the last five years or a simple caution has been issued in the last two years.
- h) It is necessary to safeguard and protect health and safety in the future.

There are several options for formal action. The decision as to which is the most appropriate depends on the circumstances of each case, the relevant legislation and the risk to health and safety. The options include:

- Improvement Notice
- Prohibition Order
- Suspended Prohibition Order
- Emergency Prohibition Order
- Formal Caution
- Service of Notice to Abate a Nuisance

All notices that are served and where legislation allows, will be placed on the Authority's public register.

Failure to comply with an Notice or Order 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.

11.1 Power to Charge for Enforcement Action

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action. The Council will charge under the following:

- Section 11 and 12 Improvement Notices
- Section 20 and 21 Prohibition Notice
- Section 28 and 29 Hazard Awareness Notice
- Section 40 Emergency Remedial Action
- Section 43 Emergency Prohibition Order
- Section 265 HA 1985 Demolition Order

The Council will also seek to recover all charges or expenses incurred in taking action with or without agreement in relation to hazards.

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting, and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or remedial work in default of a notice/order made under the Housing Act 2004 or other act used. The charge will only be waived in exceptional circumstances.

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

12. 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.

In line with Government DLUHC guidance^{*1}, we will look at the following in relation to setting the level of fine

- 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.

1* <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

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**, which is based on DLUHC 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. 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 will respond to any representations and then 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.

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.

13. Option to Prosecute or Impose a Civil Penalty

The Council has discretion whether to prosecute for an offence or impose a civil penalty and the decision will be based on the circumstances of each individual case.

To ensure consistency and transparency an enforcement panel comprising at least one Senior Officer, and a manager will review the evidence to determine the type of formal action is required. If the panel decides on a civil penalty the investigating officer shall submit a matrix and justification for the panel to amend or approve 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.

Where the Council recommends a case for legal proceedings (prosecution), it will be considered in accordance with the wider Civic Pride Enforcement Policy. The Head of Service/Senior Manager considers if a case has been investigated sufficiently, ensuring it meets evidential and public interest tests set out in the Code for Crown Prosecutors and whether any statutory defenses are available to the defendant. Cases are referred to Legal to start legal proceedings. Each case will be considered for investigation and action under the Proceeds of Crime Act 2002.

14. Suspension of Notices

Where there is no immediate risk to the health, safety and welfare of the occupants or the public, we may decide to Suspend an Improvement Notice or Prohibition Order.

15. Simple Caution

The use of a simple caution is advocated by the Home Office in situations where there is evidence of a criminal offence, but the public interest does not require a prosecution.

- Where an offence is less serious and there is no previous history of non-compliance or offences and the person who has committed the offence has admitted their guilt. In such cases, a caution may be offered (as an alternative to Court or Civil Penalty action, and on the understanding that the Council's costs will be paid by the offender) where it is likely that they will heed a warning about their behaviour and the legal consequences if they commit further offences. A charge can also be levied for a simple caution which is based on an officer hourly rate.

A simple caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record. Failure to accept a Caution leaves the authority with an option to instigate legal proceedings instead.

Cautions are viewed as valuable enforcement tools because they can be cited in court if the same person or organisation, within three years of the original offence, commits similar offences and typically both save officer time and reduce the burden placed upon the court system.

16. Work in Default / Emergency Remedial Action

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 in most cases we would look to prosecute or issue a civil penalty notice.

Emergency Remedial Action may be taken for a category one hazard/s 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 the incurred cost of the carrying out remedial action and charge a 30% administration charge.

Outstanding payments for remedial works become a charge on the respective properties. Details of any outstanding remedial charges will be entered in the register of local land charges which may be disclosed on searches by prospective purchasers.

17. Property Licensing

The Council also has powers to ensure adequate standards are met and maintained within Houses in Multiple Occupation (HMO) whether licensed or not, under Part 2 of the Housing Act 2004; And Selectively Licenced properties under part 3 of the Housing Act 2004.

Houses in Multiple Occupation. Mandatory licensing applies to all HMO's which are occupied by five or more people, comprising two or more households, and sharing amenities (kitchen or bathroom or W.C). Owners, Landlord or Managing Agents need to apply for a HMO Licence via: www.redbridge.gov.uk/housing/private-rentals/mandatory-hmo-licence/

The Council operated Additional HMO Licensing scheme for HMO with less than 5 persons but has ended in April 2022. However, the Council is consulting on a new additional HMO scheme so this requirement for smaller HMO may be reintroduced.

Selective Licensing. Selective licensing applies to all rented properties in 14 designated wards, which are occupied by a single household. The council has operated its Selective Licensing scheme since 2017. At this time (scheme) 1 which was in operation since July 2017 (scheme) 1 has ended and (scheme) 2 has been in operation since October 2018. These properties are occupied by single family households.

Operating a licensable property without the a licence, failing to comply with licence conditions and failure to comply with the Management of Houses in Multiple Occupation Regulations are criminal offences.

The Council has consulted widely on all its schemes and will continue to do so on any new schemes . We have published clear guidance on the application on these schemes and how to apply - <https://www.redbridge.gov.uk/housing/private-rentals/apply-for-a-property-licence/>.

The Council will take the view that failing to licence a property, serious or multiple breaches of Management of Houses in Multiple Occupation Regulations and breaching Licence Conditions are serious that warrants formal action.

17.1 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. Evidence that a landlord is not a fit and proper person

will result in refusal of a licence. 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.

17.2 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.

17.3 Licence Conditions

Redbridge has adopted conditions that address specific problems e.g. a prevalence of ASB incidences associated with privately rented properties.

Conditions listed on a licence cover the provision of amenities and property management standards and include specific timescales for compliance.

The licence holder is responsible to ensure licence conditions are complied with. Breaching any licence condition is an offence and may result in formal enforcement action.

17.4 Revocation of Licences

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.

17.5 Licence Duration / 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 licences 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. All HMOs without planning will only receive a one-year licence.

The Council will limit the duration of a licence to one year where an application is submitted late. Where a licence continues to be required after one year, a fresh application will have to be submitted and at that time the applicant will need to demonstrate that they are a fit and 'proper person' as defined by section 66(6) of the Housing Act 2004. Specifically, this will include whether they have '(c) contravened any provision of the law relating to housing or of landlord and tenant law; or (d) acted otherwise than in accordance with any applicable code of practice approved under section 233 (Approval of codes of practice with regard to the management of HMOs etc.)

18. Fit and Proper Person Policy

The 'fit and proper person' test is required as part of both mandatory and discretionary licensing. When granting a licence, the Council must be satisfied that the proposed licence holder and any person involved in the management of the property are fit and proper persons. We will have regard to relevant guidance and the legislative requirements in applying the 'fit and proper' test.

A person's 'fit and proper' status may be reviewed at any time. Removal of the status may lead to a refusal and/or revocation of licence(s).

The criteria (not an exhaustive list and each case will be considered on its merits) considered when assessing a person or an organisations ability to be a licence holder are as follows:

- any criminal offence including, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Particular consideration will be given to offences of dishonesty, fraud, violence, harassment, drug trafficking, human trafficking, money laundering or offences of a sexual nature or of offences relating to child exploitation or abuse, whether or not these offences were in the United Kingdom, and Housing Act 2004 offences or any breaches of provisions of housing or landlord and tenant law, including illegal evictions and harassment.
- Whether the party has practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origin, disability, sexual orientation, or religious belief in connection with carrying out their business.

- Whether a person residing abroad can effectively manage the property or has in place a UK based Licence Holder that can properly manage the property, which includes access to funds to carry out management, repairs, maintenance and deal with emergencies, etc. and agrees to be bound by the licence conditions.
- Owns or has previously owned a property for which the council has taken action as described in Section 5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order.
- Other convictions/enforcement action relating to Environmental Health, Waste, Anti-Social Behaviour Enforcement.

Each application will have to be considered individually by the Council and appropriate investigations will be undertaken to establish the fit and proper status of an individual or the directors of a company.

19. Banning Orders

Under section 16 of the Housing and Planning Act 2016 a person is not a fit and proper person if a banning order is in force against them. The Schedule Offences of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 specifies the offences for which a banning order can be made.

After a licence has been granted the Council will continually assess the fit and proper status of licence holders and property managers, considering evidence of the following:

- The Council has had a history of complaints or problems with the Licence holder or property manager which require further investigation
- The Licence Holder or manager were untruthful in the application for a licence
- The Council has reasonable grounds to suspect that the Licence Holder or manager, has committed an offence which becomes relevant to the determination of their fitness

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

20.1 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 Licenced 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.

20.2 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 like 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.

20.3 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 Regulations³ 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.

20.4 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.

21. 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 and for breaches of the Consumer Rights Act 2015⁴

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.

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

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

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 always aware of and compliant with the legislation. 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 Guidance⁵ issued by the Department for Levelling Up, Housing and Communities 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 2014⁶ 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<https://www.dashservices.org.uk/Media/Default/Docs/Guidance%20for%20Local%20Authorities%20on%20The%20Letting%20Agents%20redress%20scheme.pdf>

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

£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.

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 Property⁷ 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 Service and the Trading Standards and 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.

7

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731549/Lettings_Agents_and_Property_Managers_redress_scheme.pdf

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.

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 into 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.

22. Proceeds of Crime Applications

Applications may be made in certain circumstances under the Proceeds of Crime Act for confiscation of income received, issuance of fines, seizure of assets in serious cases. The purpose of these is to recover the financial benefit that the offender has obtained from his criminal conduct.

23. Enforcement Action in Relation to Empty Properties

There is a high demand for accommodation in Redbridge. As well as being a wasted source of housing, empty properties can be an eyesore, damage adjoining properties, blight neighbourhoods and attract anti-social behaviour.

The Council will identify, risk assess and prioritise long-term (12 months or more), problematic and nuisance empty properties, using the full range of informal and formal action to bring them back into use.

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.

23.1 Enforced Sale

The Council can 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 act 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 to recover its costs.

23.2 Empty Dwelling Management Order (EDMO)

The Housing Act 2004 introduced Empty Dwelling Management Orders (EDMO) 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).

23.3 Interim EDMOs

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.

23.4 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.

23.5 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 is 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.
- 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.

23.6 Problems Empty Properties

If a property is unsecured, unsafe, causing or is likely to cause a nuisance to the locality, there are several legislative tools available to the Council to ensure that the condition of the property is improved. The powers included provisions to ensure the property is safe, secure and not adversely affecting the amenity of the area.

24. 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 Universal Credit or 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.

25. Other General Legislation

There is a wide range of legislation containing provisions for the use of statutory notices, which legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety. 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.

26. 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.

27. Accountability – How to Make a Complaint about our Service

We take your complaints very seriously and want to resolve complaints as soon as possible. If following a discussion with the Officer or their manager, a customer wants to make a formal complaint they can do so by filling in our on-line complaint form <https://www.redbridge.gov.uk/tell-us/tell-us-whats-wrong/>

28. Publicity and Review Arrangements

We will work with various media organisations and persons to deter, promote and inform people about our enforcement regime. We will publish prosecutions and civil penalty charge notices on the Greater London Authority (GLA) Rogue Landlord Database and the Ministry Housing, Communities and Local Government (MHCLG) statutory database.

Media coverage will normally be sought where the offence/s are serious or has significant factors such as the risk to health of tenants, visitors or neighbours, the exploitation of tenants, anti-social behaviour or an issue affecting the wider area or private rented sector.

We will seek media coverage to assist in securing compliance by others or is in the public interest to demonstrate the Council's actions and to help inform issues in the wider housing sector. Publicity will also be sought to support other local authorities and regulatory partners in their enforcement efforts, especially where the perpetrator/s operate across borough boundaries.

Coverage will be sought to provide potential renters and tenants with information to enable them to check whether a landlord's history of non-compliance. This to ensure the private rented housing market operates in a fair, equal and open way. In order to prevent tenants from being exploited by dishonest landlords/letting agents, and to create a level playing field for the good, compliant landlords/agents.

Press releases may also be issued about convictions or legal action where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors. Media coverage will not be sought where the primary motive is to

cause damage to the subject. This enforcement policy will be readily available via the Council's website. The policy shall be reviewed every 2 years and any developments incorporated.

29. Appendix A: Civil Penalty Matrix

Severity of offence						
Severity of the offence. The more serious the offence, the higher the penalty						
	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	Total Score
						0
Pick one box only to the right choosing the criteria that most closely fits the case	Technical infringement	Minor offence	Moderate offence	Serious Offence	Very serious offence	
SEVERITY OF OFFENCE TOTAL						0

CULPABILITY						
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						
	Score = 0.5	Score = 2.5	Score = 5	Score = 7.5	Score = 10	Total Score
 Pick one box ONLY						0
HISTORY OF COMPLIANCE	Offender not aware of the offence but ought to have known; but there is no previous history of offending	No response to informal action; but there have been no previous warnings or civil penalties issued	Moderate level of enforcement taken in the previous 12 months, and there has been a previous warning; but no civil penalties	High level of enforcement taken during the previous 12 months and more than one warning ignored and one previous civil penalty issued for minor offence	*Multiple enforcement taken during the previous twelve months, and more than one warning ignored, and a previous civil penalty issued for serious offence	
 Pick one box ONLY						
SIZE OF PORTFOLIO	Landlord 1 property	Landlord 2-3 properties	Portfolio landlord 4-49 properties or Local managing agent	Portfolio landlord 50-99 properties or Regional managing agent	Portfolio landlord 100 or more properties or National managing agent	
SEVERITY OF OFFENCE TOTAL						

HARM/POTENTIAL HARM						
<p>The harm caused to the tenant.</p> <p>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>						
	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	Total Score
 Pick one box only to the right choosing the criteria that most closely fits the case	Potential for CLASS IV harm	Potential for CLASS II OR III harm	Actual harm which results in treatment by a GP OR Potential for significant CLASS I harm	Actual harm which results in hospital treatment tenant expected to recover completely	Significant actual harm which resulted in hospital treatment and could lead to a lifelong illness	
HARM/POTENTIAL HARM TOTAL						

Punishment						
<p>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.</p>						
	Score = 0.5	Score = 2.5	Score = 5	Score = 7.5	Score = 10	Total Score
 Pick one box ONLY						
SEVERITY OF THE OFFENCE	Technical infringement	Minor offence	Moderate offence	Serious Offence	Very serious offence	
 Pick one box ONLY						
HISTORY OF OFFENDER	No previous history	No previous warnings or civil penalties issued	A previous warning no civil penalty	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	
PUNISHMENT OFFENCE TOTAL						

DETER OFFENDER AND OTHERS

Deter the offender from repeating the offence. The goal is to prevent any further offending and help ensure that the landlord fully complies with all 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.

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 civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

	Score = 0.5	Score = 2.5	Score = 5	Score = 7.5	Score = 10	Total Score
						
Pick one box ONLY						
DETERENT TO OFFENDER	Any financial penalty will deter repeat offending	A minor financial penalty will deter repeat offending	A moderate financial penalty will deter repeat offending	A high financial penalty will deter repeat offending	Only a significant financial penalty will deter repeat offending	
						
Pick one box ONLY						
DETERENT TO OTHER LANDLORDS	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	
DETER OFFENDER AND OTHERS TOTAL						

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	Total Score
 Pick one box only to the right choosing the criteria that most closely fits the case						
	No financial benefit from operating illegally or substandard accommodation	Some benefit from operating illegally or substandard accommodation	Moderate benefit gained from operating illegally or substandard accommodation	High level of benefit gained from operating illegally or substandard accommodation	Significantly high level of benefit gained from operating illegally or substandard accommodation	
FINANCIAL BENEFIT TOTAL						

SCORE BY CRITERIA & TOTAL							
CRITERIA	SEVERITY OF OFFENCE TOTAL	CULPABILITY TOTAL	HARM/POTENTIAL HARM TOTAL	PUNISHMENT TOTAL	DETER OFFENDERS AND OTHERS TOTAL	FINANCIAL BENEFIT TOTAL	TOTAL SCORE
SCORE							

PENALTY SCORING RANGE AND FEE											
SCORE	1-5	6-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-120
FEE	£250	£500	£750	£1,000	£2,500	£5,000	£10,000	£15,000	£20,000	£25,000	£30,000

ACTUAL PENALTY IMPOSED											
TO PAY											

30. Appendix B: Housing Act 2004 Enforcement Charges

Element	Description	Amount
Hazard Awareness Notice	The charge made when it is necessary for the Council to serve a Hazard Awareness Notice informing the owner/landlord that a hazard requires attention.	£550*
Improvement Notice or a Suspended Improvement Notice	The charge made when it is necessary for the Council to serve an Improvement Notice or Suspended Improvement Notice because the owner or landlord has failed to engage with the Council, or it is unlikely that a pre-formal process will result in a satisfactory resolution.	£550*
Service of a Prohibition Order or a Suspended Prohibition Order	The charge made when it is necessary for the Council to serve a Prohibition Order because all or part of the property cannot be occupied safely, and resolution cannot be achieved by way of an informal agreement.	£550*
Service of an Emergency Prohibition Order	The charge made when it is necessary for the Council to serve an Emergency Prohibition Order because there is an imminent risk of serious harm to the health and safety of the occupier(s) in all or part of the property.	£600*
Request to remove or revoke a Prohibition or Emergency	The charge made when the Council is requested to revoke or remove prohibition / emergency prohibition orders – this will always entail a visit to the premises.	£300*
Works in Default	The charge made when it is necessary for the Council to carry out works because the owner or landlord of the property has failed to comply with a statutory notice and, on its own, prosecution would not ensure the health and safety of the occupier(s). The full cost of the works will be recovered in line with the relevant statutory provisions, a land charge will be placed on the property and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt.	Cost of the works plus 30% on costs charge.

*These charges are subject to annual Retail Price Increases (RPI)