

The London Borough of Camden’s policy statement on enforcement in relation to the Private Sector Housing Service (PSH)

Version control:

Date	Changes
October 2021	Amendments regarding revocation of licences
7 February 2023	Amendments to examples of circumstances that give rise to a presumption in favour of HMO licences being granted for a reduced period or varied to a reduce period (see appendix B)
15 February 2023	Amendments re Civil Penalty Notices
14 October 2024	Full review of policy. Key changes include: <ul style="list-style-type: none"> • Discounts for prompt payment of Civil Penalty Notices • High rise enforcement updates • Protection from Eviction 1977 offences • Information concerning splitting of fines

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1. Related documents

- [Regulators' Code 2014](#)
- Code of Practice Powers of Entry December 2014, Home Office.
- The Code for Crown Prosecutors, Director of Public Prosecutions.

2. Introduction

The purpose of this policy is to provide guidance for PSH officers to ensure enforcement is taken in line with the Regulators Code. The Legislative and Regulatory Reform Act 2006 states regulators must have regard to the code when developing policies and operational procedures that guide their regulatory activities.

The London Borough of Camden (the Council) aims to reduce or eliminate hazards and generally protect the health, safety and welfare of occupiers of housing in the private sector, particularly the private rented sector.

3. The purpose and method of Private Sector Housing enforcement

The purpose of enforcement is to:

- The overall aim is to ensure private sector housing for residents of Camden meets minimum standards at least.
- Ensure that those responsible for complying with the law take appropriate action to deal with serious hazards and risks;
- Promote and achieve sustained compliance with the law;
- Ensure that those who breach legislative requirements related to private sector housing, including companies and their directors who fail in their responsibilities, may be held to account, which may include prosecution.

All Private Sector Housing service staff who take enforcement decisions are required to follow the expectations of this policy statement. The council expects its officers to use professional judgement in accordance with this policy statement in deciding when to investigate or what enforcement action/intervention may be appropriate.

4 The principles of Private Sector Housing enforcement

The Council believes in firm but fair enforcement of the law related to private sector housing. In carrying out our duties we refer to the principles set down in the Legislative Regulatory Reform Act 2006 section 21. Those principles are that:

- a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- b) regulatory activities should be targeted only at cases in which action is needed.

These principles should apply both to enforcement in particular cases and to our management of enforcement activities as a whole.

a) **Proportionality**

Enforcement action is to be proportionate to any risks to health and safety and the welfare of residents and their guests or visitors, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law. In this policy, 'risk'

(where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.

In practice, applying the principle of proportionality means that the council will take account of how far the person responsible has fallen short of what the law requires and the extent of the risks to people arising from the breach. The Council will not only enforce where there is a higher risk to people in terms of the risk of death, injury or ill health. Enforcement action will also be considered where an unlicensed HMO is being operated as otherwise the licensing scheme may fall into disrepute.

b) Targeted

The Council determines which inspections or investigations should take priority according to the nature and extent of risks posed which will largely be in line with the Housing Health and Safety Rating System. The competence of the owner, landlord or manager may allow departures from a risk assessed priority system, where greater attention by the council on lower risk situations may lead to future benefits. Generally, the council will not respond through firm enforcement action where the only matter or matters to be resolved is, or are, low risk and based on a discretionary power. The vulnerability of occupiers may also inform enforcement action despite the housing conditions posing risks.

c) Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Those subject to enforcement action in situations of similar risks expect a consistent approach from the council in the advice tendered; the use of enforcement notices, decisions on whether to prosecute; or undertake work in default.

The council recognises that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude and competence of owners and managers, any history of cooperation or breaches, previous enforcement action, and the seriousness of any breach.

Decisions on enforcement action will remain discretionary, involving judgement by the officer, manager and legal advisor. The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

d) Transparency

Transparency means helping landlords, owners, tenants and others understand what is expected of them and what they should expect from the Council officers. It also means making it clear to them not only what they have to do, but where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

Transparency also involves the Council in having arrangements for keeping those affected by enforcement informed (as far as reasonably possible). These arrangements must have regard to legal constraints and requirements.

This policy sets out the general framework within which enforcement officers should operate. All parties need to know what to expect when an officer calls and what rights of complaint are open to them. In particular:

- when officers offer those subject to enforcement information or advice, face to face or in writing, including any warning, officers will tell those persons what to do to comply with the law, and explain why. Officers will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
- in the case of statutory notices officers may (subject to the type of variables detailed under the heading “consistency” above and in section 5b below) consult on the contents of the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and comply with the relevant statutory requirements; including appeal provisions;
- in the case of a Prohibition Order the accompanying information will explain why the prohibition is necessary. A report will be passed to the Operations Manager for approval to ensure the impact corresponds with the principles in this document.

e) Accountability

Regulators are accountable to the public for their actions. This means the Council will have policies and standards (such as the four enforcement principles above) against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

The Council’s complaints and enquiry capabilities are explained on the Council’s website at www.camden.gov.uk.

5 Enforcement Options

- a) The table below is for guidance and demonstrates the main levels and interventions for enforcement*:

	Action	Comment
Informal interventions	Verbal advice	General advice as to standards required by the Council. Referring a landlord or agent to the London Landlord Accreditation Scheme (LLAS).
	Advisory/warning letter	Advice on minor defects /minor items of non-compliance requiring attention. Warning where a breach occurs and is minor or the offender shows remorse/takes appropriate action including the showing of an intention to take action in a timely manner)
	Consultation prior to Formal Action	An informal process seeking views on the scale and type of required works prior to service of a formal or statutory notice. This

		is a discretionary action where Category 1 hazards are found.
Formal low level interventions	Legal or Formal Notice or Order	Means to secure works of repair or improvement e.g. improvement notice
	Penalty Application	Enforcement of legislation that can apply a penalty for a breach or offence such as for the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
	Decision to issue or vary a licence for a shortened period	HMO licences are typically issued for a 5 year period (the maximum period allowed under the Housing Act 2004) but we will issue or vary licences for a lesser period in certain circumstances described within this policy.
	Decision to refuse to grant a licence	The Council either must or may refuse to grant a HMO licence taking into account relevant considerations specified in the Housing Act 2004.
	Decision to vary a licence	The Council may vary a licence taking into account relevant considerations specified in the Housing Act 2004.
Formal high level interventions – common use, require manager sign off.	Caution	Where there is enough evidence of an offence to prosecute but there are very strong mitigating factors (e.g. a first offence with no harm done to public and the perpetrator cooperates fully with the investigation) we will consider use of cautions, expiring after six years.
	Prohibition Order	Where a hazard is serious enough to warrant sanctions on occupation, this will require a report made to a manager in accordance with the council's scheme of delegation.
	Prosecution/Civil Penalty Notice	Clear breaches of a legal duty or failure to comply with an enforcement notice, order, HMO licence conditions or relevant HMO management regulations. Being in control of or managing an HMO without the required licence. Harassment or illegal

		eviction offences under the Protection from Eviction Act 1977
	Rent Repayment Order	The Council is required to have a separate policy for this intervention. Please refer to this.
	Work In Default and emergency action	Where failure to carry out a legal duty, the Council may carry out the works and recover charges, plus fees, from landlord. This is also applicable where the Council use emergency powers under the Housing Act 2004 where is serious and imminent threat to health
	Decision to revoke a licence	The Council may revoke a licence taking into account relevant considerations specified in the Housing Act 2004.
	Remediation Order / Remediation Contribution Order	Powers in the Building Safety Act to assist remediation of fire safety or structural defects available in limited circumstances. May be appropriate instead of an Improvement Notice, having regard to Department for Levelling Up, Housing and Communities (DLUHC) guidance
Highest level formal Interventions, require director sign off	Compulsory Purchase Orders	The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.
	Interim and Final Management Orders	The Council will take over management of a HMO where the law demands it and the requirements are satisfied. The Council will attempt to work with the person having control/managing and, where appropriate, exhaust other enforcement options (e.g. notices and/or prosecution) before proceeding with this action.
	Banning Order	The Council will apply to the First Tier Tribunal in line with it Banning Order policy as applicable. The Council is required to

		have a separate policy for this intervention. Please refer to this.
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b) Informal Consultation prior to Formal Action under Housing Act 2004

Regarding notices under Part 1 of the Act, consultation before formal action is discretionary and formal action is mandatory where Category 1 hazards are present.

The PSH service should avoid informal consultations which cause undue delays, leaving tenants exposed to hazards or informal case management through consultation letters which increase time spent on resolution, multiple visits and possible diminished standards of works that cannot be enforced.

Following the above, this policy gives officers the option should they wish to serve a notice without prior consultation to do so and serve or aim to serve a formal notice regardless of consultation response, (unless hazard reduced/addressed) in the following circumstances:

- If there is more than one Category 1.
- Any single serious (Band A) Category 1.
- Category 1 or 2 hazard(s) requires large scale works to remove in many units i.e. 3 months
- Any Category 1 and vulnerable age group present.
- Fear of retaliatory eviction concerns by tenant*.
- If the property is an unlicensed HMO and subject to other enforcement.
- Any other similar situations as reviewed with managers.

This policy welcomes negotiations and mediation after the notice has been served. With the option to vary if needed.

The Council will always seek to recover full costs as per section 49 of the Housing Act for notices. Any representations in relation to costs will always be considered.

*Retaliatory eviction –only Improvement Notices (Including Suspended Improvement Notices) provide protection under the legislation: Section 33 of The Deregulation Act 2015.

c) Decision to issue or vary a licence for a shortened period

Where the Council is minded to grant a licence there is no prescribed duration period except as far as the legislation sets a maximum licence period of not exceeding 5 years.

In granting a licence the Council will ordinarily do so for the maximum 5-year period allowed by law. However, where evidence exists regarding a ‘person’ and/or a property that gives cause for concern as to the appropriateness of granting a 5-year licence then the Council will instead consider granting a licence for a shortened period of 1 year only. The circumstances that may give rise to such a cause for concern will include, but are not limited to, the following:

- Failure to submit an application when the property has become licensable
- Continuing to let an HMO on an expired licence/ submitting a late application to re-license an HMO ('late renewals')
- Failure to obtain consents or approvals appropriate to the property use (such as for planning or building regulation purposes)
- Applications containing material omissions and inaccuracies, deliberately misleading information, failing to notify relevant parties of an application, or failing to submit timely applications.
- Management deficiencies and failings
- Failing to comply with obligations to tenants
- History of complaints
- Previous formal action
- Compliance issues with previous licences
- Failure to pay relevant charges, fines or penalties to the Council (including Council Tax)

In cases where the above circumstances come to light after a licence has been granted then the licence may be varied to reduce the period. Any decision to issue a licence for one year or vary a licence to reduce the period will be made taking account of the generality and wider context of this enforcement policy statement and will not preclude, or be dependent upon, any other action under this policy. Any proposal to grant a one-year only licence or vary a licence to reduce the licence period will be subject to the statutory consultation process and any representations received will be considered before a final decision is made.

The landlord will need to submit a new licence application on the expiry of a one year or reduced-term licence. However, the grant of a one-year licence will enable the HMO to be legally rented, allowing the landlord in many cases to remedy the issue that gave rise to the shorter-term licence or for a relevant conviction to cease to be a factor justifying a future application resulting in a further shorter-term licence. The issuing of the one-year licence or varying a licence to reduce the licence period will be monitored and re-assessed at the end of the licence period.

To provide additional clarity Appendix B to this enforcement policy sets out circumstances in which there will be a presumption in favour of licences being granted for a one-year period only or varying a licence to reduce the licence period. A licence holder may appeal to the First-tier Property Tribunal to review the council's decision to issue a licence for a shorter term or vary a licence to reduce the licence period.

d) **Decision to refuse to grant a licence**

In determining an application for a licence for a property under Part 2 of Housing Act 2004 the council must decide whether to grant or refuse a licence. Having taken into account the relevant considerations specified in the Act the council may refuse to grant a licence having regards to the following considerations:

- A person involved in the management is deemed to be 'unfit' (unless an appropriate alternative licence holder or manager is identified). The 'Fit and Proper' test is explained in more detail in Appendix C.
- The management arrangements in place are unsuitable. For example, where:
 - the proposed licence holder is unable to comply with all the licence conditions as per certain 'rent to rent' arrangements

- the proposed licence holder lives overseas has not appointed a UK based manager (who agrees to be bound by the licence conditions)
- The applicant has been wilfully evasive or untruthful in their application, for example they have provided a false declaration -
- The applicant has failed to pay the 'Part 2' payment with respect to the licence fee where the second payment has been requested but not received. This is because the Council is unable to determine an HMO licence application until full payment has been received. The council will consider each case on its own merits.

Any proposal to refuse to grant a licence will be subject to the statutory consultation process and any representations received will be considered before a final decision is made.

The Council will adopt a common-sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations.

The applicant/licence holder has the right of appeal to the First-tier Property Tribunal against any refusal to grant a licence.

e) **Decision to revoke a licence**

A licence may be revoked by the council on its own initiative without the agreement of the licence holder. Any decision to revoke a licence (other than by agreement) will be based on all relevant matters that were taken into account when granting the licence and any relevant factors which have occurred since the licence was granted. Particular consideration will be given to whether the current licence holder or manager have ceased to be 'fit and proper' persons (this may include where licence holders/managers have been deemed not 'fit and proper' by other Local Authorities).

Circumstances a licence could be revoked:

- the licence holder or manager (even if not named on the licence) are deemed not 'fit and proper' (see Appendix C Fit and Proper test)
- the licence holder or manager has committed a serious breach, or repeated breaches, of a licence condition or conditions without a reasonable excuse
- the council considers the management of the HMO to be unsatisfactory or the HMO no longer meets the standards required for a licence (judged by the standards applicable at the time the licence was granted unless the standards prescribed in regulations have been revised)

Before revoking the licence, the council must inform the landlord and all other relevant persons that it intends to do so. The provisions for revoking a licence are set out in the Housing Act 2004. The applicant/licence holder has the right of appeal to the First-tier Property Tribunal to review any decision made to revoke a licence.

A person who has been made subject to a Banning Order cannot hold an HMO licence and the Council has a duty to apply to revoke any licence(s) held by them.

Revocation of a licence may result in the need to make an Interim Management Order (IMO) whereby the council will take over management of the HMO. The Council will always consider a 'fit and proper' alternative HMO licence holder being appointed and bound by the licence if appropriate. Our enforcement policy in relation to IMOs states the council will exhaust other enforcement options (e.g. notices and/or prosecution) before proceeding with this action. However, this may not be considered appropriate in the circumstances.

f) **Caution**

There are three preconditions, which must all be satisfied if a matter is to be dealt with by caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits his or her guilt,
- The person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case. However, a caution cannot be conditional on the Council's costs being paid.

g) **Prosecution and Civil Penalty Notice (CPN)**

The decision to proceed with a court case rests with the Council. We will use discretion in deciding whether to bring a prosecution or issue a CPN. Initiating a prosecution or serving a CPN is the most likely outcome where an offence has been committed, and so specific reference is made to the process here.

The decision whether to prosecute should take account of the evidential strength and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. A decision to prosecute/issue a CPN will only be made where there is sufficient evidence to provide a realistic prospect of a conviction and it is in the public interest to do so (See the relevant factors in appendix A). The council will consider a prosecution or issuing a CPN, where following an investigation one or more of the following circumstances apply though this list is not exhaustive as other breaches may warrant prosecution because of all the circumstances of the case:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- a breach which gives rise to significant risk has continued despite representations from tenants and other interested parties;
- a breach which relates to a clear requirement identified in a statutory notice, which if not addressed is likely to recur, or prevents revocation of the notice even if the matter is minor, or which weakens the overall objective of the notice;
- a breach which relates to a failure to provide information requested under Section 16 Local Government (Miscellaneous Provisions Act 1976 or Section 235 Housing Act 2004 which could or will affect the ability of the Council to mount successful enforcement action;
- a breach which relates to a specific local problem of rogue landlord operations/systematic management failures by a landlord or manager.

Camden will always consider enforcement action against directors or officers of companies as well as the company itself. This is particularly the case where there are previous convictions, or the offence is serious or the director/officer is or has been involved with other letting companies. Prosecution of a director/officer will also be considered where for whatever reason the company is at risk of dissolution. In these cases, Camden has to

prove that the offence by the company was committed with the consent or connivance of or was attributable to any neglect on the part of the director/officer.

In deciding whether to serve a CPN or prosecute reference must be made to Chapter 11 and 'Guidance on whether to apply a Civil Penalty Notice or Prosecution'.

h) Prosecutions/Civil Penalty Notices for HMO Regulation Management Offences

The principles in appendix A are to be followed when deciding whether to prosecute for offences. Where contraventions are minor or there are no aggravating factors enforcement staff may send a warning letter asking for contraventions to be addressed by a certain date.

Enforcement staff may decide to prosecute or serve a CPN for minor contraventions where owners and/or agents are engaging in one or more all or some of the following example aggravating factors that affect living conditions and tenant welfare:

- Renting out properties with multiple Category 1 and Category 2 HHSRS hazards
- Unlicensed HMO operation
- Undersize bedsits (e.g. less than 12 sq. meters)
- Undersize bedrooms (e.g. less than 6.5 sq. meters)
- Overcrowding through lack of amenities or numbers alone
- Lack of legal consent under planning and building legislation
- Sub-dividing rooms involving some or all of the above
- Sub-letting chains (with other aggravating factors)
- Cash in hand rents
- Harassment / retaliatory eviction
- Issuing inappropriate licences to occupy or where no written AST is given
- Tenancy Deposit concerns
- Non-compliance with any other statutory notices.
- Trading standards convictions or FPN's.
- Failing to comply with HMO licence conditions and completing works within the requested timeframes on the licence

A prosecution/CPN for offences under the HMO management regulations will be sought where 2 or more of the above practices/circumstances are also evident from inspection/investigation. However, a CPN will also be considered where none of the above are present but the management contraventions pose a risk to tenant health and welfare.

i) Prosecution/Civil Penalty Notices in relation to Unlicensed HMO's (additional and mandatory)

The aim of HMO licensing is to improve standards in the private rented sector. However, the worst conditions will be found in those unwilling to license. Therefore, there will be an enforcement drive to find and tackle these.

Landlords and letting agents/property companies should be aware of local Housing Authority requirements including any sub-letting agents/tenants or online letting agents. In view of the worst conditions will be found in those unwilling to license and that many landlords/agents have been found to be unwilling to apply for a licence until formal action is taken against them the below applies:

- Where there are poor conditions or the tenants' welfare maybe compromised in an unlicensed HMO then the enforcement staff will have discretion to prosecute or serve a CPN regardless of any forewarning given or not.
- Also, where a landlord or agent has applied for a HMO licence following an inspection/complaint or incident this does not necessarily mean that a CPN or prosecution won't still be taken.
- Likewise, if tenant welfare is/was compromised after a licence is applied for, a CPN or prosecution may still be taken.

Additional Considerations Fire Risks arising from External Walls of High and Medium Rise Blocks of Flats

While the wider enforcement policy is still relevant to High and Medium Rise blocks of flats with additional fire risks arising from external walls, each building must be considered on a case-by-case basis. Additional factors to consider include:

- Additional guidance and direction from DLUHC / central government should be taken into account
- This is an area with rapid changes and policy, guidance, options for funding, case law, guidance and understanding of risks are continually evolving
- Investigations and works required in this area are specialist in nature, and contractors with the necessary skills and experience are in high demand. Longer timescales for completion may be necessary
- The Local Authority's enforcement role overlaps with the role of the Fire Brigade and the Building Safety Regulator, and the Council will take their views into account
- Powers arising from the Building Safety Act such as the power to apply for Remediation Orders and Remediation Contribution Orders have significant overlap with powers under the Housing Act 2004. Each case should be considered on its own merits, and where appropriate the Council will consider exercising both functions either as alternative courses of action or simultaneous courses of action, having regard to guidance from DLUHC and evolving case law. Generally, Leaseholders have powers to apply for remediation orders, and we would expect them to exercise these rights on their own behalf but we are happy to support this if possible.
- Where additional risks have been fully investigated, assessed and mitigated on an interim basis, there is good management, and a clear commitment and pathway to full remediation, the Council may allow extended timescales to explore sources of funding, warranty claims etc but this cannot be indefinite. As the need for remediation has been a high profile concern for a number of years, where there has not been considerable progress in assessing and remediating risk it is likely that formal enforcement action will be taken

j) Prosecution in relation to Protection from Eviction Act 1977 offences

The PSH service will investigate all allegations of harassment or illegal eviction carried out by landlords/agents or people acting on their behalf. Sections 1(2) and 1(3) of the Protection from Eviction Act 1977 define the actions which may constitute an offence:

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable

cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

The Council will seek to gather information from both the tenant and the landlord/agent as to whether offences may have been committed. Illegal or unlawful eviction may occur when a landlord/agent or someone acting on their behalf unlawfully deprives a tenant/licensee of all or part of their home or attempts to evict a tenant without following the correct legal process. Information and advice for tenants on what the correct legal process is can be found on [Camden's Private Renters](#) website.

Harassment offences may involve landlords/agents or persons on their behalf:

- Attempting to force tenants out of their home by threatening them
- Forcing tenants to pay money to them
- Constantly calling or messaging tenants
- Turning up at tenants homes without providing the required notice
- Interrupting the electricity or gas supply within the property

The Council will initially attempt to negotiate with landlords/agents in an attempt to resolve the issue. However in the most serious cases or cases where negotiation has failed then the Council will consider instigating legal proceedings. As part of an investigation into any offences the Council may invite the alleged perpetrators to a PACE interview to discuss the allegations and allow the alleged perpetrators an opportunity to provide a response.

6 Publicity

The Council will consider publicising any conviction, rent repayment order, banning order or civil penalty notice which could serve to draw attention to the need to comply with requirements, or deter anyone tempted to disregard their responsibilities under the law enforced. We will seek to ensure all publicity is released on the day of conviction or soon afterwards.

7 Working with other Agencies

Where there is wider regulatory interest, officers usually will refer information received to other relevant regulators. Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement. We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) Government Agencies and Departments, other Local Authorities, Police Forces and Fire Authorities.

8 Rogue landlord databases

To assist other agencies where appropriate and other boroughs we will seek to keep internal local information to address rogue/criminal landlords. We will also support (in partnership with the Greater London Authority) the London Mayor's 'rogue landlord's database for London' and the DLUHC national rogue landlord database. Banning orders (under The Housing and Planning Act 2016) will rely on a database to be effective and ensure convicted landlords (particularly companies and directors) are banned as appropriate.

9 London Landlords Accreditation Scheme (LLAS/ATLAS) or similar such schemes

We recognise that education and the accreditation of landlords and agents can proactively improve standards without the need for enforcement so will seek to refer landlords to the scheme and membership of landlord and agent organisations.

Landlords and agents accredited under this scheme must be fit and proper persons and must comply with a code of conduct. Where we have evidence that an accredited landlord or agent should not be considered fit and proper or that they are failing to comply with the code of conduct we will seek action by LLAS/ATLAS (or other such scheme) that may result in accreditation being withdrawn.

10 Tenant welfare

We recognise that our enforcement can have a knock-on effect on tenants in terms of occupation and displacement. We will liaise with the Homelessness Initiatives Service when required. Where this is the direct result of a prohibition order, support and compensation will be considered. If as a result of improvement notice works, we will suspend the notice.

Where retaliatory eviction is threatened/suspected we will use powers to prevent this. When illegal eviction occurs, we will work with housing colleagues and take this into account when considering the public interest or aggravating circumstances to the PSH intervention taken. Rent repayment orders, when applicable, will be pursued where housing benefits have been paid to the owner and (when there is capacity) tenants will be supported in applying to the First Tier Tribunal for orders. The health benefits from enforcement will be recorded and reported on to show the value of this policy and the team's interventions.

Duties on the tenant and landlord regarding access

We expect landlords to work with tenants and give reasonable notice to inspect, investigate and carry out the works required to remedy issues. If the works cannot be carried out with the tenant(s) in situ then alternative accommodation may have to be provided by the landlord whilst the works are carried out. While we acknowledge that landlords do not have a statutory obligation to re-house tenants during works, they do have a legal duty to comply with any statutory notice once it is operative. If a notice is served and the works cannot be done with the tenants in situ then the tenants should be rehoused to enable compliance with the notice. Failure to re-house tenants will be taken into consideration when we determine the most appropriate course of action if a notice is not complied-with.

It is expected that tenants will give reasonable access to the landlord or their agents to inspect, investigate and carry out the work required. If the landlord claims their efforts are being obstructed by the tenants, the Council will look at the facts of the case and if we believe that works are being unfairly obstructed we may suspend action (whether or not a notice has been served). Where it is alleged that tenants have obstructed access to

carry out works, we will consider the merits of each case individually. Landlords will have to provide robust evidence of their efforts to gain access to carry out works.

For further information on tenant and landlord rights and responsibilities around temporary accommodation during repair works, please see here https://england.shelter.org.uk/housing_advice/repairs/moving_out_during_repairs

Case investigation

The PSH will investigate complaints of disrepair and poor management in private rented accommodation, with the objective to use informal and formal powers to resolve issues raised.

The Council's role is regulatory and we will not, as a matter of course, provide reports regarding the housing conditions or occupation of a property for tenants or a third party. If a tenant requires such a report they should use the services of a private consultant.

11 Council's enforcement policy amendment for civil penalties.

The application of civil penalties extends the scope of the enforcement policy, which will continue to apply to decision making in respect of prosecutions. Guidance states that the burden of proof to levy a civil penalty under the Housing Act 2004 is the same as the burden of proof to mount a prosecution under the Act.

Guidance on whether to apply a Civil Penalty Notice or Prosecution

It is viewed by many London Boroughs and central government that local authorities should be pursuing civil penalties rather than prosecute in general. Guidance leaves it open to the council to develop policy as to when to levy civil penalties and when to prosecute.

The following forms guidance as to when a prosecution will be sought:

- a) Significant suffering of actual harm/injury by the tenant or another victim will indicate that a prosecution should be the preferred option.
- b) The Council will generally prosecute where there is a history of prosecutions against the same person or company or where civil penalties have had no or little effect on compliance for offences in relation to a landlord's other properties.
- c) A difficulty in recovery of a civil penalty may influence the Council with a bias towards prosecution for future offences by the same person or company, or other companies to which the same person is a director. Such as overseas operators or internet based letting agents of no fixed address or legal entity.
- d) Where an offence is ongoing (e.g. HMO licence not applied for, or continual non-compliance of an improvement notice that has been subject to a CPN or previous prosecution)
- e) Where a serious offence has been committed at a number of properties with other aggravating factors (NB: the CPN statutory guidance states that CPN's can be used for repeat offenders).
- f) Where there has been systematic evasion/obstruction, high level of dishonesty, non-cooperation or provided misleading information during the investigation.

Generally, a decision on taking a prosecution or levying a Civil Penalty will be taken on a case-by-case basis.

12 Financial penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016)

The matters set out below are in response to the guidance for local authorities published by the Department of Communities and Local Government in April 2016 and headed Civil Penalties under the Housing and Planning Act 2016.

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local authorities with the power through the creation of section 249A Housing Act 2004 to impose a financial penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under part 2 [section 72]
- Offences in relation to the Selective Licensing of 'houses' under part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]
- Failure to comply with a regulation in respect of an HMO [section 234]

In addition, section 23 Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed in each case in line with its policy.

This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecuting.

12.1 Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016¹. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties.

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a. Severity of the offence. The more serious the offence, the higher the penalty should be.
- b. Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach

¹ CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016: GUIDANCE FOR LOCAL AUTHORITIES

of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

- c. The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d. Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- e. Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f. Deter others from committing similar offences. The fact that someone has received a civil penalty will be in the public domain through the Rogue Landlord Database and it is also 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 authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g. Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

12.2 Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide an indicative 'tariff' under the various offence categories, with the final level of the civil penalty adjusted in each case to take into account other relevant or aggravating factors.

Band number	Severity of offence	Band width [£]
1	Moderate	0-5,000
2		5,001-10,000
3	Serious	10,001-15,000
4		15,001- 20,000
5	Severe	20,001-25,000
6		25,001-30,000

Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

12.3 Failure to comply with an Improvement Notice

Maximum Court fine that can be levied for failure to comply with an Improvement Notice - Unlimited

An Improvement Notice served under part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified category 1 and/or category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more category 1 hazards present.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

A landlord or agent controlling/managing three or less dwellings, who fails to comply with the requirements of an Improvement Notice, would be regarded as having committed a serious band 4 offence, attracting a civil penalty starting at £15,001. The fine will then be adjusted once the aggravating/mitigating features are taken into account (see below).

Aggravating features/factors for failure to comply with an Improvement Notice:

The Council will have regard to the following general factors in determining the final level of the civil penalty:

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous Civil Penalty Notices or successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action such as the dwelling is within an unlicensed s257 HMO or the Electrical Safety Standards
- Harassment of the tenant such as entering without consent, not providing at least 24 hours notice, abuse or attempted illegal eviction.
- Alleged offender obstructing the council from achieving compliance or investigating the offence such as failure to cooperate with s16 and s235 notices or letter of alleged offence or attempting to prevent us from inspecting
- The alleged offender has involved an off-shore holding company with no forth coming information about a UK based manager or the UK based manager has not entered into a dialogue with the council to assist achieving compliance
- The building in which the residence is located is poorly converted with no planning permission or building control approval and no application has been made for retrospective approval to be granted
- The number of residents placed at risk by the offence
- Vulnerable residents in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.

- The existence of multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property
- Failure to observe both the beginning and completion dates towards remedial action.

Mitigating factors

- If the offender is a registered provider (housing association) we will take into account their status as a non-for-profit organisation. A Civil Penalty will only be served on Housing Associations where there has been persistent non-compliance
- The resident in occupation has clearly been obstructive and prevented the works being carried out/completed.
- The offences were rectified swiftly after they were brought to the alleged offenders attention – This is a mitigating factor only but will not prevent enforcement action being taken.
- The alleged offender has cooperated fully with investigation

12.4 Failure to Licence offences

Maximum Court fine that can be levied for failure to license an HMO or Part 3 House – Unlimited

12.5 Failure to license a ‘mandatory HMO’

Under part 2 Housing Act 2004, higher risk HMOs occupied by 5 or more persons forming 2 or more households (regardless of the number of storeys) are required to hold a ‘mandatory’ property licence issued by the local authority. Mandatory HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to license a mandatory HMO as a significant failing; mandatory licensing was introduced by the Government in order to regulate conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Under the Council’s policy, a landlord or agent controlling/managing one HMO dwelling, who fails to license a Mandatory HMO, would be regarded as having committed a serious band 3 offence, attracting a civil penalty of £10,001-£15,000.

A landlord or agent controlling/managing 2-4 HMO dwellings, who fails to license a Mandatory HMO, would be regarded as having committed a serious band 4 offence, attracting a civil penalty of £15,001-£20,000. The fine will then be adjusted once the aggravating/mitigating features are taken into account (see below).

A landlord or agent controlling/managing 5 or more HMO dwellings, and/or who has demonstrated experience in the letting/management of property, fails to license a Mandatory HMO, they would be regarded as having committed a severe offence, attracting a civil penalty starting at £20,000. The fine will then be adjusted once the aggravating/mitigating features are taken into account (see below).

Aggravating features/factors specific to non-licensing offences

- The existence of significant hazards.

- The property is subject to a Prohibition Order or Emergency Housing Act powers had been used against the property.
- The property is a mandatory HMO that is poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded.
- That the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.
- A previous history of non-compliance, irrespective of whether they had been the subject of formal action or not. Examples of previous non-compliance would include previous Civil Penalty Notices or successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations.
- Offence has been on going for over 6 months
- Harassment of the tenant such as entering without consent, not providing at least 24 hours notice, abuse or attempted illegal eviction.
- Alleged offender obstructing the council from investigating such as failure to cooperate with s16 and s235 notices or letter of alleged offence or attempting to prevent council officers from inspecting.
- The alleged offender has involved an off-shore holding company with no forth coming information about a UK based manager or the UK based manager has not entered into a dialogue with the council to assist in achieving compliance.
- The building in which the residence is located is poorly converted with no planning permission or building control approval and no application has been made for retrospective approval to be granted.
- The number of residents placed at risk by the offence.
- Vulnerable residents in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.
- Failure to provide written assured shorthold tenancy agreement where the property is occupied by tenants rather than licencees - [Types of tenancy agreement - Shelter England](#)
- Operation of the HMO is through subletting.
- Absence of basic health and safety requirement such as Gas Safety Certificate and/or Electrical Installation Condition report.
- The failure to license allowed for inner rooms, bunk beds, and lounges to be used undetected.

Mitigating factors:

- The offences were rectified swiftly after they were brought to the alleged offenders attention – This is a mitigating factor only but will not prevent enforcement action being taken. The alleged offender has cooperated fully with our investigation
- Broadly compliant with HMO standards,
- No previous convictions or CPN's.
- Overall condition is satisfactory
- Portfolio/other properties licensed after offence/investigation. Culpability is spread (see below).

12.6 Failure to License- Additional Licensing

Under part 2 Housing Act 2004, properties occupied by 3 or 4 persons forming 2 or more households (regardless of the number of storeys) are required to hold an 'Additional' property licence issued by the local authority. Certain converted blocks of flats are also HMOs which are required to be licensed under the scheme. Additional HMO licensing was introduced to allow local authorities to regulate standards and conditions. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions. Once introduced, additional licensing schemes last for a period of 5 years and schemes can be renewed for a further 5 years. The assumption is properties subject to Additional Licensing (and were required to be so at the introduction of a scheme) should be licensed as soon as possible to enable inspection and follow up action, as appropriate, enforcement and it is imperative penalties reflect that need.

The Council would view the offence of failing to license an Additional HMO as a significant failing; the Additional licensing scheme in Camden has been approved by Cabinet because we have been able to prove that we have a need to regulate housing conditions in these types of properties.

A landlord controlling/managing one HMO dwelling, who fails to license an Additional HMO but the HMO is in good condition and fairly well managed, would be regarded as having committed a moderate offence band 2 offence, attracting a civil penalty starting at £5,001. This is because less risk is posed to tenants when a HMO is small and well managed.

A landlord or agent controlling/managing 2-4 HMO dwellings, who fails to license an Additional HMO, would be regarded as having committed a serious band 3 offence, attracting a civil penalty starting at £10,001. The fine will then be adjusted once the aggravating/mitigating features are taken into account (see below).

Where a landlord or agent controlling/managing 5 or more HMO dwellings, and/or has demonstrated experience in the letting/management of property, fails to license a Additional HMO, they would be regarded as having committed a serious band 4 offence, attracting a civil penalty starting at £15,001. The fine will then be adjusted once the aggravating/mitigating features are taken into account (see below).

Aggravating factors taken into account

- The existence of significant hazards.
- The property is subject to a Prohibition Order or Emergency Housing Act powers had been used against the property.
- The property is a mandatory HMO that is poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded
- Offence has been on-going for over 6 months
- The landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.
- A previous history of non-compliance, irrespective of whether they had been the subject of formal action or not. Examples of previous non-compliance would include previous Civil Penalty Notices or successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations
- Harassment of the tenant such as entering without consent, not providing at least 24 hours notice, abuse or attempted illegal eviction.

- Alleged offender obstructing the council from investigating such as failure to cooperate with s16 and s235 notices or letter of alleged offence or attempting to prevent us from inspecting
- The alleged offender has involved an off-shore holding company with no forthcoming information about a UK based manager or the UK based manager has not entered into a dialogue with the council to assist achieving compliance
- The building in which the residence is located is poorly converted with no planning permission or building control approval and no application has been made for retrospective approval to be granted
- The number of residents placed at risk by the offence
- Vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.
- Failure to provide written assured shorthold tenancy agreement where the property is occupied by tenants rather than licencees - [Types of tenancy agreement - Shelter England](#)
- Operation of the HMO is through subletting
- Absence of basic health and safety requirement such as Gas Safety Certificate and/or Electrical Installation Condition report
- The failure to license allowed for inner rooms, bunk beds, and lounges to be used undetected

Mitigating factors taken into account

- The Offence was rectified swiftly after it was brought to the alleged offenders attention – This is a mitigating factor only but will not prevent enforcement action being taken. The alleged offender has cooperated fully with the investigation. ’
- Broadly compliant with HMO standards,
- No previous convictions or CPN’s.
- Overall condition was satisfactory
- Portfolio/other properties licensed after offence/investigation. Culpability is spread (see below).
- HMO use only started in the last few months.

12.7. Offences in relation to over-occupying a licensed HMO

Section 72(2) of the Housing Act 2004 defines offences in relation to a property being occupied by more households or persons than is authorised by the licence.

Maximum Court fine that can be levied – unlimited

Each HMO licence clearly stipulates the maximum number of persons or households authorised to occupy the property, which is determined with regard to the nature of the occupying group, room sizes and available amenities.

A person commits an offence if he is the person having control or managing an HMO which is licensed who knowingly permits another person to occupy the house and the other persons occupation results in the house being occupied by more households or persons than is authorised by the licence

When determining the level of financial penalty for such offences the Council will have regard to the size of the property and the extent of over-occupation and the length of time for which it has occurred.

12.8 Breach of licence conditions

Maximum Court fine that can be levied for failure to comply with a licence condition – unlimited

All granted property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property, including:

- Undertaking Gas Safe and electrical checks
- Installing and maintaining smoke alarms
- Obtaining tenant references, providing written tenancy agreements and protecting deposits
- Notifying the Council of any specific changes in circumstances
- Carrying out specific measures to prevent or address anti-social behaviour
- Maintaining the property in reasonable repair
- Ensuring that the gardens are tidy and free from refuse
- For HMO, licences granted under part 2, carrying out works that were a condition of the granted licence or reducing occupation levels as necessary

It is important that the manager/licence holder of a licensed property complies with all imposed conditions but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

In determining the level of a civil penalty, the Council will therefore initially consider;

- a) The number and nature of the licence condition breaches; and
- b) The nature and extent of deficiencies within each specified licence condition

Clearly, the circumstances of breach of licence condition offences have the potential to vary widely from case to case but, as a guide:

- A landlord or agent controlling/managing five or less HMO dwellings, who fails to provide tenants with their contact details or fails to address relatively minor disrepair, with no other relevant factors or aggravating/mitigating features to be taken into consideration [see below], would be regarded as having committed a moderate (band 1) offence, attracting a civil penalty starting at £1,000. The fine will then be adjusted once the aggravating/mitigating features are taken into account.
- Where a landlord or agent controlling/managing a six or more HMO Dwellings, and/or has demonstrated experience in the letting/management of property (professional landlord/agent) commits the same offence, they would be

regarded as having committed a moderate (band 2) offence, attracting a civil penalty starting at £5,001. The fine will then be adjusted once the aggravating/mitigating features are taken into account.

- A landlord or agent controlling/managing one HMO dwelling, fails to carry out safety critical works/improvements imposed as a condition of a granted HMO licence, such as installation of an adequate smoke detection system, would be regarded as having committed a serious (band 3) offence, attracting a civil penalty starting at £15,001. The fine will then be adjusted once the aggravating/mitigating features are taken into account.
- A landlord or agent controlling/managing 2-4 HMO dwellings, who commits the same offence would be regarded as having committed a serious (band 4) offence, attracting a civil penalty starting at £15,001. The fine will then be adjusted once the aggravating/mitigating features are taken into account.
- Where a landlord or agent controlling/managing a 5 or more HMO dwellings, and/or has demonstrated experience in the letting/management of property (professional landlord/agent), commits the same offence, they would be regarded as having committed a severe (band 5) offence, attracting a civil penalty starting at £20,000. The fine will then be adjusted once the aggravating/mitigating features are taken into account. .

Aggravating features/factors

- The existence of significant defects
- The property is subject to a Prohibition Orders or Emergency Housing Act powers had been used against the property.
- Offence has been on-going for 6 months or more
- A previous history of non-compliance, irrespective of whether they had been the subject of formal action or not. Examples of previous non-compliance would include previous Civil Penalty Notices or successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations | Harassment of the tenant such as entering without consent, not providing at least 24 hours notice, abuse or attempted illegal eviction.
- Alleged offender obstructing the council from investigating such as failure to cooperate with s16 and s235 notices or letter of alleged offence or attempting to prevent us from inspecting
- The number of residents placed at risk by the offence
- Vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.

Mitigating factors taken into account

- The offences were rectified swiftly after they were brought to the alleged offenders attention – This is a mitigating factor only but will not prevent enforcement action being taken.
- The alleged offender has cooperated fully with the investigation
- No previous convictions or CPN's.

- Overall condition was satisfactory

12.9 Failure to Comply with the Management of Houses in Multiple Occupation [England] Regulations and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Maximum Court fine that can be levied for failure to comply with each individual regulation - Unlimited

The HMO Management Regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers
- Taking safety measures, including fire safety measures
- Maintaining the water supply and drainage
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected
- Maintaining common parts
- Maintaining living accommodation
- Providing sufficient waste disposal facilities

It is important that the manager of an HMO complies with all regulations but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others. Furthermore, and using Regulation 8 of the 2006 regulations as an example, a breach of this regulation could relate to defects to an individual window in one HMO but multiple defects to the structure, fixtures & fittings in number of rooms in a second HMO.

In determining the level of a civil penalty, the Council will therefore initially consider;

- a) The nature of the management regulation breaches; and
- b) The nature and extent of deficiencies within each regulation

Clearly, the circumstances of HMO Management Regulation offences have the potential to vary widely from case to case but as a guide:

- A landlord or agent controlling/managing less than 5 HMO dwellings, who fails to display a notice containing their contact details or fails to address relatively minor disrepair, would be regarded as having committed a moderate (band) 1 offence, attracting a civil penalty starting at £1,000. The fine will be adjusted once aggravating/mitigating features are taken into account.
- Where a landlord or agent controlling/managing a 5 or more HMO dwellings, and/or has demonstrated experience in the letting/management of property (professional landlord/agent) commits the same offence, they would be regarded as having committed a moderate (band 2) offence, attract a civil penalty starting at £5,001. The fine will be adjusted once aggravating/mitigating features are taken into account.
- A landlord or agent controlling/managing one HMO dwelling, who fails to maintain fire alarms in working order, to maintain essential services to an HMO or allow an HMO to fall into significant disrepair, would be regarded as having committed a serious (band 3) offence, attracting a civil penalty starting at £10,001. The fine will be adjusted once aggravating/mitigating features are taken into account.

- Where a landlord or agent is controlling/managing 2-4 HMO dwellings, commits the same offences, they would be regarded as having committed a serious (band 4) offence, attracting a civil penalty starting at £15,001. The fine will be adjusted once aggravating/mitigating features are taken into account.
- Where a landlord or agent is controlling/managing 5 or more HMO dwellings, and/or has demonstrated experience in the letting/management of property (professional landlord/agent), commits the same offences, they would be regarded as having committed a severe (band 5) offence, attracting a civil penalty starting at £20,001. The fine will be adjusted once aggravating/mitigating features are taken into account.

Aggravating features/factors

- A previous history of non-compliance, irrespective of whether they had been the subject of formal action or not. Examples of previous non-compliance would include previous Civil Penalty Notices or successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations
- Irrespective of whether they had been the subject of formal action or not. Examples of previous non-compliance would include previous Civil Penalty Notices or successful prosecutions [including recent convictions that were 'spent'], works in default of the land, Harassment of the tenant such as entering without consent, not providing at least 24 hours notice, abuse or attempted illegal eviction.
- Alleged offender obstructing the council from achieving compliance or investigating the offence such as failure to cooperate with s16 and s235 notices or letter of alleged offence or attempting to prevent us from inspecting
- The alleged offender has involved an off shore holding company with no forth coming information about a UK based manager or the UK based manager has not entered into a dialogue with the council to assist achieving compliance
- The building in which the residence is located is poorly converted with no planning permission or building control approval and no application has been made for retrospective approval to be granted
- The number of residents placed at risk by the offence
- Vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.
- The existence of multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property

Mitigating factors

- The offences were rectified swiftly after they were brought to the alleged offenders attention – This is a mitigating factor only but will not prevent enforcement action being taken.
- The alleged offender has cooperated fully with our investigation
- No previous convictions or CPN's.

- Overall condition was satisfactory

12.10 Failure to Comply with a Banning Order

Maximum Court fine that can be levied for failure to comply with a Banning Order – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

12.11 Splitting fines – Companies and directors (all HA offences)

Fines may be split in varying degrees between directors and the company when the director or directors of the company are significant shareholders. The degree to which this occurs may be related to the level of shareholding and other factors.

13 Process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty on a person, the Council will give the person notice of the authority's proposal to do so [a 'Notice of intent']

As the burden of proof is the same as for undertaking a prosecution the case officer may consider it necessary to send a letter of alleged offence, or undertake a PACE interview, prior to the service of the notice of intent. Officers may also request information including the requisition of documentation under Section 235 Housing Act 2004 and information under section 16 of the Local Government Miscellaneous Provisions Act 1946

A person who is given a notice of intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28-day period, this period starting the day after the date on which the Notice of intent was given

After the end of the period for representations the Council will—

- (a) Decide whether to impose a financial penalty on the person, and
- (b) If it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

If the Council decides to impose a financial penalty on the person, it will give the person a notice (a “final notice”) imposing that penalty.

The final notice will set out—

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,
- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

14 Policy Guidance on Housing Act penalties- the rationale

The policy provides guidance to front line enforcement officers and their managers and sets out the rationale for the level of fines levied, to other interested parties. It aims to provide some consistency of judgement so that the initial fine set at the notice of intention stage gives similar penalties for similar levels of seriousness and/or size of organisation.

The policy or guidance was derived from the early-stage draft guidance or policy prepared by those local authorities who had already given detailed consideration to the needs of legislation and Government guidance. We selected what we considered the best approach made some amendments and utilised it to guide the Council.

The policy or guidance is intended to be flexible and capable of amendment as the Council gains experience in the correct levels of penalty to be levied. These will be influenced by a variety of areas including tribunal decisions, especially higher-level tribunals, the courts, comments in representations received, and experience in other local authorities.

Basing penalty levels on known court fines and costs is subject to considerable variation across London and sentencing fails to provide a suitable basis for the levels of penalty considered in this guidance.

The Council has gained experience of the levying of penalties through the Estate Agents and Letting Agents Redress Schemes, and the issue of fees under Consumer Protection legislation. Government guidance for this legislation identifies the need to charge the maximum £5,000 for some penalties which are levied for breaches, which are technical and have a mainly financial consequence. Whereas failure to license or fail to comply with improvement notices under the Housing Act for example, has the potential to cause ill health, injury or death. A failure to license an HMO, whilst apparently procedural and technical in nature, has the potential to evade the detection of very poor living conditions. We consider amongst rogue landlords there will be a more determined effort to avoid licensing, and many landlords have neglected to apply for an HMO licence under the Additional HMO Licensing Scheme when required in November 2015.

The maximum penalty available reflects the increased risk to health than is relevant to Trading Standards penalties. Thus, there is more capability for penalties to reflect the size and culpability of an organisation and the potential effects of non- compliance.

This is why the policy has a clear method of ranging penalties from a low level to the highest level.

Rents charged in the London Borough of Camden are amongst the highest in London and the UK. Government guidance suggests penalties should have a deterrent effect on landlords to prevent further offending. The council considers that penalty levels should reflect this. However, the council also considers that some landlords may face hardship if debt levels are high which may in turn affect the landlord's ability to fund works of improvement. The process of representation offers the landlord the opportunity to set out their financial circumstances and for the council to fix a lower penalty according to circumstances. This has been tested and achieved with estate and letting agents.

In some cases, it may be necessary to take into account other ongoing cases i.e. raiding 3 flats same day/week all belonging to same landlord, it would be reasonable to lower some fines, this depends on the totality principal and the application of aggravating factors.

15. Civil Penalty Notices and discount

The Council will automatically apply a 15% discount if full payment for a final Civil Penalty Notice is made within 28 days.

- A discount of **15%** will be deducted from the penalty imposed in the Final Notice if payment is received by the Council within **28 days of the notice being issued**.
- If full payment is not received within the 28 days, the original financial penalty amount will be applicable.
- Confirmation of payment must be provided to the case officer.

Appendix A

Factors to be considered

In assessing if enforcement action/prosecution is necessary and proportionate (i.e. in the public interest), consideration will be given to:

- the seriousness of compliance failure;
- the degree of risk from the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused;
- views of any victim/injured party, financial gain or benefit from non-compliance;
- the general co-cooperativeness of the offender;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender;
- the likely effectiveness of the various enforcement options;
- any relevant legislative provisions, policy or legal official, professional guidance or advice;
- Blatant or reckless disregard for the law, poor management;
- Whether a conviction is likely to result in a significant sentence;
- the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. illegal eviction or harassment under Landlord and tenant Act);
- the defendant has previous convictions or cautions which are relevant to the present offence;
- the offence, although not serious in itself, is widespread in the area where it was committed;
- an officer has been obstructed;
- the cumulative effect of such breaches would be serious even if the breach in itself was not; or the cumulative effect of other offences, bad management
- A prosecution will have a significant deterrent effect;

Appendix B

Examples of circumstances that give rise to a presumption in favour of HMO licences being granted for a reduced period or varying a licence to reduce the licence period.

- Deliberately providing false or misleading information in a licence application
- Where the licence is a renewal and the works required on a previous licence have not been carried out
- The re-letting of rooms which had been given a “zero” occupancy on the previous licence.
- Failing to notify relevant parties of an application
- Failure to submit applications when the property has become licensable
- Submitting late applications to re-license a property ('late renewals')
- Underlying conduct leading to convictions/CPNs in respect of more than one property
- Alterations to properties or subdivision of rooms without appropriate consents or approvals
- Failure to possess a current Electrical Installation Condition Report
- Failure to ensure Electrical Installation Condition Reports are obtained from suitably qualified contractors who are registered with a competent person scheme specifically for the purposes of undertaking inspection and testing
- Failure to remedy items listed within an Electrical Installation Condition Report as being 'danger present' or 'potentially dangerous' or to undertake any further investigation required without undue delay
- Failure to possess a current gas safety certificate or failure to remedy defects listed within a gas safety certificate
- Defective doors and windows
- Failure to protect a tenant's deposit in a government-approved tenancy deposit scheme
- Failure of the property manager/letting agent to belong to a property redress scheme as required under housing law
- Significant and/or numerous items of disrepair found at the time of inspection, *examples of such disrepair often found during our licensing inspections include:-*
 - *Defective fire alarms*
 - *Damaged doors or frames, or latches that do not properly engage their keeps, or, where fitted, self-closing devices that do not engage the door's latch to its keep or missing intumescent strips and smoke seals*
 - *Ill-fitting windows, or broken glazing, or windows having broken sash cords or perished glazing putties or are otherwise defective*
 - *Broken or loose electrical fittings*
 - *Defective mechanical extract ventilation*
 - *Broken, loose or missing handrails and balusters to stairs*
 - *Excessively worn, torn or loose stair carpeting*

It is accepted that things may break – what we do not expect to find during our inspection is evidence of lots of things that are broken or have clearly been so for a long time - If we do then it is likely that a licence will be limited to one year only.

Appendix C

The fit and proper test

Before granting, refusing to grant or revoking a licence, the council assesses the proposed licence holder and anyone else involved with the management of the property against 'Fit and Proper' person criteria. This requirement is to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO, and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

In applying the 'Fit and Proper' person test, the Council must have regard to a range of relevant factors, including any wrongdoings of the person concerned, such as ~~where~~ whether they have:

- committed any offence involving fraud or other dishonesty, violence or drugs and certain types of sexual offences;
- practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability, in connection with the carrying out of business;
- contravened any provision of housing or landlord and tenant law;
- had a licence refused, or have been convicted of breaching the conditions of a licence under Part 2 the Act;
- owned/managed a property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004;
- owned/managed a property that has been the subject of any enforcement action under the housing health and safety rating system (HHSRS) in part 1 of the 2004 Act or the HMO management regulations.

In addition, the Council may also take into account whether any person associated or formerly associated with the proposed licence holder or manager has done any of these things, if it considers this information relevant.

The council's general approach is to consider the nature of any conviction or housing law contravention, their relevance in connection with the management of an HMO, and the potential harm associated with the contravention. Convictions relating to fraud, operating an unlicensed HMO, or posing a risk to the welfare or safety of tenants, are likely to be relevant in determining 'fit and proper'. A landlord who has criminal convictions for harassment and/or illegal eviction is unlikely to be deemed 'fit and proper'. A conviction based upon the existence of a significant hazard may indicate a landlord's failure to properly manage health and safety. An administrative or technical breach of a provision is unlikely to carry any significant weight in determining 'fit and proper' status. Multiple offences or a series of offences over time may however demonstrate a pattern of inappropriate behaviour, which is more likely to lead the Council to conclude that someone is not fit and proper.

More than one contravention or conviction will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious.