


The London Borough of Camden's Policy Statement on Enforcement in  Camden  
relation to Private Sector Housing Team (PSH).

**(Updated February 2019)**

## **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:

- 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 Team 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. This policy will not apply to registered providers (i.e. housing associations) as the Council will seek to liaise with them in most cases. Formal intervention for registered provider properties will only be appropriate in serious circumstances.

## **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) Targeting***

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\*\*](http://www.camden.gov.uk).

## 5 Enforcement Options

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

	<b>Action</b>	<b>Comment</b>
<b>Informal Interventions</b>	Verbal advice	General advice as to standards required by the Council. Referring a landlord or agent to 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.
<b>Formal low level interventions</b>	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 such as for the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
<b>Formal high level interventions – common use, require manager sign off.</b>	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 two 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 condition(s) or any relevant HMO management regulation(s).
	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
<b>Highest level formal Interventions, require director sign off</b>	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 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.

#### **b) Informal Consultation prior to Formal Action under Housing Act 2004**

In regards to 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 team 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.
- Cat 1 or 2 hazard(s) requires large scale works to remove in many units i.e. 3 months
- Any Cat 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) 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.

The reasons for issuing a caution instead of prosecution in the courts would commonly be that the offender has no previous history in relation to a minor offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur. If a caution were to be offered and refused by the offender then the case would proceed to court.

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.

#### **d) 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/CPN. The taking of a prosecution/serving of a CPN is the most likely outcome of a failure to comply with a notice or order, or 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. No prosecution/CPN may go ahead unless the Council finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest (See the relevant factors in [appendix A](#)). The council will consider prosecution/CPN, or consider recommending prosecution/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, such as Section 16 Local Government (Miscellaneous Provisions Act 1976 where information is not received on owners and interested parties, 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'.

#### **e) 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 from the discovery of the offence where owners and/or agents are engaging in all or some of these example aggravating factors that effect living conditions and tenant welfare:

- Renting out properties with multiple Cat 1 and Cat 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.
- Tenancy Deposit concerns.
- Where Ltd company have changing directors do not respond to section 16 or 235 notices, use postal forwarding addresses.
- Non-compliance with any other statutory notices.
- Trading standards convictions or FPN's.

It will be expected that 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.

Consideration will have to be given to the gravity of the management contraventions witnessed as well as any of the above practices going on. Some single contraventions of the law may be so great they alone justify prosecution/CPN, e.g. no smoke alarms where there has been a fatal fire/injury or unlicensed HMO operated by a repeat offender with any HMO regulation offences (however slight) could be considered. **N.B:** The tenants' wishes and protection of them will always be assessed as part of our action.

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

The aim of any HMO licensing is to improve standards in the PRS. However the worst conditions will be found in those unwilling to licence. Therefore there will be an enforcement drive to find and tackle these. To ensure that the worst landlords/agents are targeted for enforcement and that those who are small portfolio, good landlords but are simply unaware of the scheme the following will apply: Landlords should have had a written warning (or a verbal warning from an enforcement officer) to them that their property may require a HMO licence.

Professional 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 licence 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:



- a) 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.
- b) 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. If the landlord or agent knew about the requirement of HMO licensing or should have known about the scheme (e.g. portfolio of properties) then a CPN or prosecution may still be taken.
- c) Likewise if tenant welfare is/was compromised after a licence is applied for, a CPN or prosecution may still be taken.

## **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 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 GLA) the London Mayor's 'rogue landlords database for London' and the MHCLG 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**

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

## **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 prevention team when required. Where this is the direct result of a prohibition order, support and compensation will be considered. If it might be the 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.

## **11. Councils Enforcement Policy Amendment for Civil Penalties.**

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

### **11a) Guidance on whether to apply a Civil Penalty Notice or Prosecution**

It is viewed by many London Boroughs and the MHCLG 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. Generally, the Council will prosecute for the more serious offences, which would otherwise attract the higher levels of Civil Penalty, given the greater import or gravity associated with criminal courts.

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

**11b)** The level of suffering of actual harm/injury by the tenant or another victim will indicate that a prosecution should be the preferred option.

**11c)** 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.

**11d)** 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.

**11e)** 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)

**11f)** 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).

**11g)** where there has been systematic evasion/obstruction, high level of dishonesty, non-cooperation or misleading information accompanying the offence and investigation, such as failure to comply with notices requesting information. Or where misleading or false responses affect the same (section 238 Housing Act 2004).

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 prosecution proceedings.

## Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016<sup>1</sup>. 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 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.** *While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local 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.*

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<sup>1</sup> CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016: GUIDANCE FOR LOCAL AUTHORITIES

## 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 minimum '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	0-5000
2		5001-10,000
3	Serious	10001-15000
4		15001- 20,000
5	Severe	20001-25000
6		25001-30000

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

#### 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.

The civil penalty for a landlord controlling three or less dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** matter, representing a band 3 offence, attracting a civil penalty of at least £10000.

Where a landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated experience in the letting/management of property the failure to comply with the requirements of an Improvement Notice would be viewed as being a **severe** matter attracting a civil penalty of £20000 or above.

### *Aggravating features/factors specific to non-compliance with an Improvement Notice*

- The nature and extent of hazards that are present. 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 would justify an increase in the level of the civil penalty

### *Generic aggravating features/factors*

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 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
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s]
- Observance of both the beginning and completion dates towards remedial action. Failure to comply with the start date without reasonable excuse should be viewed in line with a failure to complete works within the specified time, although where remedial action is reasonably underway and the completion date has passed, the Council should exercise discretion.

### **Failure to Licence offences**

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

#### ***Failure to licence a 'mandatory HMO'***

Under part 2 Housing Act 2004, higher risk HMOs of 3 or more stories, occupied by 5 or more persons forming 2 or more households 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 licence 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, the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a moderate matter, representing a band 1 or 2 offence, attracting a civil penalty of at least £1000- £5000 Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, the failure licence a mandatory HMO would be viewed as being a **serious** matter attracting a civil penalty of £10,000 or above [a band 3/4 offence]

*Aggravating features/factors specific to non-licensing offences*

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, a mandatory HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with their 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

***Failure to Licence- Additional Licensing.***

Under Part 2 Housing Act 2004, the Council has designated certain HMO's to be required to be licensed under an additional HMO licensing scheme. Whilst the additional scheme deals generally with smaller dwellings or properties other than those required to be licensed under the Mandatory Scheme, the Additional Scheme is time limited and properties that are licensed under the scheme are not subject to automatic renewal as in the Mandatory scheme. The assumption is properties subject to Additional Licensing (and were required to be so at the start of the 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. It is therefore necessary to mirror the civil penalties for Mandatory HMO's above. This is also reflected in the considerable publicity undertaken by the council to inform would be licence holders of the scheme.

*Generic aggravating features/factors*

As set out under 'Improvement Notice' above and:

More details as to how to set fine level for failure to licence s72 (1):

Mitigation to go in penalty referral forms to set/justify fine:

Failure to license: licence application made quickly, no overcrowding (room's sizes, number of persons or provision of amenities), broadly compliant with HMO standards, cooperative with investigation (LOAO, s16 and s235), tenants compensated, no Part 1 action needed or serious HHSRS hazards. No previous convictions. Proper tenancy agreements in place, no illegal evictions to escape licensing. Overall condition was satisfactory. Portfolio/other properties licensed after offence/investigation. Culpability is spread (see below). No complaints or victim impact slight. No. of properties control/managing/owning is 2 or less. The landlord/owner (even though he should have been) may not have been fully aware of HMO use or additional scheme or HMO use began in last few months.

Aggravation to go in penalty referral forms to set/justify fine:

Part 1 action needed or serious HHSRS hazards. It has been HMO for 6months or more. Property overcrowded, by room size, numbers or lack of amenities, significant non-compliance with HMO standards. Received warning for Housing Act breaches before. No co-operation with s16 and s235 or LOAO s. Tenants complained and reported harm/concerns. No gas/elect

certs provided. Operation was sub-letting. The failure to license allowed for inner rooms, bunk beds, and lounges to be used undetected. 3+ properties owned/managed. Fully aware of HMO licensing scheme (additional scheme). Tenants don't have AST's. Large property, 3 storeys or 5+ occupants. No HMO licence received. HMO operation has ceased without licence applied for.

Some examples are given below, but these are by no means binding

Example 1) £2500 fine – Landlord let to 'guaranteed rent' agency who turned property into HMO, had full management agreement with agency, landlord was unaware of HMO Licensing. No previous, good condition, small 3 bed flat, cooperated and licensed. Tenants did not complain and are happy.

Example 2) £4000 fine – Agent in control/managing, large company, operating many years in HMO's across London, convicted before for management offences. Cooperated and licensed. Tenants did not complain and are happy. No HHSRS or management regs issues. Good rooms sizes and maintenance.

Example 3) £10,000 fine – Agent in control/managing, property overcrowded, by room size, numbers and lack of amenities, large non-compliance with HMO standards. First offence, letting agency online, HHSRS hazards and management reg issues, tenants had AST. Fire safety with MOE and alarms issues. Tenants evicted and no HMO licence was ever obtained. Disrepair.

Example 4) £20,000 fine - Agent in control/managing, large company, very small rooms, tenants have sham licences, company convicted before for similar HMO, inner rooms, serious disrepair. Large scale non-compliance with HMO standards.

### **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 in any specified changes in circumstances
- Carrying out specified 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:

- The civil penalty for a landlord controlling five or less dwellings [or 1 or 2 HMOs], with no other relevant factors or aggravating features [see below], for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair would each be regarded as a **moderate** band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, these same offences would be regarded as a **moderate** band 2 offence, attracting a civil penalty of £5000 for a 'professional' landlord or agent
- The civil penalty for a landlord controlling five or less dwellings [or 1 or 2 HMOs], with no other relevant factors or aggravating features [see below], for a failure to provide or maintain smoke alarms in working order, to fail to address serious ASB issues such as the use of a licensed premises for illegal purposes or the failure to carry out works/improvements imposed as a condition of a granted HMO licence would each be regarded as a **serious** band 3 offence, attracting a civil penalty of £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, these same offences would be regarded as a **severe** band 5 offence, attracting a civil penalty of £20000 for a 'professional' landlord or agent

*Aggravating features/factors specific to non-licensing offences*

- None – the nature of the licence condition breaches and their impact upon the occupiers would be an integral part of the initial assessment process

*Generic aggravating features/factors*

As set out under 'Improvement Notice' above

### **Failure to Comply with an Overcrowding Notice**

*Maximum Court fine that can be levied for failure to comply with an Overcrowding Notice – Unlimited*

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that falls outside of the scope of mandatory HMO licensing. The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.

Under the Council's policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** band 3 offence, attracting a civil penalty of £10000. This 'basic' civil penalty would increase to a **severe** band 5 offence, attracting a civil penalty of £20000, for a 'professional' landlord or agent controlling/owning a significant property portfolio and/or having demonstrated experience in the letting/management of property.

#### *Aggravating features/factors specific to non-compliance with an Improvement Notice*

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty

#### *Generic aggravating features/factors*

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 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

### **Failure to Comply with the Management of Houses in Multiple Occupation [England] Regulations**

*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 [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

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 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 number and 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:

- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a **moderate** band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property these same offences would be regarded as a **moderate** band 2 offence, attracting a civil penalty of £5000 for a 'professional' landlord or agent
- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a **serious** band 3 offence, attracting a civil penalty of £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property these same offences would be regarded as a **severe** band 5 offence, attracting a civil penalty of £20000 for a 'professional' landlord or agent

*Aggravating features/factors specific to non-licensing offences*

- None – the nature of the Management Regulation breaches and their impact upon the occupiers would be an integral part of the initial assessment process

*Generic aggravating features/factors*

As set out under 'Improvement Notice' above

### **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.

### **Sub-letting 'chains' and multiple offenders (all HA offences).**

Case by case basis.

But where there is no party with a high level of culpability then fines can be split.

Fines can also for one party can be split between directors and the company or husband wife.

So an offence that attracts a £10,000-£15,000 fine and has 3 offending parties. Could be split by culpability three ways as long as they are all equally implicated in the offence. But where one party has more 'means to pay' then fine can be raised.

Example S72 1 offence at an unlicensed flat HMO:

Landlord – Allowed guaranteed Rent Company to set up HMO, landlord knew it was HMO. Replied to s16 and LOAO. Fine: £3500

Landlord's agent (large national company) – gave to rent to rent company, was liable for repair and gas safety certs. Replied to s16 and LOAO. Fine: £6,500

Rent to rent letting agent – issued sham licences, put in partitions to make it 4 bedroom with inner rooms. Did not reply to LOAO or s16. Fine: £7,500

### **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 require the usual information including the requisition of information under Section 235, Housing Act 2004. However, the notice of intent is a formal part of the process and must be fully complete irrespective of the detail of the answers in response to the letter of alleged offence or PACE interview. Even if the information is repeated.

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.

***An offender's compliance with the identified breach during the representation period would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate i.e. compliance at that stage would be relevant to the amount of any imposed financial penalty***

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

13)

### **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. As at December 2017 few local authorities have served interim or final penalty notices, and no steer to Housing Act offences has been provided through decisions through tribunals or courts

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 licence 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 there being no significant aggravating factors.

## Appendix A

### **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;