



# Private Sector Housing Enforcement Policy Supplement 2017

Environmental Health (Pollution and Residential) Services  
Community Safety and Environmental Health Division  
Directorate of Housing and Safer Communities

## Preface

The Royal Borough of Greenwich (Royal Borough) Community Safety and Environmental Health Division divisional enforcement policy sets out the approach to enforcement across the services. This is a supplement to that policy that explains in more detail the Environmental Health (Pollution and Residential) Services enforcement policy in relation to private sector housing, which includes owner/occupation, Registered Providers as well as the private rented sector (excludes property owned by the Royal Borough).

The Royal Borough's Environmental Health (Pollution and Residential) Services sets out to ensure that legally compliant standards of housing conditions are maintained in privately owned residential property, including housing matters arising from privately owned land. In carrying out its functions, the service will prioritise and target resources to improving the private rented sector.

The Royal Borough regards all aspects of managing and renting residential property as a business and expects those engaged in it, e.g. as a landlord, a letting agent etc. to understand and be conversant with the legal requirements and take responsibility for their business undertakings.

The Royal Borough's preferred approach is to give informal advice and to help business achieve the standards required. However, where this approach fails, where there is a history of non-compliance or where it is necessary to protect the health safety and welfare of people or the environment the service will take the necessary enforcement action.

The service's functions include; the licensing and proper management of houses in multiple occupation (HMOs), enforcement of the housing, health and safety rating system, overcrowding, illegal eviction and harassment, public health matters and associated/related provisions. The services functions reflect the Royal Borough's statutory duties and are in-line with the Royal Borough's corporate objectives and associated strategies.

The service works closely with partners across London including other local authorities, regulators and registered providers of social housing. Any protocols agreed with partners are referred to in this policy. The policy sets out the Royal Borough's transparent approach to private housing enforcement so that all stakeholders understand how we deal with the service functions and how they will be dealt with by the Royal Borough when it necessary to intervene.

# Table of contents

Preface .....	2
Table of contents.....	3
1. Background and context.....	5
1.1 Policy Aims .....	5
1.2 Enforcement Action – what is it? .....	5
1.3 Relationship with the Community Safety and Environmental Health Division Enforcement Policy. 5	
1.4 Enforcement Objectives .....	5
1.5 Fees and Charges.....	6
2. Primary Authority.....	6
3. Providing Assistance and Information .....	6
4. Targeting Enforcement Action .....	6
4.1 Property Type or Occupation.....	7
4.2 Areas.....	7
4.3 Individuals .....	7
4.4 Other .....	7
5. Licensing of Private Rented Sector Properties .....	8
5.1 Mandatory HMO Licensing.....	8
5.2 Discretionary Licensing .....	8
5.3 Operating an Unlicensed Property.....	8
5.4 License Renewal .....	8
5.5 License Fees.....	9
5.6 Duration of Licenses.....	9
5.7 Fit and Proper Person Policy.....	9
5.8 Revocation of a License.....	9
6. Management Regulations.....	9
7. Management Orders.....	10
8. Overcrowding.....	10
9. Anti-Social Behaviour .....	10
10. Protection from Eviction, Harassment and Criminal Entry. ....	11
11. Public Health Team.....	11
12. Housing, Health and Safety Rating Scheme (HHSRS) .....	12
Category 1 hazards.....	12
Category 2 hazards.....	12
13. Enforcement Action .....	12
13.1 General Information .....	12
13.2 Charging for Enforcement Action .....	13
13.3 Types of Enforcement .....	13

14.	Protocols .....	17
14.1	Fire Safety enforcement protocol with London Fire and Emergency Planning Authority .	17
14.2	Noise protocol .....	17
14.3	Management of Enforcement Action for Vulnerable People. ....	17
15.	Partners .....	18
16.	Appeals and Complaints Procedure .....	18
17.	Enquiries .....	19
18.	Glossary .....	20
Appendix I - Statement of Principles for the Issuing of Civil Penalties .....		21
1.	Purpose.....	21
2.	Overarching Principles for Issuing a Civil Penalty .....	21
2.	The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 .....	21
2.1	Enforcement Process.....	22
3.	Civil Penalties under the Housing Act 2004 and the Housing and Planning Act 2016.....	23
3.1	Civil Penalties Matrix.....	24
3.2	Enforcement Process.....	30
3.3	Discounts.....	31
3.4	Appeal.....	31
3.5	Recovery.....	31

# I. Background and context

## I.1 Policy Aims

1. Ensure safer and healthier private housing.
2. Explain the legal responsibilities, policies, principles and priorities followed when we enforce legislation.
3. Raise the profile and demonstrate transparency of enforcement in the private housing sector and in particular the private rented sector.
4. Increase public confidence in the quality of local accommodation and assist a responsible private rented sector to thrive in the Royal Borough.

## I.2 Enforcement Action – what is it?

Enforcement means an action carried out in exercise of or against the background of statutory enforcement powers. It includes inspections (using our powers of entry, which includes, where necessary, by warrant) and investigations where the purpose is checking compliance with the law. It also includes providing advice to help those responsible persons and businesses to comply with statute and more formal enforcement action such as service of statutory notices, the making of orders, the issue of financial penalties, works in default, enforced sale, compulsory purchase and prosecution.

## I.3 Relationship with the Community Safety and Environmental Health Division Enforcement Policy

The Royal Borough of Greenwich Community Safety and Environmental Health Division has a [divisional enforcement policy](#) that sets out the principles of good regulatory practice and the approaches that are followed by our regulatory services and officers across these services. This document is a supplement to that policy that explains in more detail the Environmental Health (Pollution and Residential) Services policy in relation to private sector housing enforcement.

Both consider the Royal Borough's approach to better regulation within the Government's Better Regulation agenda. They follow the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006 (2006 Act) and subsequent related legislation.

The 2006 Act requires that regulatory services have regards to current Regulators Codes when developing policies and procedures that guide our regulatory activity. This policy has regard to the [Regulators Code 2014](#).

This policy promotes efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary burdens on businesses such as landlords and letting or managing agents.

## I.4 Enforcement Objectives

The Royal Borough's Environmental Health (Pollution and Residential) Services covers all privately owned residential accommodation and land. In normal circumstances, our enforcement action will be carried out to ensure:

- I. Tenants of a private landlord or registered providers of social housing (RPs) live in homes free of significant hazards which affect their health and safety.
- II. Privately rented accommodation, including houses in multiple occupation (HMOs), are managed in accordance with legal requirements.
- III. All licensable properties are licensed and license conditions met.

- IV. Vulnerable occupiers or those unable to support independent living, live in accommodation free of significant risks to their health and/or safety.
- V. Owners or occupiers of privately owned land or property do not cause a statutory nuisance to owners or occupiers of other land or property.
- VI. Owners or occupiers of privately owned land or property do not present an unacceptable risk to public health, safety or the environment.
- VII. Persons are held accountable for actions which are deemed detrimental to local environmental quality or to the health, safety and welfare of other residents.
- VIII. The service meets its statutory duties.
- IX. Subject to data protection law and other relevant statute, the Royal Borough actively shares information between its services. The Royal Borough will share information with other regulators to help detect or prevent crime.

### 1.5 Fees and Charges

Some legislation allows the Royal Borough to apply fees and charges in respect of the work carried out by the authority. Fees and charges are revised annually. Where fees and charges apply they are mentioned within this policy.

## 2. Primary Authority

Primary Authority requirements under the Regulatory Enforcement and Sanctions Act 2008 (enforced by the Better Regulation Delivery Office (BDRO)) were extended to cover the Housing, Health and Safety Rating System (HHSRS), under the Housing Act 2004, in October 2013.

The Royal Borough welcomes applications from businesses to form a Primary Authority Agreement, e.g. letting agents, landlords, RPs. Please see section 17 (Enquiries) for contact details. This can apply where either a business has housing across two or more Local Authority areas or where an organisation, such as a trade body wishes to offer a consistent approach to compliance for its members.

The Royal Borough will have regard to formally recognised Primary Authority Agreement's in its enforcement approach. The [BDRO publish a list](#) of primary authorities and the businesses they support.

## 3. Providing Assistance and Information

In most cases we will first seek to work with service users to meet our objectives before escalating to use other forms of enforcement action. We publish our [service standards](#) on our website. We will provide clear, accessible advice and guidance and provide contact details where further information is required. Information is provided in a range of formats, hard copies, and electronically. Information can be provided in languages other than English upon request or where a need to do so is identified. [Key information](#) can be found on our website.

## 4. Targeting Enforcement Action

From time to time we will target our enforcement activity to ensure we meet our objectives effectively and efficiently. Our targeted action is agreed in line with the Royal Borough's constitution and delegations.

Some examples of ways in which activity may be targeted is set out below (not an exhaustive list):

#### 4.1 Property Type or Occupation

- I. Unlicensed properties.
- II. Poorly managed privately rented properties.
- III. Private rented property subject to incidences of anti-social behaviour.
- IV. Properties where tenants receive Local Housing Allowance/Housing Benefit/Universal Credit. These tenants are more vulnerable to lower standards of accommodation and can consequently face greater risks to their health safety and welfare.
- V. Properties poorly or illegally built or converted that may not comply with planning or building regulation requirements.
- VI. Household types such as shared accommodation.
- VII. Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC)<sup>1</sup>.
- VIII. Construction type – where there is a known issue associated with methods of construction for example precast reinforced concrete.
- IX. Where a style of renting or rental model causes risk to health, safety or welfare, e.g. rent to rent models, where a short-term tenant sub-lets a property creating an unregulated HMO.

#### 4.2 Areas

- X. Where there are identified issues in a specific locality. This can be determined on a street by street or ward basis.
- XI. Where an area of the Royal Borough has been identified as potentially having adverse health or socioeconomic indicators.
- XII. To provide a co-ordinated approach alongside other Royal Borough initiatives, for example, the Plumstead Environmental Action Area.

#### 4.3 Individuals

Where a landlord, agent, organisation or individual<sup>2</sup>:

- XIII. Fails to manage privately rented accommodation in accordance with legal requirements.
- XIV. Fails to comply with informal or formal requests to meet minimum legal requirements of relevant legislation or commits offences.
- XV. Fails to submit a valid license application or meets licensing standards and requirements.
- XVI. Places tenants in overcrowded accommodation.
- XVII. Their activities result in the need for us to work proactively to meet our enforcement objectives.

#### 4.4 Other

- XVIII. To support the Royal Borough's published corporate strategies and policies such as the joint strategic needs assessment or homelessness strategy.

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<sup>1</sup> From 1st April 2018 private rented property (new lets and tenancy renewals) cannot lawfully be rented with a EPC rating of less than 'E'.

<sup>2</sup> Such persons may also be referred to as "rogue" landlords or agents as per the oxford English dictionary definition of a rogue being "a dishonest unprincipled person"

## 5. Licensing of Private Rented Sector Properties

### 5.1 Mandatory HMO Licensing

A mandatory license is required for HMOs with three or more storeys and with five or more occupiers sharing some facilities. Since 2006 the Royal Borough has publicised the need for these HMOs to be licensed. In December 2015, the government consulted on extending the scope of mandatory HMO licensing. The Royal borough is committed to implementing and, where necessary, enforcing any changes subsequently introduced because of this consultation.

### 5.2 Discretionary Licensing

Local Authorities have the discretion to bring into force licensing of residential accommodation as defined in parts 2 and 3 of the Housing Act 2004. Adopting these provisions allows local authorities to require landlords of some privately rented properties to apply for a license.

There are two types of discretionary license schemes. **Additional** licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and are causing particular issues for the people who live in these properties or residents in the area. **Selective** licensing may be appropriate where there are issues with low housing demand, anti-social behaviour, high levels of migration, poor property standards, high levels of crime or high levels of deprivation in certain areas and some or all of the responsible persons in that area are generally failing to act to address the issues.

On the 1 October 2017, the Royal Borough's Additional HMO Licensing Scheme comes into force requiring all HMOs (as defined by the Housing Act 2004) to be licensed with the Royal Borough. Owners and/or managers of HMOs will be required to submit an online application and pay a fee. Discounts for 'early bird' and/or professionally recognised landlords will be available. See [here](#).

The Royal borough is currently determining whether selective licensing in all or parts of the Borough is appropriate and necessary. Any decision to introduce a scheme will be based on sound and robust evidence to support the decision. The Royal Borough is committed to ensuring all legislative requirements, such as public consultation, are met in full before introducing any scheme. Fees and charges associated with any proposed scheme will seek to provide an incentive for the responsible parties to comply with the scheme requirements.

### 5.3 Operating an Unlicensed Property

The Royal Borough employs resources to find unlicensed properties and where identified may apply a punitive unlicensed application fee.

If a landlord cooperates with the Royal Borough an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently made within 10 working days. Consideration will be given to any representations regarding exceptional circumstances that may have resulted in the application not having been made within the 10 working days. In other circumstances, the Royal Borough will investigate and if appropriate consider taking formal action, such as prosecution, applying for a Rent Repayment Order, issuing a Civil Penalty, etc.

The Royal Borough may provide tenants with information and advice on how and when they can claim back the rent they paid whilst the property was unlicensed.

Tenants of an unlicensed property cannot be issued with a section 21 Housing Act 1988 eviction notice whilst the property remains unlicensed.

### 5.4 License Renewal

The Royal Borough will send a reminder to the license holder approximately 3 months before the expiry of the license. Failure to make a valid re-application, within 1 month of the license expiring



will forfeit the right to relicense at the renewal fee rate. Each case will be considered on its merits and subsequent license applications will be charged at either the new license or unlicensed fee rate. In addition, formal action will be considered, which may include, prosecution, applying for a Rent Repayment Order, issuing a Civil Penalty.

The Royal Borough may provide tenants with information and advice on how and when they can claim back the rent they paid whilst the property was unlicensed.

Tenants of an unlicensed property cannot be issued with a section 21 Housing Act 1988 eviction notice whilst the property remains unlicensed.

## 5.5 License Fees

The Royal Borough applies [fees](#) for licensing of private rented property. Fees cover the administration and enforcement of the schemes and are subject, at least, to annual review.

## 5.6 Duration of Licenses

Licenses will normally be granted for the full five-year period. The length of the license may be reduced from five years to an appropriate lesser period where any of the following apply:

- I. Where the legalisation of the property is required, e.g. where planning consent is required for its use.
- II. Where there are concerns that the proposed management arrangements may not be satisfactory and evidence is required that management is satisfactory before allowing a longer license period to be granted.
- III. To remove any advantage gained over those license holders who applied at the appropriate time.
- IV. Where a scheme is time limited by law.

Following the expiry of a license a new application and fee will be required.

## 5.7 Fit and Proper Person Policy

In granting a license the Royal Borough must be satisfied that the proposed license holder, manager and any person involved in the management of the property are fit and proper persons. We will have regard to relevant guidance and the legislative requirements in applying the 'fit and proper' test.

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

## 5.8 Revocation of a License

Revoking a property license under the Housing Act 2004 may occur under the following circumstances:

- I. Breach(es) of license condition(s).
- II. Where the license holder and/or manager are no longer considered fit and proper person(s).
- III. By agreement with the license holder, e.g. where the license holder has sold their interest in the property.

# 6. Management Regulations

HMO Management Regulations place requirements on landlords and managers of HMOs to maintain, communicate and manage the HMOs they run. The Regulations also place requirements on occupiers of HMOs to not obstruct or interfere with the management and maintenance of the

HMO. There are two sets of Regulations; [The Management of Houses in Multiple Occupation \(England\) Regulations 2006](#) and [the Licensing and Management of Houses in Multiple Occupation \(Additional Provisions\) \(England\) Regulations 2007](#). Both sets cover the same requirements but relate to different types of HMOs. The Regulations cover:

- I. Duty of manager to provide information to occupier.
- II. Duty of manager to take safety measures.
- III. Duty of manager to maintain water supply and drainage.
- IV. Duty of manager to supply and maintain gas and electricity.
- V. Duty of manager to maintain common parts, fixtures, fittings and appliances.
- VI. Duty of manager to maintain living accommodation.
- VII. Duty to provide waste disposal facilities.
- VIII. Duties of occupiers of HMOs.

Breaching any of the Regulations is an offence, which carries an unlimited fine or the imposition of a Civil Penalty of up to £30,000 for each breach. In most cases the Royal Borough will inform the landlord and/or manager of the breaches of the regulations informally giving a reasonable time to remedy the defects (usually 10 working days). If the informal process fails then the Royal Borough will consider formal action.

## 7. Management Orders

These powers are contained in the Housing Act 2004 and may be used as a last resort where

- I. All other attempts have failed,
- II. There is no reasonable expectation of a license being granted or
- III. It is necessary to protect the health safety or welfare of occupiers, visitors or persons living in the area or,
- IV. Anti-social behaviour is affecting other occupiers, visitors or persons living in the area.

The Royal Borough has plans in place to manage properties where a management order is made. These arrangements can include external agencies.

## 8. Overcrowding

The service will investigate complaints received about overcrowded living conditions howsoever received and take the appropriate action, which accounts for the impact on neighbours'. The service will liaise with the Royal Borough's Housing Options Service where our actions are likely to lead to tenants moving out of their accommodation. The service may advise persons living in overcrowded conditions that their health/safety is at risk and not require them to move out if they do not wish to do so. When a tenancy comes to a natural conclusion we may require a responsible person to reduce or limit the numbers of tenants when re-letting the property under a new tenancy. Each case will be judged on its own merits.

## 9. Anti-Social Behaviour

Where complaints of anti-social behaviour are more appropriately dealt with by other services, such as the pollution control, anti-social behaviour, enviro-crime teams, these complaints will be referred to them. When making such a referral the service requester will be informed of the team dealing with the matter and provided with the appropriate team contact details.

Where we have legal powers to deal with anti-social behaviour we will initially liaise with relevant organisations such as academic institutions, landlords and their associates in addition to the above teams to seek an informal resolution. Where this approach fails to resolve the matter, formal action against the responsible person will be considered, where possible.

## 10. Protection from Eviction, Harassment and Criminal Entry.

The Royal Borough is committed to protecting the welfare and rights of tenants of privately rented accommodation. Working closely with colleagues in the Royal Borough's Housing Options and Support Service and the Police, officers will investigate cases where illegal eviction, harassment or criminal entry is suspected. Where appropriate the Royal Borough will assist tenants seeking civil injunctions and compensation from their landlord.

[The Protection from Eviction Act 1977](#) makes harassment and illegal eviction criminal and civil offences. Relevant occupiers subjected to harassment or illegal eviction can seek damages and/or injunctions from the civil courts. If the landlord is convicted in the magistrates' court, they can be fined or sent to prison for up to six months. The crown court can impose any fine and/or imprisonment for up to two years. The Royal Borough can also apply for compensation on behalf of the occupier from the magistrates.

In serious cases where there is an imminent risk to safety, the Royal Borough can apply for a warrant for the arrest of the perpetrator. We will work with the Police in these cases, who are empowered to arrest the offender who is then brought before the magistrates, where they can apply for bail.

Harassed and/or illegally evicted occupiers can use the county court to get an injunction to stop the harassment and/or to be reinstated in their home and to get damages as compensation for their landlord's actions.

[The Criminal Law Act 1977](#) protects tenants from violence during an eviction, even if the eviction is legal. If a person is convicted of an offence, they will be liable to an unlimited fine or up to 6 months imprisonment. A Police constable can arrest a person they suspect causing this offence.

## 11. Public Health Team

The Royal Borough will investigate cases relating to the protection of public health, which include:

- I. Private drainage and sewerage issues, e.g. blocked and broken sewers.
- II. Nuisance issues between properties, e.g. damp ingress from a neighbouring property.
- III. Pest and pest harbourage problems, e.g. infestations and accumulations that may attract pests.
- IV. Filthy and or/verminous premises, e.g. a home that has build-up of items that may represent a risk to health.
- V. Officers will oversee exhumations to ensure public health is protected.
- VI. Securing premises to protect public health.

A variety of legislation is employed to investigate and remedy these issues, which can include the service of Notice and carrying out works in default. Where there is a blatant disregard for public health, criminal proceedings may be instigated against the perpetrators.

## 12. Housing, Health and Safety Rating Scheme (HHSRS)

[HHSRS](#) is a risk based assessment for defining the risk to health safety of occupants and visitors from 29 defined hazards, e.g. excess cold, damp and mould, falls, etc. in residential property. The hazard is assessed, scored and banded between A to J.

### Category 1 hazards

These are hazards that have been scored as representing a serious risk to health and/or safety. The Royal Borough has a legal duty to act to deal with category 1 hazards (band A-C). It is committed to doing so, taking appropriate action in accordance with this and the divisional policy.

### Category 2 hazards.

The Royal Borough has a power to address category 2 hazards (band D-J). These are hazards that represent a significant risk health and/or safety.

Officers will exercise their professional judgement when proposing enforcement action against category 2 hazards. Officers will have regard to national guidance and the following locally authorised guidelines:

- VII. If the category 2 hazard is rated at band E or above (considering the national average for the type and age of the property).
- VIII. Where there are category 1 hazard(s) also present.
- IX. Where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventive action is taken.
- X. Where there are targeted enforcement priorities, e.g. defined action areas, such as the Plumstead Action Area or as part of a project to address specific issues.
- XI. Where there are two or more category 2 hazards, which when considered together, amount to neglect of the property or disregard for tenant's health, safety or welfare.
- XII. Where there is a track record or history of the responsible party disregarding previous enforcement advice or action, there are previous convictions for relevant offences or a relevant license has been refused. The Royal Borough has low confidence, based on evidence, that the responsible party will take the appropriate action without enforcement action being taken.

## 13. Enforcement Action

### 13.1 General Information

All officers will be fully trained, competent and authorised by the Royal Borough. An authorised officer will carry an identity card and, where appropriate, a warrant card. The identity card shows a photograph of the officer and their job title. The warrant card shows the officers name, job title and lists the legislation under which the officer is empowered.

We will use all available powers to meet the enforcement objectives within this policy. These powers include powers of entry, production of documents, requirement to produce information about a person's identity and interest in property/land and the power to require certificates regarding gas or electrical safety in HMOs. We will have regard to any relevant government guidance when carrying out our enforcement activity.

We will have regard to other legal requirements that might apply to our actions for example the Human Rights Act 1998, Data Protection legislation, Regulation of Investigative Powers Act 2000, Criminal Procedure and Investigations Act 1996 and codes of practice made under the Police and Criminal Evidence act 1984, etc.

## 13.2 Charging for Enforcement Action

The Housing Act 2004 allows the Royal borough to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other legislation also allows us to recover costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.

The service will recover all costs and fees when formal action is taken when we think it is reasonable to expect the responsible person to pay these in the circumstances. The full costs of all officers' time, including any overheads and relevant expenses, e.g. expert reports, will be charged. In some cases, enforced sale of property will be considered to recover costs. This will apply if it is reasonable and proportionate in the circumstances of the case.

## 13.3 Types of Enforcement

The information in the [divisional policy](#) describes the range of enforcement action available to the service and the approach we take to deciding which of those is the most appropriate. The information below is provided to supplement the divisional policy and describe some situations where particular action might be taken.

### No Action

In certain circumstances, it might be appropriate that no action is taken. For example:

- I. When the health and safety risk is sufficiently low enough.
- II. Where there are extenuating circumstances regarding the person against whom action would be taken.
- III. Taking formal action would be disproportionate or inappropriate in the circumstances of the case.

The Royal Borough may make recommendations which are above the legal minimum requirements, advise if there are other avenues open to persons to resolve issues themselves or refer to another appropriate regulator or advice service.

### Informal Action

In most cases officers will seek resolution of issues through initially working on an informal basis with those involved. Informal action can take the form of verbal requests, letters or emails or schedules of work. It will be made clear that formal action could follow where there is a failure to respond to informal requests to carry out works to meet legal requirements. When formal action is taken in the first instance, without preceding informal action, they will inform the owner, landlord, agent or other appropriate person of this decision and their reasons for doing so.

### Formal Action

Where the circumstances of the case justify it, officers are expected to take a formal approach. Formal action will also be taken where compliance with a statutory requirement has not been achieved by informal action.

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

- I. There is an actionable risk to health and safety such as:
  - No heating in cold weather.
  - No hot water to wash and prepare food safely.
  - Exposed electrical wiring which people are likely to encounter.
  - Gas leak or risk of fire.

- Raw sewage surcharging into a neighbour's property.
- II. A responsible person fails to carry out works requested informally.
- III. There is a history of failure to meet requests to carry out legally required works.
- IV. There is a history of a failure to manage a property to meet legal requirements.
- V. There is a record of criminal convictions for housing related offence(s) in the last five years or a simple caution has been issued in the last two years.
- VI. It is necessary to safeguard and protect health and safety in the future.

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

#### Service of formal notices or orders

These are served/made in accordance with the requirements of the relevant legislation. The associated paperwork will set out:

- reason this action is being taken,
- timescale for completion of any works,
- works that are required,
- representations that may be made,
- relevant appeal periods,
- details of any charges, and
- consequences of non-compliance.

The Royal Borough has the power to suspend Improvement Notices and Prohibition Orders under part I of the Housing Act 2004. Suspension would be considered on a case by case basis and where the circumstances of the current occupiers were such that other options were not practical.

#### Emergency action

In some emergency situations enforcement action will be taken that will involve carrying out work without the prior need to serve legal notice. Examples are;

- Where there is an imminent risk of serious harm to the health or safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004).
- Where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of the local Government (Miscellaneous Provisions) Act 1982).

In circumstances where works would be inappropriate, disproportionate or impossible to remedy the emergency situation an Emergency Prohibition Order (Housing Act 2004) will be made, which will prohibit or restrict part or all the property from use or certain uses.

In all cases, where the legislation allows the Royal Borough will seek to recover the cost of the work and the administration and officer costs associated with the action.

#### Prosecution

Where the Royal Borough recommends a case for legal proceedings (prosecution), it will be considered in accordance with the [divisional policy](#). The Head of Environmental Health (Pollution and Residential) Services considers whether a case has been investigated sufficiently to ensure it meets evidential and public interest tests set out in the Code for Crown Prosecutors and whether

any statutory defences are available to the person(s) under investigation. Cases are referred to the Royal Borough's legal services for legal court proceedings to start. Each case will also be considered for investigation and action under the Proceeds of Crime Act 2002.

Verdicts and sentences are given in open court and are a matter of public record. The Royal Borough will publicise sentences following prosecution on a case by case basis and in line with the Justice Department's guidance. The guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders to reassure the public, increase trust and confidence or improve the effectiveness in the justice system and discourage offending or re-offending.

### Simple cautions

The service may offer a Simple Caution as an alternative to prosecution where someone has

- admitted to an offence,
- where it is their first offence, and
- they have as far as practicable assisted officers in remedying the situation that led to the offence.

Relevant examples include applying for a license as soon as the person is made aware one is required, or quickly complying with the requirements of an expired legal notice.

Simple cautions are issued by the Head of Environmental Health (Pollution and Residential) Services for private housing matters as an alternative to prosecution. Simple cautions warn people that their behaviour has been unlawful and makes them aware of legal consequences should they commit further offences.

### Work in default

This is where the Royal Borough has legally required a person to do works but they have failed to do so. The Royal Borough can carry out all or some of the required works. The powers are provided for in the specific legislation being used in the case.

In most cases a responsible person will be given notice of the intention to carry out works in their default. Once works have started it is an offence for that person to obstruct officers or their appointed contractors. The complete cost of the works and all administrative and other costs will be recovered in accordance with the relevant statutory provisions. The Royal Borough will also consider prosecution or the imposition of a Civil Penalty for any failure to act in addition to carrying out works in default to resolve the matter.

### Rent Repayment Orders

The Housing and Planning Act 2016 revised the powers available for applying for a Rent Repayment Order (RRO). A RRO requires a landlord to repay a specified amount of rent (up to 12 months) in certain circumstances.

The Royal Borough can make an application to the First Tier Tribunal (FTT) for a RRO to recover benefit payments related to housing, where the landlord has:

- Failed to comply with an Improvement Notice under the Housing Act 2004.
- Failed to license a property requiring a license under the Housing Act 2004.
- Failed to comply with a Prohibition Order under the Housing Act 2004.
- Breached a Banning Order under the Housing and Planning Act 2016.
- Used violence to secure entry to premises under the Criminal Law Act 1977.

- Illegally evicted or harassed occupiers under the Protection of Eviction Act 1977.

The Royal Borough will consider making an application for an RRO when making investigations into the above offences. An application to the FTT for an RRO can be made if a conviction has been secured or a Civil Penalty issued or where there is no prior conviction.

Where there is a prior conviction or a Civil Penalty has been issued (where there is no prospect of appeal), the full amount of rent (up to a maximum of 12 months) will be applied for and FTT is compelled by law to make an Order for that amount (as long as it has been correctly calculated).

Where a conviction hasn't been secured the FTT will determine whether the Royal Borough has met the criminal standard in relation to the relevant offence. The Royal Borough will have regard to the statutory guidance and consider the following before deciding to make an application:

- **Punishment of the offender** – the Royal Borough will consider if making an application for an RRO will have a real economic impact on the offender. Where this is unlikely, i.e. where the amount of rent paid over the preceding 12 months is minimal and doesn't reflect the severity of the offence, the Royal Borough will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.
- **Deter the offender from repeating the offence and dissuade others from committing similar offences** – The Royal Borough will consider whether the impact from making an application for an RRO in any case will be of such a financial impact and whether the wide publication of a successful application for an RRO will be of such an impact as to dissuade and deter the offender and others from repeating the behaviour or, in the case of others, committing similar offences. Where this is unlikely the Royal Borough will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.
- **Remove any financial benefit the offender may have gained as a result of committing the offence** – The Royal Borough will only consider making an application for an RRO where the impact of such an order will reflect the benefit the landlord has gained from not complying with the responsibilities, e.g. where the landlord has not carried out necessary works to improve the standards in their property and the effect of recovering up to 12 months' rent will sufficiently reflect the costs of those works. Where it is unlikely that the amount recoverable is sufficient to mitigate the benefit, the Royal Borough will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.

Before making an application, the Royal Borough will serve on the relevant person a Notice of its intentions to make an application, which will state the reasons for doing so. This will cover the above issues (where a conviction hasn't already been secured), the amount being sought and invite the relevant person to make representations within 28 days. The Royal Borough will consider any representations before making an application to the FTT.

A tenant of a property, where a relevant offence has been committed by their landlord, can also make an application to the FTT for a RRO. The Royal Borough will inform tenants of this right and will assist tenants in making their applications.

Failure to pay the amount required by an RRO will result in the Royal Borough pursuing recovery of the debt through the county court.



## Civil Penalties

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, the Housing Act 2004 (as amended by the Housing and Planning Act 2016) and the Housing and Planning Act 2016 enables enforcement by the imposition of a Civil Penalty.

Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will result in the Royal Borough carrying out the works necessary to install appropriate smoke and/or carbon monoxide detection and issuing a Civil Penalty of up to £5,000.

The Royal Borough may impose a Civil Penalty, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice (Housing Act 2004).

Note. Where a Civil Penalty has been issued and the recipient of the Improvement Notice continues to not comply, the Notice will be revoked and a further Improvement Notice served.

- Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.
- Failure to comply with an Overcrowding Notice (Housing Act 2004).
- Failure to comply with a regulation in respect of an HMO (Housing Act 2004).
- Breaching a Banning Order (Housing and Planning Act 2016).

Failure to pay a Civil Penalty will result in the Royal Borough pursuing recovery of the debt through the county court.

Appendix one sets the Royal Boroughs statement of principles for the issuing of civil penalties.

## 14. Protocols

The following protocols have been developed to help clarify how the service will work with other partners, organisations or services in relation to private housing. These may be added to or amended over time.

### 14.1 Fire Safety enforcement protocol with London Fire and Emergency Planning Authority (LFEPA)

The protocol sets out how both the Royal Borough and LFEPA will take enforcement action in relation to fire safety in properties where there is an overlap between each organisation's duties and powers.

### 14.2 Noise protocol

The HHSRS under the Housing Act 2004 covers hazards from noise and in some circumstances, where properties haven't been improved to current building regulations, works can be required to improve sound insulation in a property. The Environmental Health Pollution Control Section and Residential Services have agreed a noise protocol between the two services for dealing with complaints about noise.

### 14.3 Management of Enforcement Action for Vulnerable People.

The Royal Borough has developed this protocol for use by officers when they are considering enforcement action against a resident. It promotes a multi-departmental approach to sharing information about vulnerable people where the information known by one department may affect the decision-making process of another.

The protocol helps to ensure that a proportionate approach is taken, properly considering the needs of a vulnerable resident with our responsibility to the wider communities that we serve. It recognises that a person's responsibilities are not mitigated by the presence of a vulnerability, e.g. not to cause a statutory nuisance to others. Safeguarding issues and the support needed to meet responsibilities are key points.

Environmental Health (Pollution and Residential) Services will have regard to this protocol. In private sector housing enforcement, the protocol has proved particularly valuable in cases in which owner-occupiers, who are considered to have vulnerabilities, are hoarding in their homes and causing statutory nuisance or a fire safety risk.

## 15. Partners

The Royal Borough works with a wide range of partners and stakeholders including private sector landlords and their representatives such as the National Landlords Association, resident's groups, other Royal Borough services, other regulators such as LFEPA, Immigration Enforcement Service, HMRC and neighbouring local authorities. We value the partners we work with and will engage with them in relation to enforcement activity and procedures.

## 16. Appeals and Complaints Procedure

The divisional policy, this policy and the guidance referred to, are relevant documents we will consider when reviewing complaints in relation to our enforcement activity. There will also be further guidance that will be considered in relation to any service complaint that is not specifically mentioned here.

We will inform all persons who are the subject of formal enforcement action of their right of appeal. This right will vary depending on the legislation used.

The Royal Borough's [complaints procedure](#) is available for complaints relating to the application of this policy in cases where there is no statutory appeal procedure otherwise available. Where there is the ability to appeal statutory action, an aggrieved person must make use of these, rather than the complaints procedure.

## 17. Enquiries

Enquiries about this policy can be made to Environmental Health (Pollution and Residential) Services by:

Email: [residentialservices@royalgreenwich.gov.uk](mailto:residentialservices@royalgreenwich.gov.uk)

Telephone: 020 8921 8157

Post: Environmental Health (Pollution and Residential) Services  
Community Safety and Environmental Health Division  
Directorate of Housing and Safer Communities  
The Woolwich Centre  
35 Wellington Street  
London  
SE18 6HQ

## 18. Glossary

**Registered Providers** – A term used to describe an organisation registered with the Homes and Communities Agency that provides social housing.

**Landlord** - is anyone who rents out a property they own under a lease or a licence that is shorter than seven years.

**Letting agent** – is a person/organisation who engages in letting agency work (whether or not that person engages in other work). Includes work in seeking to find another person to whom to let housing, or a person seeking to find housing to rent and the management of that property.

**Housing, health and safety rating system (HHSRS)** - a risk based assessment for defining the risk to health safety of occupants and visitors from 29 defined hazards, e.g. excess cold, damp and mould, falls, etc. in residential property. The hazard is assessed, scored and banded between A to J.

**Local Housing Allowance (LHA)** this is the means tested benefit specifically relating to housing and replaced 'housing benefit' within the PRS.

**Anti-Social Behaviour (ASB)** - for discretionary licensing schemes affecting housing, this is conduct on the part of people living in, or visiting, residential premises a) which causes nuisance or annoyance to other people living in, or visiting, or otherwise engaged in lawful activities near the property, or b) which involves or is likely to involve the use of such premises for illegal purposes.

**Fit and Proper Test** - a legislatively defined test (section 66 of the Housing Act 2004 - <http://www.legislation.gov.uk/ukpga/2004/34/section/66>) test of a license holder and any nominated manager's professional standards of conduct. Note. The Housing and Planning Act 2016 is due to amend these provisions, introducing further criteria and the Government are currently consulting on whether to make it a requirement on anyone proposing to hold a license or be nominated as a manager to submit a criminal record check as part of the license application process.

**Shared house** - a house rented by a group of unrelated people, typically students or young professionals, who live in it under one tenancy agreement and share its facilities but have their own bedrooms. Usually, if one of them leaves the remainder find someone to take his or her place.

**Warrant** – an authorisation given by a Justice of Peace to allow authorised officers to enter a property (by force if necessary) for defined purposes.

**Enforced sale** – a power that allows the Royal Borough to recover debts registered against the title of a property by forcing its sale.

**Compulsory purchase** – a power that allows the Royal Borough to purchase a property/land without the consent of the owner. There are various legislative powers that allow compulsory purchase in given circumstances.

**Rent to Rent** - a term used to describe a situation where a landlord lets to a tenant and the head tenant then sub-lets to their own tenants, often creating an HMO. The head tenant may or may not reside in the property and the landlord may or may not be aware of the sub-letting.

**Injunctions** - a judicial order restraining a person from beginning or continuing an action threatening or invading the legal right of another, or compelling a person to carry out a certain act, e.g. to make restitution to an injured party.

# Appendix I - Statement of Principles for the Issuing of Civil Penalties

## I. Purpose

This statement sets out the principles that the Royal Borough will apply when considering the imposition of civil penalties under the following statutes:

- I. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- II. The Housing Act 2004 (as amended by the Housing and Planning Act 2016).
- III. The Housing and Planning Act 2016.

The Government has issued statutory and non-statutory guidance, which the Royal Borough will consider when deciding whether to issue civil penalties.

## 2. Overarching Principles for Issuing a Civil Penalty

These principles are:

- I. To lower or remove the risk to tenant's/occupant's health and safety.**
- II. To remove financial gain or benefit from non-compliance.**
- III. To protect the interests of the public.
- IV. To penalise the perpetrator for the offence(s).
- V. To change the behaviour of the perpetrator and to prevent future non-compliance.
- VI. To dissuade others from offending.

The Royal Borough considers points I. and II. to be the most significant and in-line with the objectives of the Royal Borough in protecting the health, safety and welfare of private tenants and improving standards in the private rented sector.

## 2. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

This policy and appended statement of principles complies with regulation 13 of these Regulations.

The regulations make it a requirement to have smoke alarms in all private rented accommodation and carbon monoxide alarms where solid fuel combustion appliances exist. Landlords are required to ensure that all smoke and carbon monoxide alarms are in working order at the start of a tenancy.

For those premises that require a property licence the regulations amend statute to now make it a mandatory condition attached to a licence.

**Note. The Royal Borough expect, as a minimum, either a mains powered smoke alarm or one operated with a sealed battery with a minimum 10-year life fitted on each floor to comply with the regulations. However, a landlord must consider the type and nature of the property being let and it may be necessary that a higher level of fire protection is required to satisfactorily protect the safety of the occupants. This is particularly relevant to HMOs, where a landlord is required to carry out a fire risk assessment. The licensing of HMOs will also require a higher level of protection and management. The Royal Borough recommends that landlord document and evidence their compliance with these regulations, e.g. dated and signed photographs/videos, a statement of testing signed by the tenant and landlord, etc.**

Government figures submitted as part of the evidence supporting the introduction of the regulations state that a person is four times more likely to die from a fire in a property which does not have a smoke detector in place. The installation of smoke detectors and carbon monoxide

alarms does not place an excessive burden on a Landlord and the cost of doing so in any given property is unlikely to exceed £500 and in many cases far less for single household occupancy dwellings. However, the impact on safety for occupants is significant, especially those that are vulnerable, those that have a relevant disability, e.g. mobility, visual, etc. or those with families.

Before issuing a penalty, the Royal Borough must serve a remedial notice. Only if the landlord fails to comply with the notice, i.e. by installing the relevant detection within the prescribed time limit of 28 days, will the Royal Borough take measures to install the detection and then issue a penalty charge.

The maximum penalty that can be issued under these regulations is £5,000. Although this can represent an excessive financial burden on the landlord, this is entirely balanced by the risk to the occupants for not having the appropriate detection. This combined with the fact the landlord will have the opportunity to remedy the situation prior to the imposition of the penalty.

A Penalty Charge comprises two elements:

- I. a punitive (or fine) element for failure to comply with the remedial notice, and
- II. a “reasonable cost element” relating to costs incurred by the Royal Borough to undertake the remedial works in default of the landlord. This would include the cost of the works as well as the administration and officer costs.

Therefore, where the Royal Borough issue a Penalty Charge it will always be for the maximum amount of £5,000. However, this will be reduced to £2,500 if the landlord pays within 14 days.

## 2.1 Enforcement Process

Where the Royal Borough, following an investigation considers that the regulations have been breached it will serve a Remedial Notice (RN). This will list the remedial works required to comply with the regulations. A landlord can request a written review of the RN within 28 days of service. This is to give the landlord the opportunity to demonstrate that they have taken all reasonable steps to comply with their duties under these regulations. This should be accompanied by evidence to support the claims.

If upon consideration of these representations the Royal Borough still consider it necessary to proceed with enforcement, it will carry out the necessary works in default of the RN, following which, a Penalty Charge Notice (PCN) will then be issued.

This PCN will set out:

- I. the reason for imposing the penalty,
- II. the premises to which it relates,
- III. the number and type of alarms the Royal Borough has installed at the premises,
- IV. the amount of the penalty (including eligibility for early payment discount),
- V. details on how to make payment, and
- VI. details of the right to request a review and how to request it.

The request for a review must be made within 28 days from the date which the PCN is served or within 14 days if the landlord wishes to be eligible for the early payment reduction.

The Royal Borough will consider any representation and decide whether to confirm, vary or withdraw the PCN. The Royal Borough will consider the following:

- I. Whether the PCN has been correctly and legally issued.
- II. Whether the evidence supported the issuing of the PCN.

- III. The amount of the PCN was reasonable and proportionate having regard to any mitigating and/or aggravating circumstances the landlord submits (supported by evidence) with the request to review.
- IV. Whether there any other significant factors submitted with the review that would lead to an adjustment.

The Royal Borough will serve the landlord with a Decision Notice following the review, setting out whether the decision has been varied, confirmed or withdrawn. Where the Notice sets the decision to either vary or confirm the PCN it will also set out the landlords right to appeal to the FTT. We would expect the landlord to make any appeal with 28 days of service of the decision notice by the Royal Borough<sup>3</sup>.

Where an appeal is made the operation of the PCN is suspended until the FTT have made their ruling to confirm, quash or vary the penalty charge notice. The FTT may not increase the amount of the Penalty Charge.

### 3. Civil Penalties under the Housing Act 2004 and the Housing and Planning Act 2016

The Royal Borough may impose a Civil Penalty, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice (Housing Act 2004).

Where there is a successful prosecution the courts can impose an unlimited fine.

- Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.

Where there is a successful prosecution the courts can impose an unlimited fine.

- Failure to comply with an Overcrowding Notice (Housing Act 2004).

Where there is a successful prosecution the courts can impose an unlimited fine.

- Failure to comply with a regulation in respect of an HMO (Housing Act 2004).

Where there is a successful prosecution the courts can impose an unlimited fine.

- Breaching a Banning Order (Housing and Planning Act 2016).

Where there is a successful prosecution the courts can impose an unlimited fine and up to 51 days imprisonment.

In setting the amount of the Civil Penalty the Royal Borough will have regard to statutory guidance.

The level of penalty levied will reflect the severity of the offence and the offenders previous record of offending. The factors that guidance requires the Royal Borough to consider are:

- I. **Severity of the offence** - The more serious the offence, the higher the penalty should be.
- II. **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.

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<sup>3</sup> This is not a legally defined timescale.

- III. **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.
- IV. **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.
- V. **Deter the offender from repeating the offence** - The goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- VI. **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.
- VII. **Remove any financial benefit the offender may have obtained because of committing the offence** - The guiding principle here should be to ensure that the offender does not benefit because of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

### 3.1 Civil Penalties Matrix

The Department of Communities and Local Government (DCLG) have provided guidance on a methodology for setting the level of Civil Penalty, which the Royal Borough has had regard to in devising its own methodology for determining the level of Civil Penalty to impose.

The Royal Borough has adopted a 9-stage process in determining the level of Civil Penalty:

#### Stage 1 – The culpability of the offender

For example, was the offence committed deliberately, the length of time the offence continued, whether the offence was repeated, whether the offence was premeditated.

In making this assessment the Royal Borough considers that renting is a business activity to make a profit and therefore should be treated as any other business and that ignorance of the law is not an excuse. However, it expects landlords/letting/managing agents with larger portfolios of properties and those that are members of professional organisations and/or accredited to have a higher-level knowledge and experience and therefore will be considered more culpable in setting the level of penalty.

#### Stage 2 – The seriousness and level of harm caused by the offence.

The Royal Borough will consider:

- I. The legislative level of punishment that can be imposed. All the offences carry an unlimited maximum fine. However, breaching a Banning Order can also result in a prison sentence of up to 51 weeks.
- II. The number of people affected.



- III. Whether the impact on the victim(s) (actual or potential) is serious, long-term, life-altering or potentially fatal.
- IV. Whether the victim(s) were vulnerable, e.g. families with children, a vulnerable adult, discrimination (protected characteristics under the Equalities Act 2010), etc.
- V. Whether there was harm (actual or potential) caused to the surrounding area or community.

The Royal Borough considers this aspect particularly significant and therefore applies extra weighting to this category to reflect its seriousness.

### Stage 3 – Punishment of the offender.

The Royal Borough will consider:

- I. Whether there was any attempt to cover up evidence of the offence, mislead officers or harass occupants and witnesses.
- II. A landlords/agent's refusal to accept or respond to the Royal Borough's (or other enforcement agency) advice and recommendations regarding their responsibilities.
- III. Did the offence relate to other crime, e.g. illegal eviction, harassment, enviro crimes, modern slavery, prostitution, drug production/distribution, etc.

### Stage 4 - Remove any financial benefit gained in committing the offence(s).

The Royal Borough considers this aspect particularly significant and will make a financial assessment of the costs associated with committing the offence(s). The level of penalty applied will always be higher (subject to the maximum level of £30,000) than the financial benefit gained from committing the offence. Where the financial benefit exceeds the maximum amount, the Royal Borough will also, where legislatively possible, apply to the FTT for a RRO and/or assist a tenant to do so.

### Stage 5 - Deter the offender from repeating the offence and from others committing similar offences.

The Royal Borough will consider whether the level of penalty imposed would act as a deterrent to the offender and others. Where this is unlikely the Royal Borough will consider prosecution and/or the application, where legislatively possible, to the FTT for a RRO and/or assist a tenant to do so.

### Stage 6 – Assessment of assets and income

In setting the level of penalty, the Royal Borough will take account of the offender's income and assets and adjust accordingly. The guiding presumption will be that the penalty will not automatically be revised downwards simply because an offender has (or claims to have) a low income. The value of an offender's assets, e.g. their rental portfolio, as well as their income, will be considered when determining an appropriate penalty. For example, a landlord with a large portfolio where a low-level penalty is initially assessed will have the penalty level adjusted upward to reflect the value of their assets.

### Stage 7 – Mitigation

The Royal Borough will consider:

- I. Steps voluntarily taken to remedy problem (see the discounts available).
- II. The offender is fully co-operative with the investigation.

- III. Good record of maintaining property and compliance with legislation, statutory standards prior to the offence(s).
- IV. The offender self-reports (e.g. for failing to license), co-operates with the Royal Borough and accepts responsibility.
- V. The offender has a mental disorder or learning disability, which is linked to the commission of the offence.
- VI. The offender has a serious medical condition(s) requiring urgent, intensive or long-term treatment, which was linked to the commission of the offence.
- VII. Age and/or lack of maturity where it affects the responsibility of the offender.
- VIII. Any further factors that the offender wishes to draw to the Royal Borough's attention.

In determining mitigating factors and how they will apply to the level of Civil Penalty the Royal Borough will consider any that they are aware of as part of the assessment process. The offender can also use the 'Notice of Intent' stage to inform the Royal Borough of any other mitigating factor they believe relevant. The Royal Borough will expect any mitigating factors pleaded to be accompanied by supporting evidence.

### Stage 8 – Totality principle

This applies where there is the possibility of imposing more than one Civil Penalty. Where there are multiple offences resulting from the same incident/conduct the Royal Borough will take account of each offence as set out in the previous stages and add up the penalties and apply the aggregate total as one Civil Penalty to reflect the most serious of the offences found from the incident/conduct (subject to the maximum of £30,000). Where aggregate total exceeds the maximum amount, the Royal Borough will consider prosecution and/or the application, where legislatively possible, to the FTT for a RRO and/or assist a tenant to do so.

Where there are multiple offences arising from separate incidents/conduct the Royal Borough will assess each individually as set out in the previous stages and apply separate civil penalties, where it is proportionate to do so.

### Stage 9 – Review and check

Prior to the issue of a 'Notice of Intent' the process and level of penalty(s) will be reviewed and checked. The purpose of this is to check the process has been correctly applied and that the resulting level penalty(s) is/are reasonable and proportionate. The Case Officers Line Manager will be responsible for this review with the final decision to proceed taken by the Head of Environmental Health (Pollution and Residential) Services.

## The Scoring Matrix

Factors	Not Applicable Score = 1	Minor Score = 5	Moderate Score = 10	Serious Score = 15	Severe Score = 20	Total
<b>Breach of a Banning Order? - this offence carries the greatest possible punishment upon a successful prosecution and therefore extra weighting is applied to reflect the severity of the offence – additional score of 10</b>						
<b>The culpability of the offender</b>	Short term offence, no premeditation and no previous history.	First time offence. The offence has been ongoing for a short time. Minor prior infractions, which may include a repeat of the current offence	Second or third time offender. No premeditation. The offence has been ongoing for a moderate period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence	Multiple offender. Some premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence.	Serial offender (10 + times). Premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence.	
<b>Portfolio landlord (more than 5 properties) or letting agent? - Multiplier of 2</b>						
<b>Level of harm</b>	Very little or no harm caused. One victim household. No vulnerable occupants.	Low-level health risk(s)/harm(s) identified. One victim household. No vulnerable occupants.	Moderate-level health risk(s)/harm(s) identified. Two to four victim households. Vulnerable occupants potentially exposed.	Severe-level health risk(s)/harm(s) identified. Two to four victim households.	Severe-level health risk(s)/harm(s) identified. Five or more victim households.	
<b>Weighting multiplier of 2</b>						
<b>Punishment of the offender</b>	No other crime, no perversion and a willingness to adhere to advice	Minor previous infractions, no perversion and a willingness to adhere to advice	Minor previous infractions, attempts to pervert, unwilling to cooperate	Significant other crime. Offender made attempts to pervert and hostile to cooperation	Severe harm resulting from other crime. Offender made attempts to pervert and hostile to the Royal	

<b>Financial benefit</b>	Negligible financial impact	Low to moderate financial impact.	Medium level financial impact.	Large financial impact.	Borough and others Maximum financial impact available	
<b>Weighting multiplier of 2</b>						
<b>Deter the offender &amp; others</b>	No or little deterrence likely. Repeat offending possible.	Low level offence, unlikely to be reported on. Mild deterrence	Some publicity may result. Will act as a mid-term deterrent from repeating offence(s).	Publicity will be sought. Large deterrence to offender and landlord community	Publicity inevitable via numerous methods. Massive deterrence to re-offending and to wider landlord community.	
<b>Assets and income</b>	No demonstrable or significant assets. Doesn't apply to agents	Low asset value (e.g. single property landlord). Doesn't apply to agents	Small portfolio landlord/agent (less than 5 properties) and/or other moderate assets/income.	Small/medium portfolio landlord/agent (between 3 – 10 properties) with other assets/income.	Large portfolio landlord/agent. Wider assets/income considered	
<b>Mitigating factors (score inverted, i.e. subtracted rather than addition)</b>	None	Minor mitigating factor	One major or multiple minor mitigating factors	Two or more major mitigating factors	Multiple major mitigating factors	-

Score Range	Fee
1 – 10	£250
11 – 30	£500
31 – 50	£750
51 – 70	£1,000
71 – 90	£2,500
91 – 100	£5,000
101 – 120	£10,000
121 – 140	£15,000
141 – 160	£20,000
161 – 180	£25,000
181 – 200	£30,000

Notes:

- I. Each offence will be assessed and then the totality principle applied.
- II. Assessments will be carried out prior to the issue of a 'Notice of Intent'. A reassessment will then be carried out following any representations received by the offender.

## 3.2 Enforcement Process

### The prosecution principle

The Royal Borough will carry out the investigation into the case as it would any other case it considers for criminal proceedings. The Royal Borough will satisfy themselves that there would be a reasonable expectation of securing a conviction and that the case would be proven 'beyond a reasonable doubt' (the criminal standard).

A case file will be developed in line with the Royal Borough's internal procedures for criminal investigations. Each case will be required to satisfy:

- I. **The evidential stage** – The Royal Borough will be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. In doing so the Royal Borough will also consider any defence there may be, and how it is likely to affect the prospects of conviction.
- II. **The public interest stage** – even if the evidential stage is met the Royal Borough will also consider whether a prosecution would be in the public interest and will consider the following factors in determining this; the circumstances of and the harm caused to the victim, whether the suspect is under the age of 18 at the time of the offence, the impact on the community, whether a prosecution is a proportionate response and whether sources of information require protecting (this usually only applies to issues of international relations and national security).

Each case will be presented to the Head of Environmental Health (Pollution and Residential) Services and the Royal Borough's Legal Services to review and confirm these stages have been satisfactorily met before considering the imposition of a Civil Penalty.

Case files will be kept electronically.

### The notice process

Before imposing a Civil Penalty, the Royal Borough will serve a Notice of Intent. This will be served within 6 months of determining whether an offence(s) has been committed. The recipient of notice may make written representations to the Royal Borough. Any representations must be made within a 28-day period and will be fully considered by the Royal Borough. It is recommended that any representations made are accompanied by supporting evidence. After the end of the period for representations the Royal Borough will:

- I. Decide whether to impose a financial penalty.
- II. If it decides to impose a financial penalty, decide the amount of the penalty.
- III. In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

The Royal Borough's expectation is that a landlord/letting agent will also use the 'Notice of Intent' stage to set out their financial circumstances and supply supporting evidence of this, which will then be considered in whether to proceed to a 'Final Notice' and the amount of penalty to impose.

If the Royal Borough decides to impose a financial penalty a Final Notice will be served. This will set out:

- I. the amount of the financial penalty (and any relevant discount),
- II. the reasons for imposing the penalty,
- III. information about how to pay the penalty,

- IV. the period for payment of the penalty (28 days),
- V. information about rights of appeal,
- VI. the consequences of failure to comply with the notice.

### 3.3 Discounts

The Royal Borough will apply the following discounted rates to any imposed financial penalties in the following circumstances:

- I. **Compliance Discount** - A 20% discount will be applied if the offender complied with the identified breach, e.g. carrying out the works required by the Improvement Notice, within the 28 days given to make representations at the 'Notice of Intent' stage.
- II. **Early Payment Discount** - A 50% of the original calculated amount (before any compliance discount is applied) should the penalty be paid within 14 days.

The Royal Borough may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

### 3.4 Appeal

A recipient of a Final Notice may appeal to the FTT against the decision to impose a penalty, or the amount of the penalty within 28 days of receiving the Final Notice.

If an appeal is lodged the Final Notice is suspended until the appeal is determined or withdrawn.

The FTT has the power to confirm, vary (increase or reduce) the size of the Civil Penalty imposed or to cancel the Civil Penalty.

Where an appeal results in the FTT confirming or varying the Civil Penalty the Royal Borough will offer the recipient the early payment discount of 50% as long as the penalty is paid within 14 days of receipt of written confirmation of the FTT's decision.

### 3.5 Recovery

Where the Civil Penalty is not paid the Royal Borough will seek to recover the amount (and any legal costs for doing so) through the County Court.