

REIGATE & BANSTEAD BOROUGH COUNCIL

HOUSING ENFORCEMENT POLICY

Background

This Housing Enforcement Policy should be read in conjunction with the main Environmental Health and Licensing Enforcement Policy. This additional policy covers in greater depth the issues and options available for enforcing housing legislation, than is appropriate for the general service policy regarding enforcement.

Introduction

Enforcement of housing standards, primarily in the private rented sector, is one of the statutory functions of the Environmental Health and Licensing Service ('Environmental Health'). The service seeks to minimise the risks to human health and the environment for the people of Reigate and Banstead from unsatisfactory housing conditions, with the ultimate aim of ensuring:

- (a) a private sector housing stock that is sound and whose condition does not endanger the health and well-being of its occupants or visitors.
- (b) rented housing that is properly managed and maintained

It is recognised that while there are many responsible landlords and letting agents, the Council has a vital role to play in tackling criminal and irresponsible landlords and preventing them from profiting from their non-compliance.

In order to regulate private sector housing, officers will conduct inspections of properties and investigate complaints of disrepair. This will be achieved by requesting information, carrying out inspections, processing licence applications, encouraging and promoting good practice, providing owners and landlords with advice and information, investigating possible offences and, where appropriate, taking enforcement action and prosecuting offenders.

Aims and Principles of The Housing Enforcement Policy

The overall aim of the housing function is to raise standards in the private sector housing stock. This benefits the health and wellbeing of Reigate & Banstead Borough Council residents and helps maintain the housing stock for future generations.

The principles of the Housing Enforcement Policy are to ensure that:

- Tenants of private landlords and registered providers of social housing live in homes that are free of unacceptable hazards and risks to their health and safety;
- Houses in Multiple Occupation are safe, well managed and all relevant Management Regulations are adhered to;

- Licensable Houses in Multiple Occupation are licensed and licensing conditions are met;
- Privately owned property and land does not present a statutory nuisance to other land owners, is not detrimental to the amenity of the area, does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
- The Council meets its statutory obligations in relation to private housing.

This Enforcement Policy provides an overview of the broad principles and processes with which the Council will seek to comply when taking action to ensure that all private sector housing in the borough is healthy, well managed and safe. It should be read in conjunction with the Environmental Health and Licensing Enforcement Policy, which sets out how the Council will follow the principles of good enforcement.

Determining the Appropriate Action

All types of enforcement action will be based upon an assessment of the risk to public health and the environment, caused by non-compliance with the legislation. Any enforcement action chosen by the officer will be governed by the principles of consistency, proportionality, fairness and transparency.

Where consideration is being given to a sanction for serious non-compliance, a Sanctions Panel will usually be convened to decide on the most appropriate action. The Panel will include the investigating officer/s for the case, the Environmental Health Team Leader and the Environmental Health Manager. A member of the Council's Legal Team may also be asked to participate.

In cases where consideration is being given to prosecution or administration of a Simple Caution, or in the case of certain specified Housing Act 2004 offences the administration of a civil financial penalty, the Environmental Health Enforcement Decision Matrix will be used to help reach a conclusion. A copy of this is attached as Appendix B to this Enforcement Policy. The Decision Matrix will be used in conjunction with a Sanctions Panel being convened.

A written record of the decision and factors considered in making it will be made and kept in the case file.

Authorised Officers

All authorised officers of the Service will abide by this enforcement policy when carrying out their enforcement duties and shall receive relevant training to enable them to do so.

Action can only be taken by officers who are specifically authorised under the Council's Scheme of Officer Delegation. This will only be those who are competent by training, qualification and / or experience. Authorised officers will also have sufficient training and understanding of the team's procedures to ensure a consistent approach

to service delivery.

Relevant visits made under the Housing Act 2004, will also be subject to individual authorisation, as required by Section 239 of the Act.

The 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 a risk to the health of the occupants, in relation to a particular hazard type. Hazards are categorised dependent on the degree of risk, into two types:

Category 1 hazards represent a serious danger to health and the Council has a *duty* to take appropriate action to see these hazards reduced.

Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council has *power* to reduce category 2 hazards through appropriate action.

Much of this enforcement policy relates to enforcement work under the Housing Act 2004. Other pieces of legislation will be used as appropriate and most of these are listed later in this document.

Inspection

Dwellings may be inspected both reactively (in response to a request or complaint) and potentially proactively based on risk and intelligence. Where there is reason to believe a hazard may exist, but access is denied or prior warning would defeat the purpose of the inspection, the Council can apply to the Magistrates Court to obtain a warrant to enter a property without prior notice and using force if necessary.

The inspection may be limited to that part of the property where the Officer has reason to believe there may be a problem, but may extend to the whole of the property, common parts and any gardens, garages and yards.

Tenure

The Housing Health and Safety Rating System (HHSRS) outlined above applies to all tenures of housing. Furthermore, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Social Housing Provider. Generally, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not usually able to do so.

For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

Owner-Occupiers

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

- Vulnerable elderly people who are judged incapable of making informed decisions about their own welfare
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- Hazards that might reasonably affect persons other than the occupants
- Serious risk of life-threatening harm such as electrocution or fire

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant social care authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

Social Landlords

Housing Providers exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by the Homes and Communities Agency (HCA). 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 not normally take formal action against Housing Providers unless:

- 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

If the Council determines that it is appropriate to take action, it will then normally notify the Housing Provider that a complaint has been received and/or a hazard identified and seek the Housing Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action and will then determine which of the available enforcement options is the most appropriate, considering the facts of the case.

Private Landlords

The Council will have regard to the principles of statutory guidance and relevant guidance from the First-Tier Tribunal (Property Chamber) ('FTT') decisions and will seek to proceed in accordance with the Enforcement Options set out below in this policy.

Landlords are expected to either:

- Provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or
- To ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council

The failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

Shared Enforcement Responsibilities

In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies, for example Surrey Fire and Rescue Service. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

Prior to Enforcement

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. 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, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment / threatened eviction / poor management practice;
- where the tenant is old and frail or otherwise vulnerable, e.g., where the tenant's first language is not English and this is likely to cause them difficulty;
- where the tenant could not for some other reason be expected to contact their landlord / managing agent;

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

Enforcement Options

Once a property has been inspected, officers will identify the hazards found and calculate the risk score using HHSRS. They will then consider what action needs to be taken to reduce the risk. In deciding the most appropriate type of action to be taken, they will consider:

- the number and type of category 1 and 2 hazards
- the vulnerability and personal circumstances of the current occupiers
- In the case of HMOs, whether they are licensable or not, the number of households in residence, any overcrowding, poor management and/or risk from fire.

The actions can be broken down into 'informal' and 'formal' action (see below).

(a) No Action

Where no action is possible or the general principles for enforcement action lead the officer to determine that no action should be taken by the Authority, customers will be given advice on ways that they can deal with the matter themselves by taking their own legal action or other means. These include:

- Referral to Thames Water in the case of Public Sewers
- Referral to a solicitor in relation to potential action under section 11 of the Landlord and Tenant Act 1985.

In cases that fall outside our legislative remit no other action will be taken.

(b) Informal Action

Informal action includes offering advice or sending a written request for action within a specified time.

It is usual that the person responsible for remedying any defects will already have been notified of these by the tenants and the officer must have notified them of their intention to inspect if enforcement action is to be taken. This allows the responsible person an opportunity to act to resolve the defects before any formal inspection.

It is also usual that the responsible person will be present during the inspection. If they are not, officers can contact them afterwards then discuss the defects and agree timings for resolution if appropriate.

Action taken by the responsible person will be monitored. If an informal approach does not result in the hazard being appropriately remedied in a timely manner, formal action will be taken.

Depending on the hazard and the potential harm to the occupant it may be appropriate to take formal enforcement action immediately.

It should be noted that in view of the provisions enacted by the Deregulation Act 2015 Section 33 governing retaliatory eviction of tenants who have made complaints about their accommodation, where a landlord has been made aware of deficiencies by a tenant, and his inadequate response or failure to respond results in the involvement of the Council, it is appropriate that if Category 1 and 2 hazards are identified under the Housing Act 2004 that formal enforcement notices are served.

This is to ensure tenants receive the protection from retaliatory eviction provided by the Deregulation Act 2015. This protection applies when a tenant has made a genuine complaint about the condition of their property that has not been addressed by their landlord, and their complaint has been verified by a local authority inspection, which then results in service of either an improvement notice or a notice of emergency remedial action. Under these circumstances, a landlord cannot evict that tenant for 6 months using the 'no-fault' eviction procedure (a section 21 eviction).

(c) Formal Action

The Council has a duty to take appropriate action where Category 1 hazards are present, which means it may be necessary to proceed straight to formal action without an informal stage.

We may also proceed directly to formal action where the informal stage is considered as having been the period of time prior to the inspection, when the responsible person could have rectified the defect and negated the need for Council involvement.

The Council will take appropriate emergency enforcement action where the property poses an imminent risk to health or safety of the occupants or others directly affected by it.

The Council will take the most appropriate enforcement action in accordance with this Policy.

Statutory Notices

Formal action will usually involve the serving of statutory notices. Most notices served require the recipient to commence and complete remedial works within specified time limits.

Under the Housing Acts, the following enforcement actions are available to the Council when considering the most appropriate course of action:

- Serve an **Improvement Notice** or **Suspended Improvement Notice**;
- Make a **Prohibition Order** or **Suspended Prohibition Order**;
- Serve a **Hazard Awareness Notice**;
- Make a **Demolition Order**;
- Declare a **Clearance Area**;
- Make an **Interim or Final Empty Dwelling Management Order**
- Take **Emergency Remedial Action** (Category 1 Hazards only);
- Make an **Emergency Prohibition Order** (Category 1 Hazards only);
- Serve an **Overcrowding Notice**.

Officers will use the Housing Health and Safety Rating System Enforcement Guidance

(published by the ODPM, February 2006) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf) in determining the most appropriate course of action from the above list and will adhere to the relevant consultation requirements set out on the legislation for taking into account the views of occupiers and owners and other stakeholders.

Housing Act 2004 Notices and Orders come complete with a 'Statement of Reasons' explaining why one type of enforcement action was taken rather than another. Officers will be willing to discuss the works specified in the notice, the reason for serving the notice and any alternative remedy the recipient may propose.

Certain Notices can be suspended, such that a specified time period elapses or specified events occur (or do *not* occur) before the suspended notice comes into operation.

Not more than one course of action can be taken at a time for the same hazard (unless it is an emergency action) but alternative action can follow if one of the actions taken has proved unsuccessful. Emergency procedures cannot be used for category 2 hazards.

Where a Notice is served and there is a change in ownership of the property, the notice can be enforced on the new owner or recipient. However, any outstanding liabilities such as fines or costs remain with the original owner or recipient of the notice.

There are statutory rights of appeal against Notices, Orders and associated decisions made by the Council. Appeals against enforcement action are made to the First Tier Tribunal (Property Chamber) ('FTT'). The FTT may confirm, quash or vary a Notice, Order or decision. Details of these rights and information about where to make an appeal are contained within the notes (usually on the rear) of any Notices or Orders served.

Charging for Enforcement Action

Where the Council takes formal action and has the power to make a charge for the action (for example when taking certain action under the Housing Act 2004) a charge for enforcement can be made.

The fundamental principal in making a charge for service of a formal enforcement notice is that it should recover the cost of Council's time in investigating and assessing the issues resulting in service of the notice. The default expectation on all responsible for property standards i.e. landlords or owners, is that their properties will comply with minimum legal standards and that the Council's involvement to enforce standards is a last resort. Inspections will in most cases be advised in advance and the responsible person will have had every opportunity to rectify issues without the need for the Council to become involved. It is therefore not unreasonable that those who require intervention should bear the costs of the Council's time in having to do so.

The following types of notice will therefore result in a flat rate charge of £450 per notice or order:

Housing Act 2004:

- serving an improvement notice under section 11 or 12
- making a prohibition order under section 20 or 21

- taking emergency remedial action under section 40
- making an emergency prohibition order under section 43 or
- making a demolition order under section 265 of the Housing Act 1985

Mobile Homes Act 2013:

- Compliance Notices under section 4

The charge is based on officer time needed to take enforcement action, and is calculated on a cost recovery basis, as is the default in the Council's Policy on Fees and Charges.

Additional costs would be charged for external contractors providing specialist assessments e.g. Electrician report in order to determine what remedial action is required in order to take enforcement action.

Enforcement charges will be reviewed annually as per the Councils fees and charges setting process.

Where the Council takes enforcement action under the Housing Act 2004 in respect of more than one HHSRS hazard and serves more than one notice or order, a separate charge for enforcement action will apply to each notice or order served.

Where appropriate, hazards may be combined on one notice or order if the remedial works are similar to reduce the hazards.

It may also be appropriate where a number of notices or orders are served for legal reasons (for example, subsequently being able to carry out works in default) that the Council decides it appropriate not to charge for all notices served.

Enforcement Action Thresholds

The Council uses the following threshold values to guide decisions as to the initial enforcement expectation, depending on the hazard score. These are internal guidelines only and are not based in legislation or statutory guidance.

	Vulnerable age group in occupation	No vulnerable age group in occupation
Category 1 Hazard		
Score >1000	Formal action / improvement notice	Formal action / improvement notice
Category 2 Hazard		
Score 500-999	Formal action / Hazard awareness notice	Formal action / Hazard awareness notice
Score <500	No Action	No Action

In exceptional circumstances however, all types of enforcement action will be considered.

Where the hazard score results in no action, the occupier or tenant will be advised of any other action that may be available to them to deal with the issues that are of

concern to them. Such advice will be confirmed by letter and copied to the responsible person for information.

Types of Statutory Notices

(a) Improvement Notices

In the vast majority of cases properties are in such a condition that they can be repaired or improved rather than demolished or closed and so improvement notices are likely to be a common type of enforcement for category 1 hazards. The service of a notice will seek to reduce a category 1 hazard to a category 2 hazard or else to remove it entirely.

An improvement notice will specify the following information:

- which category of hazard it relates to
- the nature of the hazard and the premises / property on which it exists;
- the deficiency giving rise to the hazard;
- the premises and nature of remedial action required;
- the date by which remedial action is to be started, (not less than 28 days);
- the period in which the remedial action is to be completed;
- notes in respect of the right of appeal.

An improvement notice will be revoked when it is complied with and may be varied by agreement.

(b) Suspension of an Improvement Notice (or a prohibition order see below)

An improvement notice would normally become operative 21 days after service and a prohibition order after 28 days. However both may be suspended. The notice may specify an event that triggers the end of the suspension, such as:

- non-compliance with an undertaking
- a change of occupancy

Suspension may also be appropriate where the hazard is not sufficiently minor to be addressed by a hazard awareness notice but the current occupiers are not members of a vulnerable age group. Consideration will also be given to the turnover of tenants at the property. Typically the activation of a suspended notice would be a change of occupancy, where an occupier is replaced by one who is of the vulnerable age group. The notice will require the owner or landlord to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

Consideration will be given to any request by the tenant to suspend the notice or replace the action by the issue of a hazard awareness notice where the works are likely to affect that tenants' health. All suspended notices and orders will be reviewed every 12 months or earlier as deemed to be appropriate.

(c) Prohibition Orders

A prohibition order may be used for either a category 1 or 2 hazard. It may prohibit the use of a part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order will specify the following:

- whether it relates to a category 1 or 2 hazard;
- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises and prohibitions which are imposed;
- any remedial action that would result in the order being revoked. (An order becomes operative 28 days after it is made);
- notes in respect of the right of appeal.

A prohibition order will be revoked if the Council is satisfied that the hazard to which it relates no longer exists.

This action will be considered:

- where the conditions present a serious threat to health or safety of the occupants;
- where remedial action is considered unreasonable or impractical for cost or other reasons e.g. where the remedial works cannot be undertaken with the tenant in occupation;
- to prohibit the use of the dwelling or part of the dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others: The specific group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children;

Regard will be had to the following matters when considering serving a prohibition order:

- the risk of exclusion of vulnerable people from the accommodation;
- whether the building is listed;
- the position of the premises in relation to neighbouring buildings;
- irrespective of any proposals the owner may have, the potential alternative uses of the premises
- any conservation or renewal area and any general proposals for the area
- the effect of complete prohibition on the well-being of the local community and the appearance of the locality
- the availability of local accommodation for re-housing any displaced occupants
- whether it is appropriate to offer financial advice or assistance

(d) Hazard Awareness Notice

Category 2 hazards i.e. a score of less than 500 will usually result in no action or the potential for a hazard awareness notice (HAN) being served. This will draw the attention of the person responsible to the desirability of remedial action. There will be no requirement to carry out the recommended works. No informal action will be taken prior to the issue of a HAN.

A hazard awareness notice will specify:

- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises on which the deficiency exists;
- the reasons for deciding to serve the notice, including the reasons for deciding

that serving the notice is the most appropriate course of action;

- the details of any remedial action, which the Council considers, would be practical and appropriate to take.

The advisory nature of the notice may result in monitoring of any premises to ascertain if works have been undertaken. The service of a hazard awareness notice will not prevent further formal action.

(e) Emergency Remedial Action/ Emergency Prohibition Order

The Council can take emergency enforcement action for hazards which present an imminent risk of serious harm to occupiers or visitors to residential premises. This action will only be taken in exceptional circumstances and will require the following:

- The existence of a Category 1 hazard
- that the hazard presents an imminent risk of serious harm to the health and safety of the occupiers or visitors

The Council can take emergency remedial action to remove the hazard and recover reasonable expenses, or immediately prohibit the use of all or part of the property. There are appeal provisions, but any appeal will not prevent any remedial works being undertaken or an emergency prohibition order being made.

A notice or order will be served within seven days of emergency action being started. This will state:

- the nature of the hazard and the premises / property which it exists;
- the deficiency giving rise to the hazard
- the premises and nature of remedial action required;
- the power under which the remedial action has been (or is to be) taken;
- the date when the remedial action was (or is to be), started.
- notes in respect of right of appeal

(f) Demolition

Where a Demolition Order is used, the Council will assist in the re-housing of the occupants who are displaced. The Council will consider the following matters in reaching a decision on making a demolition order:

- the availability of local accommodation for re-housing occupants
- the demand for, and the sustainability of the current accommodation if the hazard were remedied;
- the prospective use of the cleared site;
- the local environment, the suitability of the area for continued residential use and the impact on the area of the cleared site.

A demolition order may be replaced with a prohibition order if proposals are submitted for the use of the premises for use other than human habitation.

(g) Clearance Areas

Clearance is unlikely to be the most viable option in most cases. However the following matters would be taken into account in reaching a decision on the most appropriate

action.

- the likely long term demand for residential accommodation;
- the degree of concentration of dwellings containing serious intractable hazards;
- the density of buildings and street pattern around which they are arranged;
- the overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands;
- the proportion of dwellings free of hazards and other, non-residential, premises in sound condition which would also need to be cleared to arrive at a suitable site;
- whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether added land can be acquired by agreement with the owners;
- the existence of any listed buildings;
- the results of statutory consultation;
- the arrangements necessary for re-housing the displaced occupants and the extent to which occupants are satisfied with those arrangements;
- the impact of clearance on, and the scope for relocating, commercial premises;
- the suitability of the proposed after-use(s) of the site having regard to its shape and size, the needs of the wider neighbourhood and the socio-economic benefits which the after-use(s) would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.

Houses in Multiple Occupation (HMO)

HMOs are higher risk than single family homes, and so the conditions, facilities and management are more closely regulated. Some HMOs are subject to mandatory HMO licensing.

Since October 2018 HMO licences have been required for all HMOs that are occupied by 5 or more persons forming more than one household who are sharing facilities. Prior to this time mandatory licences were only required for HMOs meeting the above criteria and being of three or more storeys in height.

The responsibility for licensing rests with the person having control of, or the person managing, the property. This is the owner, or the person who lets the property out and collects rents. Prospective HMO licence-holders must complete an application form, supply various documents and pay their licence fee.

The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

The Council will consider the application and a licence will be granted if:

- The house is reasonably suitable for occupation by not more than the maximum number of households or persons specified in the licence, or can be made so suitable by the imposition of conditions of the licence; and
- The proposed licence holder and manager of the house are fit and proper persons; and
- The proposed management arrangements for the house are satisfactory

The Council may also:

- Refuse a licence
- Revoke a licence
- Vary a licence
- Refuse to vary a licence

Inspections are part of the licensing process and may happen at any time during the lifetime of the licence. Inspections will check that the information provided in the application form was correct, that no Category 1 hazards exist at the property and that the maximum numbers specified by the licence are adhered to and that there is compliance with the conditions imposed by the licence. Inspections will normally be by appointment but may be made without notification at any reasonable time.

Licences are issued for a five-year period and a new licence should be applied for at least two months before the end of that period to ensure continuity.

The Council charges for HMO Licences are set out on the Council website. HMO licence fees are set to fully recover the Council's costs involved in carrying out the licensing function.

The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of licence condition
- Supplying incorrect information in a licence application

Where an unlicensed HMO is suspected by the Council or identified via other intelligence, the landlord will be contacted and prompted to make a valid licence application and pay the fee.

If the landlord does not make a valid application within a reasonable time, typically 28 days, and investigation undertaken confirms that a licence is required, the Council may instigate prosecution proceedings or issue a Civil Financial Penalty, as determined appropriate based on the circumstances of the case. The officer time required to obtain evidence of the need for a licence will be added to the investigative costs element of the Civil Financial Penalty if this is the chosen formal route.

If a landlord of an unlicensed HMO proactively approaches the Council for licensing and fully cooperates with the process, including addressing any management, safety or amenity issue within an agreed timescale, the licence will be processed, and the Council would not normally take enforcement action in respect of their not having previously applied for a licence. All cases are however subject to individual circumstances and in each case, action will be decided based on the particular circumstances of the case.

Management of Houses in Multiple Occupation

All identified hazards and breaches of the relevant HMO Management Regulations in any HMO, whether licensable or not, will be dealt with in accordance with the enforcement approach set out in the main body of this policy.

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on managers of Houses in Multiple Occupation (HMOs) in respect of the repair, maintenance, cleanliness and good order of the house and the facilities and equipment in it. A person who fails to comply with these Regulations commits an immediate offence under section 234(3) of the Housing Act 2004, punishable on summary conviction with an unlimited fine or the imposition of a civil penalty of up to £30,000.

Although no enforcement notices can be served under these regulations, an informal attempt to secure compliance by the landlord will normally be made before deciding on prosecution or issue of civil penalty as a course of action, for example initially sending a letter to require works.

Temporary Exemption Notice

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. A second three month TEN can be served in exceptional circumstances. A TEN may be served where an owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months.

HMO declaration

In circumstances where an application for a licence has not been received because the owner of an HMO disagrees with the Council's assertion that a certain building is an HMO, then the Council will make an HMO declaration. This has the effect of formalising the Council's decision. An owner may appeal this decision to the FTT. The decision of the FTT is final.

Management Orders

The Council is under a duty to make an interim management order where a property is required to be licensed and they consider that either:

- That there is no reasonable prospect of it being licensed in the near future, or
- That the health and safety of the occupants requires protecting.

The making of such an order, agreed by the FTT, would effectively result in the Council taking over the management of the property. The Council may also then apply for a Rent Repayment Order.

Sanctions for Non-Compliance for all types of Housing Legislation

If a Notice or Order is complied with or amendments are required to the Notice as a result of new information, a 'Revocation Notice' will be served confirming that the original Notice or Order has been revoked.

However, if the Notice is not complied with, the following sanctions will usually be considered:

- issuing a financial penalty
- Rent Repayment Order
- prosecution
- formal caution
- Banning Order
- Making an entry in the Rogue Landlords Database
- carrying out the works in default;
- carry out works in default and issuing a civil penalty, prosecution or formal caution

Financial Penalties

Since 6 April 2017, local housing authorities have had the power to impose civil (financial) penalties of up to £30,000 on individuals and organisations as an alternative to prosecution, to use robustly as a way of clamping down on criminal landlords.

The statutory guidance recommends that the actual amount of financial penalty imposed should reflect the severity of the offence and consider the landlord's previous record of offending. Fundamentally, civil penalties will be set such that it costs less to comply with the legislation and standards than the cost of not complying.

The statutory guidance recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused to the tenant
- The punishment of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The factors used by the Sanctions Panel in determining a penalty are outlined in Appendix A of this policy.

The Housing and Planning Act 2016 section 126 and Schedule 9 enables the Council to impose a civil penalty as an alternative to prosecution for certain Housing Act 2004 offences:

- Section 30 – Failure to comply with an Improvement Notice

- Section 72 – Offences in relation to licensing of HMOs
- Section 95 – Offences in relation to selective and additional licensing of houses under Part 3 of the Act
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with HMO Management Regulations

Civil penalties can only be used as an alternative to prosecution for these offences. Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed above, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

Where the Council is in a position to prosecute a letting agent and landlord for failing to obtain a licence for a licensable HMO, it has the option of imposing a (civil) financial penalty on the letting agent and the landlord as an alternative to prosecution. Where the letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both of them at different levels, depending on the circumstances of the case.

Where a civil penalty is imposed and an appeal is subsequently made to the FTT, the Council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

Financial penalties can also be imposed under the following legislation:

- Regulation 4 – Failure to comply with a Remedial Notice served under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Regulation 38 – Penalty notices relating to breaches of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- Regulation 8 – Penalty charges relating to breaches of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

As the Council is allowed to retain the income it receives from civil penalties, this course of action will also provide the Council with the opportunity to increase its housing enforcement activity within the borough.

Rent Repayment Orders

A rent repayment order (RRO) is an order made by the First-tier Tribunal (Property Chamber) requiring a landlord to repay a specified amount of rent, capped at 12 months.

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs.

Rent repayment orders have since been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below:

- Failure to comply with an Improvement Notice (under section 30 of the Housing

- Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016 (from April 2018);
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, the rent would be repaid in equivalent proportions.

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

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

We will notify tenants of their rights to apply for a RRO and will provide a statement in support of that application. Landlords will be advised when such a notification takes place.

Prosecution

In cases where consideration is being given to prosecution or administration of a Simple Caution, or in the case of certain specified Housing Act 2004 offences the administration of a civil penalty, the Environmental Health Enforcement Decision Matrix will be used to help reach a conclusion. A copy of this is attached as Appendix B to this Enforcement Policy. The Decision Matrix will be used in conjunction with a Sanctions Panel being convened.

Where an officer believes that an offence has been committed and a prosecution is appropriate, The Environmental Health Manager must be consulted and give their agreement to the proposed course of action.

The decision to prosecute does not preclude the issue of legal notices as well. Prosecutions have a preventative role in drawing attention to the need for compliance and the maintenance of good standards.

The Council will apply the principles of the Criminal Procedures & Investigations Act 1996 and Crown Prosecutors statutory Code of Practice, as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case.

In deciding whether to prosecute or not, we will consider the following matters, as listed

in the main Environmental Health and Licensing Enforcement Policy: -

The gravity of the offence/s, for example whether: -

- there has been blatant disregard for the law, deliberate intent or negligence
- there are persistent poor standards and malpractice
- there has been an injury or a case of ill health as a result of a substantial legal contravention
- a particular contravention has caused serious public alarm
- those affected are particularly vulnerable

The general record and approach of the offender, for example: -

- repeated breaches of legal requirements or license conditions or various breaches of a multiple concern and, where it appears that an individual or a company is neither willing nor able to deal adequately with these
- failure to comply with statutory notices where matters of significant concern are persistent rather than transitory
- previous convictions or cautions which are relevant to the offence.

Simple Caution where an offence is admitted: -

This procedure is an alternative to taking action in the Courts. Should a further offence be committed, it may be cited in any subsequent Court proceedings. A Simple Caution is a serious matter and it is recorded by the Council and where applicable on the Police National Computer. Cautioning is recognised as an important way of keeping offenders out of Court and in many circumstances reducing the risk that they will re-offend.

In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance April 2013 – Simple Cautions for Adult Offenders, as well as the Environmental Health Enforcement Decision Matrix and Sanctions Panel, as described above.

The caution will be administered by a Senior Officer who has been designated a 'Cautioning Officer' (e.g. the Environmental Health Manager).

Banning Orders

Since April 2018 local authorities have had the ability to apply to the First Tier Tribunal (Property Chamber) (FTT) to request a banning order against landlords or letting agents who have been convicted of a banning order offence. This has the effect of banning a landlord or letting agent from letting housing, engaging in letting agency or property management work, and/or from holding an HMO licence. Banning orders are for a minimum of 12 months and it is a criminal offence to breach one.

An application can only be made against a landlord or letting agent following their conviction by the authority for a specified banning order offence. The relevant offences are listed in the legislation, but include:

- Unlawful eviction and harassment of occupier
- Using violence to secure entry
- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Certain offences in relation to HMO's

- Serious criminal offences committed against the tenant or related to the housing in question, and subject to sentencing in the Crown Court.

In considering whether to apply for a banning order, the following factors will be considered:

- The seriousness of the offence – the more severe the sentence, the more appropriate a banning order.
- Previous convictions or entries on the Rogue Landlords Database – a longer ban may be appropriate if there is such a history.
- The likely effect of the banning order including the harm caused to the tenant, punishment of the offender and likely deterrent effect on recurrence or others.

Rogue Landlords database

This is a relatively new tool introduced by government to assist housing authorities in England to keep track of criminal landlords and letting agents. Designated users within local housing authorities can view all entries, including those made by other local authorities.

The process of making an entry in the database is governed by statutory guidance. An entry *must* be made when a person or organisation has received a banning order, and *may* be made where:

- A person or organisation is convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent
- A person or organisation has received two or more financial penalties in respect of banning order offences within a period of 12 months, committed at a time when the person was a residential landlord or property agent.

Before an entry in the database is made, a decision notice must be issued to the offender, specifying the period for which an entry will be maintained, which will be at least two years. The decision notice must be served within 6 months of the conviction for a banning order offence or receipt of a second civil financial penalty.

Consideration will always be given to this course of action in eligible circumstances. In considering whether to make an entry and the length, the following factors will be considered:

- The severity of the offence
- Mitigating factors, such as health issues or bereavement
- Culpability and serial offending
- Likely deterrent effect on the offender and on others

Works in Default

The Council has powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works by formal Notice or Order, but has failed to either start works or make adequate progress.

Works in default will generally be limited to situations where there is a strong public health imperative to complete works to resolve a serious legal contravention. All works in default will be considered on a case by case basis.

In determining if work in default is appropriate, Officers will consider the following:

- the effects of not carrying out the work on the health, safety and wellbeing of the occupant/s of the property concerned;
- the wishes of the occupier/s
- the reason/s for the work not being carried out in the first place
- the costs and complexity of carrying out the works in default
- the options and likelihood of eventual recovery of Council costs

In most circumstances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of its contractors or agents employed to carry out the works.

Works in Default costs will be fully recoverable, including the Council's full administrative costs. Interest will be chargeable until the amount is repaid.

The charges levied for the works and the associated costs will become a legal charge on the property until it is paid in full. In most cases, interest is also charged on the unpaid charges. The debt will be pursued, potentially via the civil courts, in addition to registering it as a legal charge on the property. An enforced sale of the property may be considered should this be deemed appropriate.

In some cases, it may be appropriate to impose two sanctions for example, carrying out work in default and also issuing a civil penalty or prosecuting the offender.

Other Enforcement Options

Proceeds of Crime

In certain cases, a financial investigation may be undertaken by the Council's Accredited Financial Investigator, to determine if action under the Proceeds of Crime Act 2002 is appropriate following prosecution. The findings of a financial investigation may also be used to inform the decision on whether to pursue enforcement of certain Housing Act 2004 offences by means of prosecution or by means of civil penalties, as well as the level of civil penalty to be applied.

Interim Management Order and Final Management Order

Where there is no prospect of an HMO being licensed or the health and safety condition is satisfied, the Council is required to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for the running of the property and collecting rents for up to one year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

The Council will only use these powers in exceptional circumstances. These orders can only be made with the authorisation of the First Tier Tribunal (Property Chamber).

Interim and Final Empty Dwelling Management Order

Where property has been left empty for at least 6 months the Council has the power to ask the First Tier Tribunal (Property Chamber) for approval to issue an interim Empty Dwelling Management Order (EDMO). This gives the Council the power to take over

the management of the house and seek to ensure it becomes occupied. The Council is required to engage with the owner to try and reach a solution before applying for such an order, which may last up to 1 year. This interim order may then be made final with the approval of the First Tier Tribunal (Property Chamber) if a solution has not been found in the first year. This final EDMO can last up to 7 years. These powers will only be considered in very exceptional circumstances.

Compulsory Purchase Order

This option is only taken up in exceptional circumstances, for example;-

- Where the property has been derelict for some time and is having a detrimental effect on the local environment or neighbouring properties; or
- Where the property appears to be abandoned and the owner cannot be traced; or
- Where all other avenues for bringing the property back to a useful life have been exhausted; or
- Where the property is suitable for immediate residential use, but is not likely to be occupied for residential purposes unless bought by the Council.

The making of a CPO has to be agreed by the relevant Portfolio holder, by the Executive and full Council. The Ministry for Housing, Communities and Local Government must then approve it before it can be made.

Vacated properties with Statutory Notice

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether the impact of any hazard has diminished, and whether notices or orders may be varied, suspended or revoked.

Other Housing Related Legislation Enforced by Environmental Health

Environmental Protection Act 1990 and other legislation

The Environmental Protection Act 1990 defines statutory nuisance and gives the Council power to serve an Abatement Notice requiring the owner to remedy a building that is so far defective as to be prejudicial to the health of its occupier or a nuisance. Examples of such nuisances could include rainwater penetration through defective roof or windows, rising or penetrating dampness and condensation, defective (rotten) timber flooring, elements exhibiting structural failure e.g. ceilings, and dangerous fixtures and fittings.

Public Health Act 1936

Though much of this Act has been repealed or its provisions resurrected in other legislation, it still provides the Council with power to require by notice the repair of defective sanitary facilities and the clearance, cleansing and, if necessary, fumigation of premises that are filthy and verminous. It also extends statutory nuisance provisions, (now in the Environmental Protection Act) to tents, vans, sheds (agricultural/migrant worker type accommodation) or canal boats used as dwellings.

Public Health Act 1961

This Act still provides the Council with power to require by notice the unblocking of stopped-up drains or minor repairs to private drains. At the request of an owner, the Council may undertake the repair of a private drain and recover its costs from the owner.

Local Government (Miscellaneous Provisions) Act 1976

This Act gives the Council powers to require details of the ownership of buildings and land, to intervene to bring about the restoration of disconnected services (electricity, gas, or water), and secure the unblocking of stopped up private drains in shared use.

Local Government (Miscellaneous Provisions) Act 1982

This Act gives the Council power to require the making secure, by boarding up or otherwise, of empty buildings (including houses) to prevent unauthorised entry and/or where the building is likely to become a danger to the public.

Building Act 1984

Although primarily concerned with ensuring the safety of new buildings through the application of Building Regulations, the Building Act 1984 includes powers for the Council to adopt an accelerated procedure for dealing with defects in buildings that amount to statutory nuisances (see EPA 1990 above), to require major repairs to drainage systems, provide replacement toilets and to deal with ruinous or dilapidated buildings including empty homes.

Prevention of Damage by Pests Act 1949

Notice can be served where steps should be taken for the destruction of rats or mice on the land or to keep the land free from rats and mice. Notice may be served on the owner or occupier of the land or property requiring works to clear, proof or treat the land from existing or likely pest infestations.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Where the Council has reasonable grounds to believe that the requirements of these Regulations have not been met by a landlord, there is a duty on the Council to serve a 'remedial notice'. Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action and a power to require payment of a penalty charge.

The legislation requires the Council to have in place a Statement of Principles regarding their use. This is provided at Appendix C of this policy and includes details of the penalty charges for non-compliance.

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

These Regulations establish a minimum energy efficiency standard for domestic privately rented property, and since 1st April 2020 apply to all relevant properties. Where the Council believes that a landlord may be in breach of the prohibition on letting a sub-standard property, a compliance notice may be served requiring information from that landlord to help them to decide whether there has been a breach.

If the Council is satisfied that there is a breach of the requirements, a financial penalty

may be imposed, up to the maximum limits set by the Regulations. In addition, the Council may utilise a 'publication penalty', and publish some details of the landlord's breach on the publicly accessible part of the PRS Exemptions Register, for at least 12 months.

Electrical Safety Standards in the Private Rented Sector Regulations 2020

These Regulations concern the minimum standards applying to the testing and condition of electrical installations in privately rented accommodation. They require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested to the Council.

The Regulations impose a duty on the Council to serve a remedial action notice where it considers there to be a breach and provides powers to take remedial action and recover the costs of doing so. It also provides for Civil Financial Penalties to be imposed for breaches of the Regulations.

The Redress Scheme

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 introduced a requirement for letting agents and property managers to belong to an approved redress scheme. The redress scheme must be approved by Government or designated as a Government administered redress scheme.

Where the Council is aware of an offence, it is required to take enforcement action relating to activities undertaken within the borough and may serve a Notice on the perpetrator requiring the payment of a monetary penalty of an amount determined by the Council.

The expectation in Government guidance is that a monetary penalty of £5,000 should be considered the norm and the penalty must not exceed this amount. A lower penalty should only be charged if the Council is satisfied there are extenuating circumstances.

Where a Notice is served requiring a monetary penalty, there is a right to appeal at the First-tier Tribunal, and the Notice is suspended until the appeal is determined or withdrawn.

Mobile Homes

The Council is empowered under the Caravan Sites and Control of Development Act 1960 (CSCDA) to licence caravan sites, both residential and non-residential. The CSCDA permits the Council to place conditions on licences with a view to protecting the health and safety of occupiers, both permanent and visitors, and by requiring the provision and proper maintenance of basic amenities.

The Mobile Homes Act 2013 amended the CSCDA and made changes to the law relating to the licensing of residential caravan sites (referred to as 'relevant protected sites' in the legislation). The new licensing regime for such sites enables the Council to monitor site licence compliance more effectively and to take enforcement action where necessary. The legislation includes the ability to set fees in relation to relevant protected sites to enable the recovery of the costs of licensing such sites.

The Council's 'Licensed Mobile Homes Procedure' provides detail on the scope and application of the mobile home licensing regime, as well as the procedure for issuing, transferring and varying a licence.

Enforcement Options for Licensed Residential Caravan Sites

The Mobile Homes Act 2013 amended the CSCDA to provide a range of enforcement options relating specifically to 'relevant protected sites';

- Compliance Notices – can be served for failure to comply with licence conditions, and the expenses incurred can be recovered. Failure to comply with a Compliance Notice is an offence and is liable to an unlimited fine on conviction.
- Works in default – following conviction for failure to comply with a Compliance Notice, the Council can take steps itself to undertake works to secure compliance and can recover the costs involved.
- Emergency Action – the Council can take emergency action where there is failure to comply with licence conditions and an imminent risk of serious harm to the health and safety of any person who is or may be on the land and can recover the costs involved.
- Revocation of the licence – can be sought where the licence holder has been convicted of certain offences on a number of occasions.

Approach to Enforcement of Licensed Residential Caravan Sites

The Council's approach to enforcement of licensed residential caravan sites will be slightly different to that outlined in the rest of this Housing Enforcement Policy. This is primarily because the Deregulation Act 2015 relating to protection from retaliatory eviction of tenants who have made complaints about housing conditions, does not apply in these sites. There will therefore be a more graduated approach to enforcement taken at these sites.

Where possible, an informal approach will be taken in the first instance, except where there is a significant risk to health or damage to property, or evidence of previous non-compliance. This would mean working towards an agreed schedule of works to achieve the necessary outcome within reasonable timescales.

While formal enforcement action will generally be focused on poorly managed or badly run sites and will be risk based, if an informal approach does not achieve compliance, then action will be escalated to formal enforcement. Consideration will be given to the level of risk presented by breaches of licence conditions, particularly where the impact of the breach is only upon the individual home owner and may possibly have existed for some time under the previous licensing legislation.

Licence conditions cannot be imposed or enforced upon the fabric of the mobile home itself, as this is the property of the home owner and outside the control of the site operator and the scope of the licence conditions.

Enforcement action will be based on the appropriate legislation. For example, if there are breaches of planning conditions, this will be referred to the Planning Service, while issues with elements of fire safety measures will be the responsibility of Surrey Fire and Rescue Service. Complaints about landlord harassment will be the responsibility of the Housing Options Service. Only matters relating to the site licence conditions will be enforced by the Environmental Health Service.

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

These Regulations were made on 23 September 2020 and require all site owners to submit an application to be assessed as fit and proper persons, between 1st July 2021 and by 1st October 2021.

The site owner must apply to the Council to be included, or for their appointed site manager to be included, on a register of fit and proper persons. A site owner may only apply if they hold or have applied for a site licence for the site. The same requirements apply where the owner or the site manager is a non-natural person (such as a company).

Applicants must show that there are suitable financial and management arrangements in place for the site and provide information relating to their previous conduct, including providing a basic Disclosure and Barring Service (DBS) certificate.

The legislation includes the ability to set fees in relation to applications to be included on the register of Fit and Proper Persons, as well as to charge annual fees. These are as set out in the published 'Reigate and Banstead Borough Council Fees Policy for Licenced Mobile Home Sites'.

In exceptional circumstances where the site licence holder has been unable to find a fit and proper site manager to put forward, they can approach the Council to discuss if it can appoint a suitable alternative person. The identified person would have to undergo the fit and proper test and their details be included on the register. If this action were to be required, the Council would seek full cost recovery of all officer time and any other resources required to undertake this action, in accordance with the published 'Reigate and Banstead Borough Council Fees Policy for Licenced Mobile Home Sites'.

The Council's 'Licensed Mobile Homes Procedure' provides detail on the scope and application of the fit and proper persons regime, as well as the procedure for applying to the register and the options that the Council may take to include or refuse an applicant on the register, including with the imposition of conditions. Applicants have a right of appeal to the First-tier Tribunal (Property Chamber) against the Council's decisions.

Publicity

The Council may publicise successful enforcement outcomes against businesses, licensees and individuals for housing and environmental health offences. Names of companies and individuals convicted of environmental health offences may be published on the Council's website. Cases subject to appeal will not be published, and to account for the appeals process a period of 10 weeks will be allowed to elapse following conviction before a case is added. Where the Council is notified of an appeal outside this time period, the case will be removed from the site.

Names of companies and individuals subject to a Civil Financial Penalty will not be released, as this information is not in the public domain in the same way that convictions are. However, details of the enforcement action taken, including the location of the property concerned may be published.

Publication of Enforcement Decisions

Certain enforcement decisions will be published via the Council's website. This will include:

- Date of the decision
- What the decision was
- Who made it
- The reasons for the decision
- Options considered
- Any relevant conflicts of interest

Review of the Policy

This enforcement policy will be regularly reviewed either annually, or as necessary due to changes in legislation or new guidance from the Government, the Council or appropriate professional bodies.

Complaints

The Environmental Health service subscribes to the Council's Corporate Complaints and Appeals Procedure. In addition, statutory Appeal rights exist where Notices are served or charges levied and these are set out in the legislation.

If you do not agree with any action taken by an officer you should contact the Environmental Health Manager whose details are given below.

If you feel we have given an unsatisfactory service contrary to these criteria, you can complain direct to:

**Environmental Health Manager
Reigate & Banstead Borough Council
Town Hall, Castlefield Road,
Reigate, Surrey RH2 0SH
E-mail: Katie.jackson@reigate-banstead.gov.uk
<http://www.reigate-banstead.gov.uk/>
Tel. No. 01737 276309**

**This Enforcement Policy supersedes and replaces all earlier housing enforcement policies relating to Reigate & Banstead Borough Council Environmental Health Services.
September 2021**

Appendix A: Factors taken into account when deciding the level of civil penalty

The financial penalty for each case will be agreed by a Sanctions Panel. The Panel will include the investigating officer/s for the case, the Environmental Health Team Leader and the Environmental Health Manager. A member of the Council's Legal Team may also be asked to participate.

In order to ensure that the civil penalty is set at an appropriate level, the panel will consider the following factors the Government has identified in its statutory guidance as being pertinent:

- a. The severity of the offence**
- b. The culpability/ responsibility and track record of the offender**
- c. The harm caused to the tenant**
- d. The punishment of the offender**
- e. Whether it will deter the offender from repeating the offence**
- f. Whether it will deter others from committing the offence**
- g. Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.**

The final factor is the overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that **the civil penalty that is set removes the financial benefit that has been gained from committing the offence.**

When setting a civil penalty, the panel will also take into account the cost of investigating the offence/s and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal.

The costs of investigating, determining and applying a civil penalty

In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

Cases that result in the Council issuing civil penalties clearly entail investigative and preparation costs and may involve costs in defending an appeal. These costs, comprising resources and officer time, will be built into the civil penalty charge.

The final civil penalty amount is made up of two main financial elements – the **investigative** charge and the **punitive** charge.

Investigative charges

Investigative costs will be calculated for each of the offences that are covered by civil penalties by considering the number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs.

If an investigation leads to more than one civil penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each civil penalty. There will only be one set of investigatory charges for each investigation/ operation undertaken by the Council.

Punitive charges

The guiding principle here is 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.

In order to ensure that the punitive charge is set at an appropriate level, the Council will complete its investigation and consider all of its findings against the factors identified in the statutory guidance.

The Council has created a table of punitive charges (based on Culpability and Harm) that the Sanctions Panel will refer to when determining the level of civil penalty that should be imposed:

		CULPABILITY			
		Low	Medium	High	Very High
H	Low	£2,000	£3,000	£4,000	£5,000
A	Medium	£3,000	£6,000	£8,000	£10,000
R	High	£4,000	£8,000	£12,000	£18,000
M	Very High	£5,000	£10,000	£18,000	£27,000

Government Guidance recommends that 'the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord's previous record of offending'.

Aggravating factors in the case will increase the initial amount and, equally, any mitigating factors will reduce the initial amount. Relevant aggravating factors might be previous history of non-compliance, poor or no explanation offered, or blatant failure to control the circumstances leading to the offence.

Defence charges

A person who has been issued with a civil penalty has a right of appeal to the First-tier Tribunal and this will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued.

The Council intends to defend its decision to issue civil penalties rigorously and this may involve both Officer time and additional legal support.

The Council will robustly seek to recover its legal costs in any event that it is entitled to do so.

Financial means to pay a financial penalty

In setting a financial penalty, the panel may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

It is for the offender to disclose to the Council such data relevant to their financial position as will enable the Council to assess what s/he can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

As some landlords will own more than one property, it is likely they will have assets they can sell or borrow against. After taking account of any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.

In certain cases, a financial investigation may be undertaken by the Council's Accredited Financial Investigator, to assist in determining the level of civil penalty to be applied.

Appendix B: Environmental Health Enforcement Decision Matrix

The Environmental Health and Licensing Enforcement Policy and its complementary Housing Enforcement Policy requires that in cases where consideration is being given to prosecution or administration of a Simple Caution, or in the case of certain specified Housing Act 2004 offences, the administration of a civil penalty, the Environmental Health Enforcement Decision Matrix will be used to help reach a conclusion. In the case of certain housing offences, this will be done in conjunction with a Sanctions Panel being convened, as described in the Housing Enforcement Policy.

Prosecution / Simple Caution/ Civil Penalties Verification Scoring Scheme

Name and address of premises or alleged offender:

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Part One

Criterion	Score	Total
Risk to Health or Safety		
No risk to health safety or animal welfare	1	
Risk to health or safety possible, but unlikely	10	
Cause minor ill effect, potential for more serious effect in more vulnerable groups or Significant breaches of legislation/failure to return requisition	15	
Identified or potential serious risk to health safety or animal welfare	20	
Previous History		
No previous history with the Local Authority	0	
Have reacted to previous advice, change usually effective	4	
Do not react to advice, change not always effective, confidence in management is moderate	8	
Compliance with advice is low, confidence in management /licensee is low	12	
Failure to respond to previous advice	16	
Ability of Witnesses		
Witnesses would rather not attend court but might be persuaded	1	
Witness would require witness summons to attend	2	
Witness willing to attend but may not be effective under cross examination	3	
Witness willing to attend and will be effective	4	
Willingness to prevent recurrence		
Steps taken to prevent recurrence, confidence that these steps will be effective	2	
Steps taken to prevent recurrence, doubts that these will be effective	4	
Steps promised to prevent recurrence but confidence is low that promise will be fulfilled	6	
Not willing to prevent recurrence, no confidence that the person/proprietor/licensee is capable of preventing recurrence	8	
Probable public benefit		
Penalty/publicity will have very limited value	1	
Penalty/publicity will ensure improvement in the case in question	2	
Penalty/publicity will prevent other similar offences	3	
Explanation offered by defendant		
Explanation appears satisfactory, factors appear to have been beyond defendant's control	3	
Explanation shows that prevention was possible but that necessary steps had not been taken	6	
Explanation poor, blatant failure to control circumstances leading to offence	9	
No explanation offered, wilful disregard for public health	12	
	Total	

Officer to apply one score from each section. The total score will help determine the course of action to be taken:

Decision:	Score:
Take action within the Enforcement Policy	0-23
Proceed to Prosecution / Simple Caution / Civil Penalty	24-63

Recommendation of Investigating Officer

Signed _____ Date _____

Part 2

Prosecute / Simple Caution / Civil Penalty Decision Matrix

The decision to prosecute, issue a civil penalty or to offer a simple caution should be made using the following two-stage process. Tick the appropriate response to each criterion and total the number of ticks in each column. The total number of ticks will influence the decision.

Stage 1

Criterion	Civil Penalty or prosecute	Offer Caution
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending	Yes	No
Is the offender willing to prevent a recurrence of the problem?	No	Yes
Would a prosecution be in the public interest?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes

Stage 2

Is the use of a simple caution appropriate given the circumstances of the case?
No/Yes

Recommendation of Investigating Officer/Sanctions Panel:

Prosecute / Simple Caution / Civil Penalty

Signed _____ Date _____

Further to the outcome decided above additional factors should be considered in all cases. This is because the standard of evidence required for issue of a civil penalty is 'beyond reasonable doubt', as is required for all prosecutions and simple cautions. An assessment of the Full code Test described in the Crown Prosecution Service Code for Crown Prosecutors 2013 follows on page 3.

Guidance on the code can be found here:

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

The Full Code Test

The Full Code Test has two stages: **(i) the evidential stage**; followed by **(ii) the public interest stage**.

In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.

Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test.

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. **A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.**

The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

(I) THE EVIDENTIAL STAGE

When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Is there sufficient evidence to provide a realistic prospect of conviction?

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

1. the likelihood of that evidence being held as inadmissible by the court;
- and
2. the importance of that evidence in relation to the evidence as a whole

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

Outcome of evidence test? **Pass** – Continue to next stage

(II) THE PUBLIC INTEREST STAGE.

1. How serious is the offence?
2. What is the level of culpability of the suspect?
3. What are the circumstances of and the harm caused to the victim?
4. Was the suspect under the age of 18 at the time of the offence?
5. What is the impact on the community?
6. Is prosecution a proportionate response?
7. Other considerations unique to this case?

Possible defences and mitigating circumstances

The code states that; 'When deciding the public interest, prosecutors should consider each of the questions set out above so as to identify and determine the relevant public interest factors tending for and against prosecution.'

Taking into account all the information from the evidence and public interest tests I am of the opinion that the facts tend for/against prosecution.

Decision of Environmental Health Manager

I Agree / Disagree the decision to take formal action and prosecute the defendant/ issue a civil penalty (delete as appropriate).

Signed _____

Date _____

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

Introduction

Since the 1st October 2015, a “relevant landlord” of a “specified tenancy” of residential premises must ensure during any period on or after 1st October 2015 when the premises are occupied under the tenancy that:

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Enforcement

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

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

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

Where the Local Authority is satisfied that the Landlord is either unable or unwilling to carry out the work it must also undertake works in default in the manner specified in the Regulation. As the Act does not stipulate the type of detector and alarm, where works in default are taken, it has been determined that the Local Authority will install a battery operated smoke detector and alarm at every storey of the residential accommodation.

This may only provide a temporary solution if the property is deemed high risk due to:

- The mode of occupancy e.g. it is an HMO or building converted into one or more flats, and/or;
- It has an unsafe internal layout e.g. a fire escape route passes through a high-risk room, such as a living room or kitchen, and/or;
- It is 3 or more storeys in height.

In these circumstances, consultation with Surrey Fire and Rescue Service will be undertaken to consider the adequacy of the type and coverage of the smoke alarm

system, fire escape routes including escape windows and structural fire separation e.g. fire doors, walls and ceilings.

Any further works required to address serious fire safety hazards in residential property will be enforced using the Housing Act 2004, in accordance with this Housing Enforcement Policy.

In the circumstances where a Carbon Monoxide detector and alarm is required it will install a Battery powered CO detector with a 10 year sealed lithium battery that is CE marked and Kite marked to BS EN 50291-1 and BS EN 50291-2.

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

The Authority considers that in the interests of proportionality, a lesser penalty will be merited on the occasion of a first offence only; and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

The level of penalty should, however, as a minimum, cover the cost of all works in default, officer time, recovery costs, administration fee and a fine. This is reflected in the calculation of the first time offence charge.

The Legislation allows the Local Authority to set PCN levels up to a maximum of £5,000.

Having considered proportionality, the Housing Enforcement Policy and the interests of better regulation, repeat offences will attract a higher penalty in light of an offenders continuing disregard for the legal requirements and tenant safety.

Level of penalty Charge

The penalty charge shall be set at £2,500 for the first offence but will be reduced to £2,000 if paid within a fourteen (14) day period from the date of service. This will be reflected in the fixed penalty notice as a works in default element plus the level of fine on top.

Offence	Level of FPN	Reduction
First offence	£2,500	-£500
Second and subsequent offence	£5,000	None

No discount will be given for prompt payment after the first occasion.

Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice.

The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice.

A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal (Property Chamber) against the local housing authority's decision.