

Private Housing:

# Enforcement Policy

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## 1. Introduction

- 1.1 This enforcement policy is drawn up in line with the principles of good enforcement outlined in the Enforcement Concordat, the Hampton report and with specific regard to the Regulator's Code 2014, under the Legislative and Regulatory Reform Act 2006.
- 1.2 This policy sets out how Newham Council as the Local Housing Authority, specifically its Private Sector Housing Standards (PSHS) team, will deal with breaches of housing law and other public health legislation. It hopes to ensure the law is applied fairly and consistently, to tackle offenders in proportion to their crime/s, whilst minimising the impact for the compliant, recognising the needs of local business and reducing administrative burdens.
- 1.3 This policy deals with the practical application of enforcement procedures that will be used to achieve compliance with housing, trading standards (in relation to housing and tenancies) and environmental standards. The full range of enforcement options can be found in Appendix 1.
- 1.4 Proper authorisation of officers will be ensured and applicable investigations will be carried out in accordance with the Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, Police and Criminal Evidence Act 1984 and Criminal Procedure and Investigations Act 1996.
- 1.5 The Council expects landlords to comply with the law and proactively manage their properties. This is to ensure that the health, safety and welfare of tenants are protected and their properties, and activities at their properties, are not having a negative effect on the neighbouring population.
- 1.6 In conjunction with our expectation of landlord compliance, we will also work with responsible landlords and aim to promote a professional landlord community throughout the borough. We will provide advice, guidance and signposting to assist landlords in becoming more professional and knowledgeable in their role. We will expect them to have a good understanding of housing standards and management. For those landlords who require help in improving their knowledge and skills we will be proactive in providing assistance by providing guidance documents e.g. on minimum property standards and requirements for HMOs, running training events, encouraging membership of professional landlords groups and keeping our landlord's pages up to date on the Newham website. We will also engage with landlords via a landlord's forum, eBulletin and other regular communication, both direct and on our website. We will also signpost landlords to other groups or advisory services that can help in achieving these goals. For those landlords who do not engage or do not comply with their legal obligations, or where a landlord asks for help or guidance only once an investigation has been initiated, the following enforcement principles will apply.
- 1.7 Our overall aim of our enforcement action is to protect health and improve housing standards by;
  - changing the behaviour and seeking legal punishment of those who flout the law;
  - eliminating financial gain or benefit from non-compliance;
  - providing transparent and consistent regulation within a private market;
  - promoting professionalism and resilience within the private rented sector;
  - providing a 'light touch' for compliant landlords and create a level playing field by tackling non-compliant landlords within the sector.

- 1.8 Enforcement action and resources will be applied proportionally based on the seriousness of the offence/s and focused toward seeking the highest penalties for non-compliant offenders. This means taking legal action where we detect serious or systematic breaches of housing and public health legislation. This will always be in accordance with statutory codes of practice, council procedures and protocols and official guidance from central and local government bodies.
- 1.9 Additionally we will consider equalities impacts arising from enforcement decisions by ensuring our approach is proportionate and we will seek to mitigate any adverse equalities impacts where possible.
- 1.10 Where minor breaches of the law are witnessed and/or the risk to health is lower, we will attempt to resolve problems through the signposting of complainants, using lesser civil legal routes or informally. This will enable economic growth for compliant businesses and allow the Council to focus on the worst landlords.
- 1.11 In tandem with the approach to landlords set out above, we will expect service users to engage with their landlords and report issues of disrepair direct to them, giving reasonable time for their landlord to respond and action any complaint. Where however this response is not satisfactory, or the issue is an emergency, then we will accept complaints for further investigation. We will usually require some evidence of the disrepair being complained of. See items 2.2, 2.3 & 3.33 for further details on how we will approach this issue.
- 1.12 We will also seek to empower service users by providing advice, guidance and signposting to relevant organisations, such as other Departments of the Council, Shelter and Citizens Advice Bureau, amongst others. We will also participate in various meetings and other fora (both council led events as well as external events, such as community meetings or events) where residents can be provided with face to face advice and guidance.
- 1.13 Where complaints are received from Housing Association (HA) tenants the Council will generally only deal with these issues where the tenant can show that they have initiated action through their HA's complaints procedure and no action has yet been taken by the HA. We will deal with emergency issues as any other emergency case would be dealt with under this policy.

## 2. How we investigate

- 2.1 We will use data, intelligence and audits of certain licensed properties to target our proactive and reactive inspections on those premises with disrepair, overcrowding, nuisances and other public health issues and also those without property licences and those in breach of their licence.
- 2.2 In the first instance for most cases, service users are expected to take their own action to resolve the problem. This will usually need to be in the form of a written complaint (either via letter or electronic communication such as text, email or WhatsApp message) to their landlord, allowing them sufficient time to respond. Where service users approach the service with a complaint we will ask to see a copy of any such correspondence prior to initiating action. We will provide sample templates of such letters on our website. For less serious or minor matters, we will be unable to take direct action. We will endeavour to point service users toward further help and advice wherever possible. In the case of emergency issues we will not require evidence of prior written complaints.
- 2.3 For cases involving reports of damp and mould growth the above provision in 2.2 will apply. However we will be mindful of the contents of the Housing Ombudsman and Government reports and guidance relating to the effects of damp and mould (published

in relation to social housing, but still of relevance to the private rented sector). These documents challenge the assumption that mould can be caused by 'lifestyle' issues and highlight the aspects of a property that can lead to such conditions. They also provide updated evidence on the health effects regarding exposure to mould. Consequently, when investigating such issues, we will therefore consider all of the inter-related factors that can lead to condensation and mould growth – being the thermal efficacy of the structure of the property, the type of heating, the adequacy of ventilation and moisture production in the property. In particular we will expect landlords to take a 'fabric first' approach to their dwellings, by upgrading the thermal properties of the building, as well as ensuring that adequate heating and ventilation is present before considering the impact of occupant behaviour e.g. in the production of excess moisture, or other related factors. We will also seek to educate and assist service users in this area by providing advice, as set out in section 1.12 above.

- 2.4 The Council will assist tenants in providing advice and guidance to make it easier to understand the permitted letting fees paid by tenants in private sector housing and other related trading standards legislation relating to tenant's rights. There are a range of sanctions available to the Council against a landlord or agent who has charged a prohibited payment or breached other legal requirements. The Council will use these powers using the principles in this Policy.
- 2.5 In certain circumstances the Council will also provide advice, mediation and in more urgent cases undertake investigations and take possible enforcement action against harassment and illegal eviction. Advice will be given to tenants to try and promote a preventive approach as well as signposting them to civil remedies such as RROs (see 3.28 - 3.30 below for details) and claims for compensation. This function will be provided by the PSHS team with support from other teams within the Housing Department. The PSHS team will only deal with the worst cases where other Services have already attempted re-instatement and/or rehousing of tenant(s). Rehousing issues will remain with other teams responsible for that function, which applies to the entire range of scenarios that the PSHS team may deal with.
- 2.6 The Property Licensing schemes will generally operate on a light touch basis, with a set of letters requiring licence applications to be made and details of enforcement options where applications are not made. Landlords will be given sufficient time to make a full application and provided with advice on how to do so. Failure to make a licence application or other serious defects or omissions when making an application will usually result in enforcement action, including use of a Cause for Concern procedure, resulting in a reduced term of a property licence.
- 2.7 The Council will also investigate long term empty properties, with a particular focus on those properties which are causing a disproportionate negative impact upon their local neighbourhood. A stepped approach will be taken so that all avenues are explored before formal enforcement options are considered.
- 2.8 Working with the London Fire Brigade and others we will seek to ensure that all residential blocks containing self-contained flats are subject to proper oversight and investigation, including where appropriate, enforcement action in order to ensure the health and safety of residents, particularly in relation to fire safety.
- 2.9 The Council will work with other teams, both internal and external, such as Public Health, the Greater London Authority and relevant Government Departments, to tackle the issues of fuel poverty, poor energy efficiency in homes and related issues such as damp and mouldy homes. This will be via a mixture of enforcement work to achieve improvements, e.g. using Excess Cold and Damp & Mould hazards under the Housing Health & Safety Rating System or assessing any statutory nuisance under s80 of the

Environmental Protection Act 1990, and also using other mechanisms such as facilitating grant uptake for energy efficiency improvements.

- 2.10 **Leaseholder complaints:** Newham Council is generally not able to respond to complaints by long leaseholders requesting assistance in taking action against other long leaseholders or freeholders (this includes all tenure types). Newham will only offer assistance in cases where there are exceptional circumstances; this may include cases where there is imminent risk to health.
- 2.8 In all other situations the leaseholder will be redirected to;  
The Leasehold Advisory Service <http://www.lease-advice.org> Telephone: **020 7832 2500**.
- 2.9 **Housing Association (HA) complaints:** HA tenants will be expected to liaise with their own HA using their formal repairs reporting procedure and if this does not achieve the required improvements, then the tenants will be advised to pursue the problem through their HA's formal complaints procedure. Additionally the tenant will be advised that they will then be expected to report problems to the Housing Ombudsman. Housing Ombudsman Service, PO Box 152, Liverpool, L33 7WQ Telephone 0300 111 3000 <https://www.housing-ombudsman.org.uk/residents/>  
These actions will not preclude the council from investigating where it is an emergency case or where the council believes the case to be of sufficient public health risk and priority (provided the reporting actions have been followed), in which case the enforcement principles in this policy will apply.

### 3. General Enforcement Policy

- 3.1 The Three key principles we will apply to our enforcement activity are
- **Consistency**
  - **Proportionality**
  - **Openness**
- 3.2 **Consistency:** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, culpability of the offender, the history of compliance and the attitude and actions of those involved.
- 3.3 **Proportionality:** means relating enforcement action to the risks and severity of the breach of the law involved and to deter offenders from repeating the offence and discourage others from committing similar offences. This will ensure that the most serious risks are targeted first.
- 3.4 **Openness:** means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements and advice or guidance.
- 3.5 We will ensure that Officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate, which will enable them to choose proportionate and effective approaches.
- 3.6 We will endeavour to provide general information, advice and guidance to make it easier for landlords to understand and meet their regulatory obligations. We will also attempt to signpost those landlords who have more complex questions or require legal advice. Such information will be provided via the Council's website, eBulletins and other pathways, such as landlord forums.

- 3.7 The Council's large scale property licensing schemes will be 'light touch' for compliant landlords and its enforcement focus will be on non-compliant landlords. We will achieve this through the risk assessment of data from various sources, such as complaints, licensing audits and historical data as well as from direct property audits from the Compliance Team.
- 3.8 Under the Council's property licensing schemes a full licence application requires a Part A and a Part B payment, which are administered separately (unless requested as a single payment). Any property licensing application forms received without payment (or where incorrect or deficient information is supplied) will not constitute a valid application. Where either or both payments are not made, and after reasonable reminders have been sent, then the Cause for Concern process will be initiated, see 3.9 below. Additionally, failure to pay either or both parts of the fee will result in a licence application being refused and the Cause for Concern process being initiated. This may result in a reduced licence term for the application received or any future licence that is applied for.
- 3.9 When existing licence holders are found to have breached one or more conditions of their licence, or failed to fully comply with other related enforcement action, then the licence holder will be referred for an assessment under the Council's Cause for Concern procedure. Additionally, when assessing a property licence application, and defects and/or omissions are noted (including issues relating to payment of both parts of the licence fee) the Council will assess these issues under the Council's Fit and Proper and Cause for Concern policies. This may result in a reduced term of a property licence, usually to a period of 1 year, although discretion will be applied on a case by case basis. Once the one year (or other varied period) of licence expires a full new licence application will then be required. A Licence holder may continue to remain on a reduced term of their property licence if they still are a 'Cause for Concern' e.g. not fulfilling the training requirement, poor management etc.
- 3.10 The Council will assist landlords, licence holders and agents where possible on its licensing procedures and requirements. In most cases the Council will attempt to communicate with landlords where contraventions are suspected unless the suspicions are serious or if the suspect has a history of poor standards and/or non-compliance. Where required, property inspections will then be carried out, with a view to immediate enforcement.
- 3.11 Where property defects and evidence of poor management are identified, which are likely to significantly impact on health, the Council will take action. It will also take action where information is not provided or misleading information is given or where fraud is uncovered.
- 3.12 A significant health impact is defined as where there is a Category 1 hazard(s), a statutory nuisance, significant or numerous management regulations breaches or other significant public health hazards with clear health effects, such as sewage leaks.
- 3.13 Where defects or hazards are judged to be of an emergency nature then the Council will respond in a maximum of 48 hours, with the aim of a 24 hour response in the majority of emergency cases.
- 3.14 The Council will usually serve a statutory Notice or Order where Category 1 hazard(s) are found. Reasonable time will be given to complete the works if a Notice is served. In most cases the Council will seek to discuss these cases prior to the service of a Notice or Order, to discuss timescales and other relevant matters with landlords. Any response made will not necessarily cause the Council to withhold service of any Notice or Order, it is merely an informal consultation. In emergency cases, or cases where a prior compliance visit was made (as described in Section 3.7) and remedial works have not been carried out (whether those arose from hazards originally reported by the Compliance Team or hazards subsequently found), the consultation exercise will not be undertaken.

- 3.15 Nuisances and other public health matters that are not abated by the responsible person before the Council witnesses the offence will result in a relevant statutory notice being served. Breaches of HMO management regulations and/or breach of the conditions of a property licence will normally lead to enforcement as detailed in Appendix 1.
- 3.16 This policy regarding Housing Associations (HA) will be periodically reviewed. Specifically, the Council will periodically check the number of complaints we receive from HA tenants. If we find that there are larger numbers of disrepair complaints from certain HAs, we may write to that HA seeking an explanation. If after this step complaints to continue to rise from that HA, then the Council may take a more extensive approach to any complaints regarding their properties, leading to a more robust enforcement response by strictly enforcing all legal requirements placed upon that HA.
- 3.17 Charges for the service of Notices and/or Orders under the Housing Act 2004 will normally be made, where applicable (see section 5, below).
- 3.18 Where landlords fail to comply with Notices and/or Orders, the Council will normally take legal action against the appropriate person. It may also carry out works in default of the owner where there are outstanding works of an urgent nature. The cost of these works and the administrative costs will be raised as a charge against the property (see section 5, below). Officers will be required to follow the internal Works In Default procedure.
- 3.19 Where offences have been witnessed, but the severity and impact of the offence is considered to be minor, or where there are other mitigating circumstances, then a simple caution or a warning letter may be offered as an alternative to more formal enforcement action. These will be held on file and may be referred to when determining action for any future breaches committed by that person.
- 3.20 Where legal action is necessary to address housing offences and crimes, financial penalties, under section 249A of the Housing Act 2004, may be used as an enforcement tool. Appendix 2 details the decision making process in determining the penalty amount, as set out in the Council's Financial Penalty Matrix. A discount of 20% will be offered where payment is made within 28 calendar days, from the date of service of the final penalty notice. Prosecutions may be taken where there have been, amongst other considerations:
- serious neglect of their responsibilities as a landlord/agent, or
  - significant harm as a result of their action(s), or
  - where there have been previous criminal convictions or out of court disposals, or
  - poor history of compliance with housing and associated legislation, or
  - the action(s) has had significant adverse effects on tenants or other victims, or
  - issuing a Financial Penalty is not likely to change perpetrator behaviour or housing conditions.
- The exact enforcement response will depend on the individual circumstances of each case. It is not possible to set a prescriptive set of rules for when one option may be used as opposed to another.
- 3.21 The Council may make use of Banning Orders under the Housing and Planning Act 2016 where a relevant banning order offence is committed. Generally this process will be reserved for the most egregious offences, where a landlord demonstrates a clear neglect of their duties and where there is a history of poor compliance. Officers will be required to follow the internal Banning Order procedure.
- 3.22 In cases where some form of enforcement action has been taken, or a serious legal breach has been witnessed, but remedial works or actions have not been carried out, and there appears to be no realistic prospect of the landlord doing so, the Council may apply for an injunction against the landlord under Section 222 of the Local Government Act 1972. These will only be sought in the most exceptional of circumstances where

residents are left exposed to serious defects and hazards. The following three principles will apply when considering this option:

1. An injunction will only be considered in exceptional circumstances and with great caution;
  2. The breach will have to be particularly serious and the action needed to protect the resident exposed to such conditions and
  3. There will be consideration of whether the unlawful conduct will continue unless and until an injunction is sought, i.e. if nothing short of an injunction will be effective.
- 3.23 The Council will also make use of other Financial Penalty Notices under different legislation, to deal with relevant trading standards related breaches (see 3.25 below), energy efficiency regulations breaches (see 3.26 below) and electrical safety regulations breaches.
- 3.24 In conjunction with the Department for Levelling Up, Housing and Communities (DLUHC), the Council is responsible for collecting information on the materials and type of insulation used in external wall systems of specified residential buildings. Where a building's fire safety defects are identified which are likely to significantly impact on occupiers' health, the Council may take enforcement action under Part 1 of the Housing Act 2004. Failure to comply with a Notice served under Housing Act 2004 may result in prosecution and in the case of conviction may result in an unlimited fine. Additionally the Building Safety Act 2022 allows the Council to apply for Remediation Orders and/or a Remediation Contribution Order to the First Tier Residential Tribunal (Property Chamber-Residential Property) where the relevant landlord fails to remedy specified relevant fire safety defects, in a timely manner. The Council will review the specific circumstances of each case and determine the most appropriate action to take, in consultation with the London Fire Brigade, where required.
- 3.25 The Council will actively investigate letting agents to ensure that they are compliant with all trading standards legislation including the Consumer Rights Act. We will take action to ensure that letting agents are members of a redress scheme and a Client Money Protection scheme, where necessary. We will also take action to ensure that letting agents are not charging prohibited tenant's fees and are capping their deposits. The enforcement options available are for Financial Penalty Notices for breaches set out in relevant Regulations (see Appendix 1). Prosecutions are also a potential course of action under The Consumer Protection from Unfair Trading Regulations 2008 and the Tenant Fees Act 2019.
- 3.26 The Council will also actively investigate the issue of energy efficiency in the private rented sector, primarily under the powers within the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended (also known as the MEES Regulations), but also having other legislation available, such as the powers under Part 1 of the Housing Act 2004. These regulations are designed to tackle the least energy efficient properties, being those rated F or G on their Energy Performance Certificate (EPC). This will also help to alleviate fuel poverty, reduce carbon emissions and contribute to other Council targets in this area. Enforcement options are for a Compliance Notice to be issued, which may be issued at the start of an investigation, as well as Financial Penalty Notices for breaches set out in the Regulations. These Financial Penalty Notices will have the penalty amounts determined by assessing the following three factors: assessment of the landlord's property portfolio, any history of previous offences and details of any response from the landlord (if any), including willingness to comply with the Regulations and to work cooperatively with the council. Properties that are compliant under the MEES Regulations, but which still pose a possible Excess Cold hazard, may also be subject to a subsequent assessment under the Housing Act 2004 or other appropriate legislation.
- 3.27 Where it is necessary, for example under Part 1 of the Housing Act 2004, to reduce or remove a hazard caused by, for example, excess cold, the Council will generally require



works to improve a property's EPC rating to C. The Council will in any event always encourage landlords to improve their properties to an EPC rating of C or above, wherever practical. The Council will consider the individual circumstances of each such case and may accept the attainment of a lower EPC rating. To assist the Council in its decision making, landlords who propose attainment of a lower EPC rating will be encouraged, if not required, to provide evidence demonstrating why it would not be viable to attain an EPC rating of C or above. Consultation will be carried out as per the details in section 3.14.

- 3.28 The Council may also, in addition to other action, seek to obtain a Rent Repayment Order (RRO) from the offender to recover up to 12 months of Housing Benefit/Universal Credit. The council will also signpost tenants to third party organisations that can assist tenants with applying for a RRO for reclaiming up to 12 months of rent paid, which has been funded by the applicant, not via Housing Benefit/Universal Credit. The council will usually provide further support in the form of providing evidence of the relevant offence.
- 3.29 Payments for charging notices, financial penalties, RROs and/or works in default costs are to be paid in full by their recipient(s) within the time specified on the relevant notice/invoice. Instalments or payment plans will only be accepted in exceptional circumstances and only by approval of a manager within the Service. The Council may offer a discount for Financial Penalty Notices where early payment is made.
- 3.30 Where a financial penalty, RRO and/or charges are not repaid civil action will be taken to recover any outstanding debt and other charges incurred.
- 3.31 All information obtained will be treated in confidence and in accordance with UK General Data Protection Regulation (GDPR) and The Data Protection Act 2018. However, it must be recognised that the Council operate secure mechanisms to share information with other internal and external agencies and law enforcement bodies. There will be circumstances where shared or complimentary enforcement action may be taken with other agencies to help target resources and activities and minimise duplication.
- 3.32 To reduce the likelihood of retaliatory eviction, enforcement action will continue until the property is brought up to a satisfactory condition, whether or not the original tenant remains in the property.
- 3.33 Where a case cannot progress due to obstruction or similar actions by a tenant, and a reasonable excuse for the landlord is then present, the council will in the first instance notify the tenant in writing that this will prejudice the case and prevent further enforcement action from being taken. If the obstruction persists and the landlord has demonstrated attempts to progress the case then the case will be closed with appropriate notification steps taken for all parties, including (where applicable) suspension of legal Notices or Orders where necessary, or the service of a Hazard Awareness Notice where appropriate, or case closure letters if enforcement action has not yet commenced.
- 3.34 To ensure consistency and adherence to the enforcement policy, internal procedures will be put in place to ensure legal actions are monitored and reviewed.
- 3.35 A list of enforcement options and outcomes can be found in Appendix 1.

#### 4. Complaints, Feedback or Compliments

- 4.1 Those persons and individuals who are regulated by this department should expect that they will be dealt with professionally and in a manner in accordance with the Council's code of conduct for officers.

- 4.2 In the event that an individual or company is not satisfied with the service, or if not in agreement with the action taken by the investigating officer, or if they wish to give feedback about the service they have received, they should in the first instance contact the Operations Manager and if they wish to discuss further, with the Head of Service.
- 4.3 If a service user wishes to make a compliment they should also contact the Operations Manager or Head of Service.
- 4.4 The Operations Manager and/or Head of Service can be contacted at,  
**Private Sector Housing Standards Service**  
**London Borough of Newham**  
**Newham Dockside 1<sup>st</sup> Floor West Wing**  
**1000 Dockside Road**  
**London, E16 2QU**
- Tel: 0203 373 1950**  
**Email: [propertylicensing@newham.gov.uk](mailto:propertylicensing@newham.gov.uk)**
- 4.5 If this does not resolve the complaint, the Council also has a formal complaints system. See <https://www.newham.gov.uk/contact-information/complain-comment-compliment/1>  
**OR**
- 4.6 Contact can also be made in writing to:  
**Complaints and Member Enquiries**  
**London Borough of Newham**  
**Newham Dockside**  
**1000 Dockside Road**  
**London, E16 2QU**
- Email: [Corporate.Complaints@newham.gov.uk](mailto:Corporate.Complaints@newham.gov.uk)**
- 4.7 A service user can still make a complaint in cases where the Council has instigated legal proceedings. **However, making a complaint will not stop any impending legal action.**
- 4.8 Where statutory notices have been served, making a complaint does not replace the statutory rights of appeal or the right to make representation. Nor does it allow extra time to comply with any notice or order.
- 4.9 If a service user disagrees with a statutory notice then they should take action specified in the notice or order to make an appeal, if any exists. Reference should be made to the notes that accompany the notice or order for more detail.

**If a summons or directions have been issued by a Court or Tribunal any recipient of the notice or order must continue to follow these. As with all cases where legal action is being taken, it will be strongly recommended that service users seek legal advice.**

## 5. Charging, Fees and Compensation

- 5.1 There will be a charge for all Notices served and Orders made under the Housing Act 2004. The charge will only be waived in exceptional circumstances. The charge will usually be a fixed amount, currently £845, but for certain cases certain ancillary costs will be added, which have been incurred when determining whether to serve a Notice or make an Order and identifying action to be taken in any Notice or Order e.g. where it has been necessary to commission fire safety reports in relation to the 'Fire' hazard.

- 5.2 The proposed recipient of any charging notice can make representations as to their personal circumstances, or other reasoning, and will be notified of the Council's intent to serve the charging notice in any prior consultation correspondence – see paragraph 3.14. However where emergency action is taken or a prior compliance visit carried out, removing this consultation step, this prior notification will not be available; nevertheless any subsequent representation will be considered. The charge will only be waived in exceptional circumstances following consideration of the particular merits of any such representation received. If there is an appeal against the Notice or Order then the charge will not be applied until the appeal is resolved, and where the Notice or Order is then upheld. If the Notice or Order are quashed then the charging notice will not apply and will be withdrawn.
- 5.3 There is no right of appeal against a charging notice; only to the Notice or Order to which the charging notice relates.
- 5.4 Where works in default are completed an administrative charge of 30% will be added to the works cost.
- 5.5 Where a prosecution is taken the Council will in most cases request the Court to consider an application for a compensation claim on behalf of the tenant(s).
- 5.6 We may also request a contribution to costs associated with enforcement that ends with a simple caution. This charge will be reasonable and evidenced on request.
- 5.7 Licence fees will be split to comply with the ruling given in R (Hemming) vs Westminster City Council (2017) UKSC 50.

## 6. Publicity

- 6.1 We will work with various media organisations and persons to promote and inform people about our enforcement regime. We also will look to publish certain prosecutions on the Greater London Authority (GLA) watch list and the Department for Levelling Up, Housing and Communities (DLUHC) statutory database. Media coverage will normally be sought in the following cases:-
  - The offence is a serious one or has significant factors such as the risk to health of tenants, visitors or neighbours, the exploitation of tenants, anti-social behaviour or an issue affecting the wider area or private rented sector.
  - Coverage will assist in securing compliance by others or is in the public interest to demonstrate the Council's actions and to help inform issues in the wider housing sector.
  - To draw attention to a particular issue or set of hazards.
  - To provide potential renters and tenants with information that will enable them to check whether a landlord has a poor operating history. It will seek to ensure the private rented housing market operates in a fairer and more transparent way, and that tenants are protected from exploitation by unscrupulous landlords and letting agents.
  - To support other local authorities and regulatory partners in their enforcement efforts, through information sharing, and increase awareness of criminal and rogue landlords who operate across borough boundaries to crack down on poor and criminal behaviour.
  - The offence is serious and/or was committed wilfully and the Council wishes to draw attention to their willingness to take a hard line in such cases.
  - Coverage is otherwise in the public interest;
  - A press release will also be issued about convictions where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors, as well as the borough's environment.

- Media coverage will not be sought where the primary motive is to cause damage to the subject.

## 7. Further Information

- 7.1 If you would like more information on our service, please go to these webpages: <https://www.newham.gov.uk/housing-homes-homelessness/help-problems-renting-privately/1> **and** <https://www.newham.gov.uk/housing-homes-homelessness/rented-property-licensing/1>
- 7.2 If you are a Landlord and would like training and support on property management matters such as Housing Benefit rules, possession proceedings and changes in housing legislation you should visit Newham's Landlord Accreditation page at: <https://www.newham.gov.uk/housing-homes-homelessness/landlord-accreditation-scheme/1>
- 7.3 This policy will be monitored and reviewed by a suitable management team. Last updated February 2024 by Paul Mishkin.

## APPENDIX 1: Enforcement Options

Action	Circumstances
1. No action	<ul style="list-style-type: none"> <li>Complaints or allegations of housing legislation breaches or statutory nuisances are of minor or low risk to health and the landlord has not been informed by the complainant, or allegations are unsubstantiated and unwitnessed.</li> <li>Cases where landlords are clearly making progress with remedial works and are likely to be completed in a reasonable timeframe.</li> <li>Formal action is inappropriate in the circumstances.</li> </ul>
2. Advisory notices and letters	<ul style="list-style-type: none"> <li>Where conditions are evidenced to justify action and investigation and it is appropriate to give opportunity to landlords and tenants to make representations, provide information or effect change to meet compliance.</li> <li>No defects are present which pose a serious risk to health or nuisance.</li> </ul>
3. Formal notices or orders	<ul style="list-style-type: none"> <li>The defect/conditions presents a risk to health and/or a nuisance.</li> <li>There are previous failures of statutory requirements.</li> <li>Previous advisory notices/letters ignored or action was not taken in a timely manner or to the correct standard.</li> <li>There is a lack of confidence in the individual or management i.e. the willingness to respond to an informal approach</li> <li>The Council is legally required to serve a statutory notice.</li> </ul>
4. Financial Penalties (of up to £30,000 if under Housing & Planning Act 2016, The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 or Tenant Fees Act 2019, or up to £5,000 under other legislation)	<ul style="list-style-type: none"> <li>Non-compliance with an improvement notice.</li> <li>Failure to obtain a property licence (Both Parts 2 and 3 Housing Act 2004).</li> <li>Significant and/or repeated breaches of HMO management regulations.</li> <li>Breaches of conditions of a property licence.</li> <li>Amount of penalty decided by Financial Penalty Matrix (see Appendix 2)</li> <li>Used as an alternative to a prosecution.</li> <li>Other financial penalty powers are within breaches of the following legislation: <ul style="list-style-type: none"> <li>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020,</li> <li>Tenant Fees Act 2019,</li> <li>Consumer Rights Act 2015,</li> <li>The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019,</li> <li>Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 and</li> <li>The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and subsequent amendments.</li> </ul> </li> </ul>

5. Works in Default - Emergency Remedial Action & Emergency Prohibition Order	<ul style="list-style-type: none"> <li>• There is an imminent risk to health and safety to the occupant and/or public</li> <li>• Awaiting the service of a notice or a prosecution would not adequately protect the public interest.</li> <li>• However this does not rule out subsequent action being taken in conjunction with a prosecution, financial penalty, RRO or other legal action.</li> </ul>
6. Works in Default – non-compliance with a notice	<ul style="list-style-type: none"> <li>• We may carry out works required by a notice if they have not been completed within the permitted time and where there are urgent matters still outstanding.</li> <li>• This may be taken in conjunction or followed with a prosecution or financial penalty and/or RRO.</li> </ul>
7. Reducing the term (length) of a Property Licence.	<ul style="list-style-type: none"> <li>• When assessing a Property Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policies, we may reduce the term of the licence.</li> <li>• A cause for concern assessment will also be carried out when a licence holder has outstanding enforcement issues e.g. non-payment of a Financial Penalty Notice or ongoing breach of an enforcement notice.</li> <li>• Where correct Planning permission has not been obtained, and is required, this may be a ground for reducing the term to a 1 year licence.</li> <li>• A Licence holder may continue to stay on a reduced term of their licence if they still are a 'Cause for Concern' e.g. not fulfilling the training requirement, poor management etc.</li> </ul>
8. Adding new property licence conditions	<ul style="list-style-type: none"> <li>• When assessing a Property Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policies, we may add further conditions to remedy poor landlord behaviour or standards e.g. not fulfilling the training requirement, poor management etc.</li> </ul>
9. Formal (Simple) Caution	<ul style="list-style-type: none"> <li>• These will apply to the range of offences that is within the jurisdiction of PSHS. They may be applied where a prosecution or Financial Penalty is determined not to be in the public interest, or where there are other mitigating circumstances that would not warrant a more formal enforcement option.</li> </ul>

<p>10. Refusal to grant a property licence and Revocation of property licenses and approvals</p>	<ul style="list-style-type: none"> <li>• Where the Licence application is not made in accordance with the Council's application requirements; or</li> <li>• Where the Licence application is not accompanied by the appropriate fee; or</li> <li>• Where the proposed manager/licence holder is not a 'fit and proper' person; or</li> <li>• Where the proposed manager/licence holder is not the most appropriate person to hold a licence; or</li> <li>• Where the proposed manager/licence holder is not the person or an agent of a person who has control of the property; or</li> <li>• Where the proposed management arrangements are not satisfactory; or</li> <li>• Where the property is not reasonably suitable of occupation in regards the number of persons or households.</li> <li>• Where the Council consider that the licence holder or any other person has committed a serious breach or repeated breaches of a condition of the licence.</li> <li>• Or a combination of the above.</li> </ul>
<p>11. Prosecution</p>	<ul style="list-style-type: none"> <li>• At the charging stage there must be sufficient evidence for a realistic prospect of conviction and it is in the public interest to prosecute under the Code of Crown Prosecutors. Once the case is heard in Court the Prosecution must prove the offence(s) beyond all reasonable doubt.</li> <li>• See section 3.20 for more detail.</li> </ul>
<p>12. Rent Repayment Orders (RRO)</p>	<ul style="list-style-type: none"> <li>• RROs will be considered after every successful prosecution for failure to comply with an Improvement Notice (section 30); Prohibition Order, including Emergency Prohibition Orders (section 32); Offences in relation to licensing of HMOs (section 72) and in relation to licensing of houses under Part 3 of the Act (section 95).</li> <li>• Where a landlord fails to licence a licensable property and they received a significant amount of Housing Benefit or Universal Credit, a RRO application may be made to the First Tier Tribunal (Property Chamber-Residential Property).</li> </ul>
<p>13. Banning Order</p>	<ul style="list-style-type: none"> <li>• The Council may decide to seek a Banning Order following breach(es) of 'banning order offences' (set out under The Housing &amp; Planning Act (Banning Order) Regulations 2018) by landlords or agents. A Banning Order lasts for a minimum of 12 months and prevents landlords or agents from letting their own properties or being involved in the lettings and property management industry across England.</li> </ul>
<p>14. Injunction</p>	<ul style="list-style-type: none"> <li>• The Council may seek an Injunction under section 222 of the Local Government Act 1972 where there are exceptional circumstances, where there is a clear need to protect the health, safety or wellbeing of a resident and where nothing short of an injunction will be effective.</li> </ul>

<p>15. Interim &amp; Final Management Order</p>	<ul style="list-style-type: none"> <li>The Council may decide to seek an Interim Management Order (IMO), following a breach of certain licensing offences, where the health and safety or welfare of the occupants is at serious risk (the 'health and safety condition' section 104 Housing Act 2004) and/or breach of a banning order by landlords and agents. An IMO lasts for a maximum of 12 months and gives control of the subject property to the Council. At the end of the Interim period a Final Management Order (FMO) of up to 5 years may be sought, which follows the same principles but on a longer term basis.</li> </ul>
<p>16. Compulsory Purchase Orders (CPO) / Empty Dwelling Management Orders (EDMO)</p>	<ul style="list-style-type: none"> <li>Where long term empty dwellings are causing problems in their neighbourhood the council will consider the use of a suite of powers, including CPOs and EDMOs, to ultimately take ownership away from those who show no prospect of bringing their properties back into use. A systematic approach will be taken, with increasing use of stronger powers the longer cases are not adequately dealt with by owners.</li> </ul>
<p>17. Proceeds of Crime Act</p>	<ul style="list-style-type: none"> <li>Where landlords or others have benefited from the proceeds of a criminal activity an application may be made to recover any benefit, such as a Confiscation Order under The Proceeds of Crime Act 2002.</li> </ul>
<p>18. Remediation Orders and Remediation Contribution Orders under the Building Safety Act 2022</p>	<ul style="list-style-type: none"> <li>Where relevant landlords fail to remedy specified fire safety defects in certain buildings in a timely manner, the Council may make an application for a Remediation Order and/or Remediation Contribution Order to the First Tier Tribunal (Property Chamber-Residential Property).</li> </ul>



## APPENDIX 2: Financial Penalty Matrix

The following matrix is used by officers in determining the penalty amounts for a Financial Penalty Notice under the Housing and Planning Act 2016. It has been created having specific regard to the Government Guidance for Local Authorities: Civil penalties under the Housing and Planning Act 2016, published April 2018.

Each of the rows in the matrix take into account certain criteria set out in the guidance. Each row produces a score dependent on the severity of the issue, being either 1, 5, 10, 15 or 20. At the end of every row the officer will have to justify the most appropriate score chosen based on evidence in the case. The sum of the scores of each of the 4 rows produce a total. This final total is then compared against the council's set fee ranges, which determines the exact penalty amount; see table below. E.g. a matrix total of 17 would result in a penalty of £7,500, a score of 55 would result in a penalty of £20,000 etc.:

Score Range	Fee
1 – 5	£1,000
6 – 10	£2,500
11 – 15	£5,000
16 - 20	£7,500
21 – 30	£10,000
31 – 40	£15,000
41 – 60	£20,000
61 – 80	£25,000
81 – 100	£30,000

Consequently the officer using the matrix will at no point be setting the penalty amount themselves as it is automatically calculated by the matrix, dependent on their assessment and resultant scores in each of the 4 rows.

The matrix is reproduced below.

Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	Total	Justification
<b>1 - Deterrence &amp; Prevention</b>	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence	Medium confidence that a financial penalty will deter repeat offending. Minor informal publicity required for mild deterrence in the landlord community.	Low confidence that a low financial penalty will deter repeat offending (e.g. no contact from offender). Some informal publicity will be required to prevent similar offending in the landlord community.	Little confidence that a low financial penalty will deter repeat offending. Likely informal publicity will be required to prevent similar offending in the landlord community.	Very Little confidence that a low financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community.		
<b>2 - Removal of Financial Incentive</b>	No significant assets. No or very low financial profit made by offender	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.		
<b>3 - Offence &amp; History</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offences of moderate to large severity or a single instance of a very severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.		
<b>4 - Harm to Tenant(s) (*Score is doubled on this section in line with Statutory Guidance)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).		

**TOTAL**