

Private Housing Services Enforcement Policy

**Guidance for Private
Housing Services
Enforcement Officers**

1. Introduction

- 1.1 This document sets out Brent Private Housing Services (PHS) Enforcement policy and working guidance. It explains how Brent as a Local Housing Authority (LHA) aims to deliver some key aims and objectives ultimately derived from the Brent Borough Plan (2015-2019). It applies to those enforcement functions administered via the Council's PHS Enforcement Team. These will include:-
- Reducing category 1 hazards in the private rented sector
 - Reducing high category 2 hazards for licensable properties within the same sector
 - Taking enforcement action in relation to the Property Licensing Schemes. This includes both failure to licence and breach of conditions enforcement
 - Regulating standards of management, repair, amenity provisions and safety in houses in multiple occupation.
 - Investigation and abatement of public health nuisances.
 - Taking and/or facilitating robust enforcement action against rogue landlords including civil penalties and Rent Repayment Order proceedings against such landlords, under the provisions of the Housing and Planning Act 2016.
 - Using a holistic approach towards PHS enforcement activities, to deliver good support for compliant landlords needed to partner with the Council in meeting the demand for accommodation that is safe and well presented, whilst ensuring that non-compliant landlords are taken to task as best as the legislative framework allows.
- 1.2 This policy together with a set of procedures contain information on how the enforcement tools, provided by the Housing Act 2004, the Housing and Planning Act 2016 and general public health legislation, can be used fairly and consistently to achieve improvement to housing, health and the environment in the Borough. A working guidance for the commonly occurring hazards, the work process flowcharts and case reporting procedure are also included.
- 1.3 An opportunity will be given to small landlord businesses to be self-regulating, where ever possible and to put things right when things go wrong. We will therefore focus our enforcement activity where this self-regulation fails.
- 1.4 The Council expects landlords to support their tenancies throughout any enforcement action and our enforcement has been framed on the basis that all available tenancy protection tools available under current legislation, will be used as effectively and efficiently as possible for this purpose.
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2. How we decide what to inspect or investigate

2.1 We will target our programmed, routine and reactive inspections on those premises, nuisances and other public health matters that are statutory requirements and/or present the greatest risk to occupiers, neighbours and the public. Unlicensed Houses in Multiple (HMOs) are of particular interest at this time, in view of the over 10,000 such properties essentially identified via risk analysis research and the impact of these on Overcrowding, Anti-social behaviour and other blights within the Borough.

2.2 We have a Corporate Complaints Policy which explains how and when we aim to respond to complaints. Some categories of complaints are urgent and all referrals shall be actioned in a time sensitive manner, thereby minimising the need for a formal complaint to be made.

2.3 **Leaseholder complaints:** PHS often receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. PHS action will be limited to;

- Failure to licence enforcement, statutory nuisances enforcement and, Category 1 and high Category 2 hazards enforcement, where the leasehold flat is tenanted.

In all other situations e.g. civil disputes between freeholder and leaseholder, the leaseholder will be redirected to;

- The Leasehold Advisory Service - 31 Worship Street, London E2CA 2DX, telephone 020 7374 5380 info@lease-advice.org.uk.
- Advised to contact a solicitor who specialises in leasehold law

2.4 **Registered social landlord complaints:** PHS often receives complaints from registered social landlord (RSL) tenants requesting action against their landlord. PHS action will be limited to;

- Cases where the tenant is able to show that the internal complaints process of the RSL has been exhausted and it would be inappropriate to refer the matter on to the Housing Ombudsman because of outstanding health and safety concerns without a timely plan of action being provided by the RSL.

In all other situations e.g. dissatisfaction with the RSL's timescales, the tenant will be redirected to;

- The Housing Ombudsman Service – Exchange Tower, Harbour Exchange Square, London E14 9GE , Tel 0300 111 3000, email: info@housing-ombudsman.org.uk
 - Advised to contact a designated service or solicitor specialising in housing law.
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Part 1 – Housing Conditions Enforcement

1. Summary

1.1 The principal legislation used by PHS is the Housing Act 2004 along with new and extended provisions under the Housing and Planning Act 2016. However, there are circumstances where other legislation may be more appropriate in dealing with the identified problem. Officers will be expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases it may be appropriate to use a range of enforcement tools.

1.2 The key principle is to deal with a complaint in the most efficient and cost effective way possible by using the full range of enforcement powers and to meet the levels of service set out in our *Customer Promise*.

2. Housing Act 2004 & The Housing Health and Safety Rating System

2.1 Where the PHS Enforcement team has reason to enter a property we will *risk* assess the whole property using the housing health and safety rating system (HHSRS).

2.2 The Councils overall objective is to remove category 1 hazards and achieve the Decent Homes Standard in accommodation where possible. This is particularly important in premises occupied by vulnerable groups. It is therefore the Councils intention to remediate to achieve this standard where ever possible if formal action is required.

2.3 It is the Councils policy to make full use of its powers under a range of statutory instruments as many hazards in Brent can be remedied in this way; the legislation is detailed later in this section.

2.4 The 2004 Act places a duty on the Council to take action where a category 1 hazard has been identified. There is a discretionary power to deal with category 2 hazards. An improvement notice must be served where there are Cat 1 Hazards present. High Cat 2 Hazards (D and E) can also be included on the notice.

2.5 An improvement notice may be served where Cat 2 hazards exist. Where licensable properties are affected by high Cat 2 Hazards (D and E) an improvement notice shall be served and/or licensing enforcement action shall be taken to address the deficiencies. Officers should use their professional judgement as to whether a Housing Act notice route and/or a civil penalties-rent repayment order solution is to be pursued. Further guidance on this shall subsequently be provided within this document.

2.6 The Act provides a range of enforcement tools:-

Improvement Notices – section 11 is used for category 1 hazards, section 12 is used for category 2 hazards, or both category 1 and 2 hazards can be included on the same notice.

An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.

Prohibition Orders – section 20 for category 1 hazards and section 21 for category 2 hazards, or both category 1 and 2 hazards can be included on the same notice. This order may prohibit the use of part or all of a property for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups.

In an HMO it can be used to prohibit the use of specified dwelling units.

Hazard Awareness Notices (HAN) – section 28 for Cat 1 and section 29 for Cat 2, or both Cat 1 and 2 hazards can be included on the same notice. This is used where a hazard has been identified but it is not reasonable or appropriate to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if it is considered that a follow up inspection is required without being notified by the affected person(s). This notice is not registered as a land charge and has no appeal procedure.

Emergency Remedial Action - section 40 – this is only available for use where there is an imminent risk of serious harm resulting from a category 1 hazard. The authority must enter the premises and undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a justice of the peace where he/she is satisfied that the authority would not be granted admission.

Emergency Prohibition Order – section 43 – this is only acceptable for use where there is an imminent risk of serious harm, the hazard rates as a category one and where it is not practical to carry out the remedial works as in section 40. It can prohibit the use of all or any part of the premises with immediate effect.

Demolition Order – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

Clearance Area – All residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

Suspended Improvement Notices or Prohibition Orders – these notices may be suspended where enforcement action can safely be postponed until a specified event or time. This could, for example, be a period of time or a change in occupancy. Current occupation and wishes must be taken into account. These may also be considered where there is evidence of programmed maintenance by portfolio landlords. The suspensions must be reviewed at the very least every 12 months. The advantage of suspending a notice is that there is a record of the LHA's involvement and the situation must then be reviewed. It is also recorded as a land charge.

Subject to the templates being available, all statutory notices shall be produced and logged via Acolaid Enterprise and irrespective of how it is produced, a lock file copy of each notice shall be stored on the IDOX document management system.

3. Public Health Legislation

3.1 The following legislation is available where the Housing Act 2004 measures are not appropriate, do not sufficiently deal with the problem, or a quicker resolution can be achieved.

3.2 There is a duty on officers to deal with some types of problems e.g. serious and e.g. a hazardous environment/statutory nuisances in some circumstances where the most appropriate powers lie beyond the Housing Act 2004 provisions.

3.3 Officers should keep abreast of particular changes of legislation and directives as required to undertake duties professionally.

- **Environmental Protection Act 1990 section 80**

Notices may be served if the officer is of the opinion that there is a statutory nuisance at the premises and it is reasonably practicable to do so, bearing in mind the departmental priority of improving living standards within the *private rented sector*. The premises must be deemed prejudicial to health (disease) or a nuisance (crosses a boundary). This notice can be used to remedy the following common defects;

- Damp and mould growth
- Broken or inefficient hot water and heating systems
- Leaks between flats/dwellings
- Clearing putrescible waste from gardens

Case law such as Bristol CC vs. Everett must be referenced as this provided a narrow definition of prejudicial to health to cover disease rather than any wider health and safety element.

- **Housing Act 1985 (as amended)**

Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions (Part X) are still available and can be used where the 2004 Act is not sufficient (e.g. single household dwellings, not required to be licensed, or otherwise outside the scope of section 139 of the 2004 Act).

- **The Management of Houses in Multiple Occupation (England) Regulations 2006**

These regulations have been introduced to deal with management issues (mainly common parts) in all HMO other than s.257 HMOs (converted self-contained flats).

Most practicably, action under these regulations will involve summary prosecution for breaches of these regulations in tandem with failure to licence proceedings, as properties already licensed are more readily regulated via breach of licence conditions proceedings.

These are an extremely quick and efficient form of enforcement action and should be used wherever appropriate.

- **The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007**

These regulations can be used to deal with management issues (mainly common parts) in s.257 HMOs (self-contained flats which were converted pre 1991 and the building work undertaken in connection with the conversion did not comply with the 1991 building regulations).

3.4 Supporting Legislation: **The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence.**

- **Housing Act 2004 s.235** – power to require information
- **Local Government (Miscellaneous Provisions) Act 1976 section 16** - Used to formally request information about a premises or a person.
- **Police and Criminal Evidence Act 1984**
- **Criminal Procedures and Investigation Act 1996 as amended**

Subject to the templates being available, all enforcement documentation shall be produced and logged via Acolaid Enterprise and a lock file copy of each document required for possible litigation shall be stored on the relevant IDOX document management system.

4. Enforcement Procedure

4.1 This Enforcement Guidance will cover the general principles of good enforcement practice and provide a framework to enable enforcement action to be prioritised and linked to local housing and environmental conditions. Priorities for enforcement will also reflect local and regional housing strategies and policies.

4.2 PHS is responsible for enforcing a wide range of statutory provisions relating to the state of repair and environmental conditions affecting the health and safety of the occupant and bringing empty properties back into use.

4.3 Where other agencies are required to take enforcement action e.g. LFEPA, Planning and Building Control, PHS will co-ordinate this action to ensure that there is no duplication or inconsistencies in the action required.

4.4 In general any enforcement action will be taken in line with the Regulators Compliance Code and with the principles of good enforcement outlined in the Enforcement Concordat. This framework requires that regulators should ensure there is clear information, guidance and advice available to help those they regulate to meet their responsibilities to comply

4.5 General enforcement policy

4.5.1 This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

4.5.2 To ensure consistency and adherence to the enforcement policy there are internal procedures in place for all cases to be monitored and reviewed.

4.5.3 Where formal action is required officers will provide;

- Clear information and advice to all relevant parties
- Ensure an opportunity is given to discuss what is required before formal action is taken (unless urgent action is required)
- Advise the relevant parties of the named officer responsible for dealing with their case.
- Give written explanation of any rights of appeal at the time the notice is served
- Notify the relevant parties about any financial charge that the Council may apply and seek to recover as part of the enforcement process

For Working Flow Charts – See Appendices

5. General Conduct

5.1 Officers will show their identification badges and offer these for scrutiny when visiting people or requesting access to premises. They should also carry their proper authorisation cards with them when inspecting premises.

5.2 All authorisations of enforcement officers must be in writing, specifying the limits of authorisation and will form part of the identification cards shown on visits.

6. Complaints

6.1 In the event that an individual or company is not satisfied with the service they should be directed in the first instance to the Team Manager.

6.2 If this does not resolve the complaint the Council also has a formal complaints system via www.brent.gov.uk

7. Housing Act 2004 Part 1 Enforcement

7.1 The Housing Act 2004 and subsequent HHSRS Regulations 2005 have identified a number of hazard categories that have been found within the home. There are 29 hazards that arise from disrepair, lack of maintenance or poor design. The health effect from these hazards range from death to minor injuries and the HHSRS provides the opportunity to compare unrelated hazards such as fire with other hazards such as damp and mould growth. This is done through the calculation of a hazard score. The higher the score the higher the risk posed by the hazard.

7.2 This enforcement policy sets the following prioritisation scheme for dealing with hazards, this will be subject to regular review. The principal behind this is detailed below.

- All category 1 hazards will be dealt with as a priority over category 2 hazards.
- Where there are multiple category 1 hazards or a mixture of category 1 and high category 2 hazards (i.e. D and E) all will be included on one improvement notice where applicable.
- In some circumstances the use of other enforcement tools should be considered to deal quickly with a defect or deal with a defect which may not achieve a High Category 2 e.g. where damp and mould can be addressed via the landlords obligation to address disrepair within a licensable property.

7.3 Vulnerable Groups

7.3.1 Enforcement action should normally be taken on the basis that the property will at some time in the future be occupied by a vulnerable person, the main facts which influence this decision is that;

7.3.2 Brent's private rented sector (PRS) currently represents around 1/3rd of the housing stock (I.e. approx. 40,000 properties) and is still growing. It is now bigger than the Registered Social Landlords (RSL) sector within the Borough. The corporate vision is that *"Brent will be a thriving, vibrant place, where our diverse community lives in an environment that is safe, sustainable and well maintained."*

Recent research commissioned by the Council confirms that whilst there is generally good accommodation for PRS tenants, supply is very limited, costs are relatively high and anti-social behaviour challenges prevail in some tenures/localities. Furthermore, tenants living in poor accommodation often feel 'trapped' due to a lack of viable alternatives.

7.4 Notice of Entry

7.4.1 There has been a number of decisions by the RPT that indicate that it is necessary to serve a S.239 Notice of Entry notice on the landlord before visiting a premises for Part 1 HA 2004 enforcement investigations.

7.4.2 Where you are invited in to do an inspection by the tenant, the policy is that ordinarily there is no need to serve a separate section 239 notice above and beyond the initial appointment letter.

When sending an initial appointment letter this should be indicated as being enacted under s.239 Notice of provisions, clearly stating the date, time, time and reason for inspection. The initial inspection letter and section 239 notice shall be produced and

logged via Acolaid Enterprise as per all other statutory notices wherever possible. Part 2/3 HA 2004 licensing inspections can be carried out via unannounced attendance, but relevant authorisation must be available to show occupants on request.

7.5 Section 8 Statement of reasons

7.5.1 Under section 8 of the Housing Act 2004, a statement must be prepared detailing which notice provisions are being considered. The statement must also include why the other options have been discounted at this stage. In making these decisions regard may be given to:

- The seriousness of the situation and any imminent risk to health and safety
- The current occupation and the impact the decision may have on the social exclusion of certain groups of people,
- The turnover of tenants or occupants to the property,
- The management of the property,
- The occupants' views,
- The owners' views,
- The number of hazards within the property and whether they are category 1 or category 2
- The enforcement policy and procedures, the private sector housing strategy and housing strategy.
- The decent homes standard
- Consultation and views of other services

7.5.2 Once a decision has been made the appropriate notice procedure must be followed. When taking any form of action a covering letter and the statement of reasons under section 8 must also accompany the notice and the schedule of works.

7.5.3 The Residential Property Tribunal has been giving great weight to these statements and have criticised non-specific standardised statements, it is therefore important to make these quite individual in each case.

7.6 Consultation

7.6.1 Officers will usually consult interested parties (including tenants) on their proposals for Category 1 and Category 2 hazards to be addressed. The exception may be where the issue is urgent or dangerous and cannot wait while a consultation process is undertaken. These comments may include alternative works or other matters such that officers may revise the schedule or time period for compliance before serving the Notice.

7.6.2 If an Improvement Notice under the Housing Act 2004 is considered the most appropriate course of action the case officer should usually send a Pre notice letter to the landlord (prepared via Acolaid Enterprise) explaining the findings of the inspection and hazard scoring and invite them to make a representation so their views can be taken into consideration. The letter should give the landlord a reasonable time to make their representations to the case officer.

- 7.6.3 During this consultation period the case officer should be drafting up the notice and schedules ready for service at the end of the consultation period. If a representation is made then they should be documented and incorporated into the statement of reason as part of the consultation with the landlord/person responsible.
- 7.6.4 The Pre notice letter will indicate that a Notice is to be served but we are consulting with them to consider their views and agree works and timescales for the Notice schedules. Any agreed works and timescales shall be drafted into the notice which must be drafted and ready to be served immediately after the expiry of the consultation period. The Pre notice letter will also indicate a charge of £300 for serving of the notice that will apply.
- 7.6.5 If the landlord/person responsible does not make a representation within the consultation period then a notice must be served and the charge will apply with immediate effect.

7.7 Charging

- 7.7.1 There will be a charge for Notices served under the Housing Act 2004, excluding management regulations.
- 7.7.2 The Housing Act 2004, s49: *Power to charge for certain enforcement action* and section 50: *recovery of charge under s49* permits the Council to charge and recover expenses incurred in respect of certain enforcement action exercised under Chapter 5, Part 1 of the Act.
- 7.7.3 These include improvement notices (sections 11 & 12), prohibition and emergency prohibition orders (sections 20, 21 and 43), emergency remedial action (section 40) and demolition orders (sec 265, Housing Act 1985).

8. Level of remedial works required

- 8.1 As a minimum, category 1 hazards must be reduced to a low category 2.
- 8.2 Where this is not possible all reasonable steps must be taken to reduce the hazards as far as reasonably practicable. In some cases, such as listed buildings, category 1 hazards may remain. This scenario should have been considered when deciding which course of action is most appropriate and may influence the officer's decision as to which type of enforcement action to take.
- 8.3 When deciding on the remedial works, regard must be had to the seriousness of the hazard, the ideal that the property should achieve, the decent homes standard, current Building Regulations and the level of work required that is reasonable to reduce the hazard significantly without incurring excessive cost.
- 8.4 For the hazard of fire, where the property is an HMO, section 10 of the Housing Act 2004 states that the LHA must ordinarily consult with the Fire Authority before taking any action and deciding on the remedial works. For further guidance regarding the lead enforcement role of PHS or the LFEPA in various building categories etc, please check the Lacors Housing guidance manual.
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- 8.5 Wherever possible enforcement action should result in the property becoming a Decent Home. In some rare circumstances this may not be achievable in such cases this should be discussed with the team manager.
- 8.6 Further details and standards can be found by referring to specific HHSRS technical guidance

9. Prosecution

- 9.1 Where there is a summary offence, breach of a notice or an order the officer must investigate the offence and prepare the case for prosecution. This may involve interviewing relevant people under caution, following the relevant parts of the Police and Criminal Evidence Act 1984.
- 9.2 In making a decision whether to prosecute or not officers will have regard to the Code for Crown Prosecutors (Prosecutors employed by the Crown Prosecution Service). This is to ensure that fair and consistent decisions about prosecutions are made. However there is a presumption to prosecute unless there are extraordinary circumstances.
- 9.3 The code of practice details two tests, which govern the decision-making process. A case must pass both tests to show that prosecution is appropriate, the evidential test and public interest test.
- 9.4 Where a prosecution is taken Legal should request the Court to consider a compensation claim on behalf of the tenant. The defendant should be informed that you are intending to request the Court to consider this if the prosecution is successful.
- 9.5 Other legal remedies such as injunctions/unlawful eviction proceedings should be explored where necessary against a landlord where there has been an illegal eviction.

10. Works in Default

- 10.1 The Housing Act 2004 and other legal powers outlined above make provision for the Council to carry out the works to a property where the person responsible has failed to comply with a notice. The WID process flowcharts follow at the end of the document as appendices.
 - 10.2 WID and Prosecutions should be carried out simultaneously where statutory notices have not been complied with AND there is a possibility of homelessness or an occupier having to leave their home as a result of a continuing problem.
 - 10.3 In deciding whether works in default is an option, the officer must consider the imminent risk to health and safety and whether undue delay would put the occupier, visitors or the public at increased risk. They must also consider what the minimum works required would be to remove the risk.
 - 10.4 The cost of the works must be assessed and the Councils financial standing orders and procurement procedure followed. At present, There is a 30% surcharge over and above the cost of the works to cover for the administrative obligations involved in the event of Works in Default being commenced. The responsible person(s) must be advised of this in writing before commencement.
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Part 2 – Property Licensing Enforcement

1. Introduction

- 1.1 The Housing Act 2004 provides for three types of licensing within the private rented sector: mandatory licensing of certain Houses in Multiple Occupation (HMOs), additional licensing of HMO's and the selective licensing of other residential accommodation. Brent is operating a variety of these licensing schemes and as of 1 January 2015, has introduced a borough wide additional scheme and a selective licensing scheme covering the designated wards of Harlesden, Willesden Green and Wembley Central.
 - 1.2 Many landlords are responsible and provide adequate housing with good management, but there are some that lack the skills, knowledge and/or willingness to manage their properties professionally. It is these types of property that often cause the problems.
 - 1.3 Mandatory licensing is aimed at certain types of HMO with 3 or more storeys and they must be occupied by 5 or more people who constitute more than one household. There must be an element of sharing facilities or amenities. Section 257 HMOs are also included within this remit.
 - 1.4 Additional licensing is aimed at all other HMOs occupied by 3 or more people who constitute more than one household throughout the borough. Section 257 HMOs are also included within this remit.
 - 1.5 Selective licensing is not descriptive specific in that there is a requirement to licence all other residential accommodation other than HMO's that fall under the mandatory/additional scheme in a designated area. This includes flats, houses, HMO's and single family properties.
 - 1.6 The licensing function has been introduced in order to:
 - Ensure landlords are 'fit and proper persons' or employ agents who are
 - Establish that adequate management is in place
 - Ensure the accommodation is adequate for the number of occupiers
 - Allow for tenants' health, safety and welfare to be safeguarded and for high risk properties and their landlords to be identified via enforcement action under Parts 2 and 3 of the 2004 Act as well as under Part 1 of the said Act.
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2. Aims of Property licensing

- 2.1 Brent Council aims to ensure fairness and transparency when administering the property licensing schemes, and in particular seeks to ensure that co-operative and compliant landlords are not disadvantaged compared with landlords who do not co-operate, and/or operate unsafe or poorly managed properties. This is reflected in the fees system which allows for longer license periods for well managed properties and requiring licenses to be renewed more regularly for those that are poorly managed, providing a financial saving to good landlords.
- 2.2 The council aims to publicise any Licensing Schemes, to assist landlords in running their businesses in compliance with the legislation.
- 2.3 The council aims to provide guidance and assistance to enable landlords to understand the requirement to licence properties and to comply with the licensing legislation.
- 2.4 The council aims to grant property licences in the maximum number of cases, within the requirements stipulated by the Housing Act 2004.
- 2.5 The council aims to take robust action when it gains evidence that there has been a failure to licence a property that is required to be licensed, to ensure that compliant landlords are not disadvantaged.
- 2.6 The council aims to respond to licensing customers at all times in accordance with the Council's Customer Care Policy.
- 2.7 The fee must only take into account all the costs incurred by the council in carrying out their functions under Part 2 and 3 of the Act. Brent Council has therefore developed a fee structure that reflects the work involved in processing an application and granting or refusing a licence.
- 2.8 The fees will be reviewed at regular intervals to reflect how the scheme evolves and any additional costs incurred by the council, e.g. annual increases in council costs.

3. Offences for failing to licence a licensable property

- 3.1 The Housing and Planning Act 2016 has now introduced civil penalties of up to a maximum of £30,000 in respect of the following offences:
 - Failure to comply with an Improvement Notice
 - Failure to licence or be licensed in respect of Houses in Multiple Occupation (HMOs)
 - Failure to licence or be licensed in respect of the Landlords Selective Licensing Scheme
 - Failure to comply with licensing conditions
 - Failure to comply with an Overcrowding Notice
 - Failure to comply with a regulation in respect of an HMO
 - Breaching a Banning Order
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Funds arising from these penalties are retained for housing enforcement activities.

3.2 The same Act also introduces the option of applying for a Rent Repayment Order (RRO) in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Breaching of a Banning Order
- Using violence to secure entry to a property
- Illegal eviction or harassment of the occupiers of a property

Where rent is paid by the Council, an RRO award is retained by the Council, whilst an award to tenants paying their own rent is due to the tenant.

4. Inspections

- 4.1 The council aims to administer Property Licensing Schemes efficiently and effectively, and as such, the majority of applications will be considered without the need for any further inspections.
- 4.2 However, all licensed HMO properties must be inspected within the licence period to check that the information supplied is correct and that the property is free from serious hazards. In most instances, such post – licensing inspections will be carried out via the Licensing Team, who will then pass on cases requiring attention to Cat 1 hazards and/or other major non-conformities to the Enforcement Team.
- 4.3 Licensing does not preclude the council from taking any of the enforcement actions described in Part 1 of the Housing Act 2004 in relation to any hazards found and in many cases an improvement notice will be the most appropriate course action.

5. Enforcement – Civil Penalties and Prosecutions

- 5.1 The Housing and Planning Act 2016 contains several provisions relating to licensing of privately rented homes and housing enforcement related to this type of tenure. They include such measures as the ability for housing authorities to impose a civil penalty in lieu of prosecution, as a means of dealing with rogue landlords.
- 5.2 A civil penalty can only be imposed as an alternative to prosecution, as the legislation does not permit a Local Authority to impose a civil penalty and prosecute for the same offence. Similarly if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.
- 5.3 The decision on when to prosecute and when to issue a civil penalty shall be decided on a case by case basis, in accordance with the **work process flow charts** which have been updated to include reference to the issuing of civil penalties as an alternative to prosecution for relevant offences under the Housing Act 2004.
- 5.4 Where a civil penalty is imposed, an appeal can be lodged at the First Tier Property Tribunal (FTPT). A Local Authority will then need to demonstrate 'beyond reasonable doubt' that an offence has been committed. Enforcement officers shall serve the

required statutory notices (at least 2 to be served), deal with defendant representations and work jointly with Brent Legal Services to defend any appeals at the FTPT, all in accordance with the **work process flow charts**.

6. Enforcement – Rent Repayment Orders

- 6.1 Under Housing Act 2004 provisions, Rent Repayment Orders (RROs) allowing Local Authorities to recover up to 12 months Housing Benefit/Universal credit paid to any person in connection with occupying a rented home. Similarly, tenants paying their own rent could apply to the FTPT for an RRO, once a conviction was secured by the Local Authority.
 - 6.2 RROs have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences. Under the new legislation an RRO can be applied for when the landlord has committed one of the offences listed in paragraph 3.2 above even without a conviction. However, where an application for an RRO is made and the landlord has not been convicted for the relevant offence, the FTPT will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.
 - 6.3 As a conviction via the courts can only be secured on proving an offence beyond reasonable doubt, the safest way to secure an RRO is to apply after an offence has been successfully prosecuted. Essentially, where an offence has been prosecuted and hence a civil penalty cannot be imposed, a Rent Repayment Order shall still then be applied for in appropriate cases.
 - 6.4 If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be re-paid to the Local Authority. If the tenant paid the rent themselves, then the rent must be repaid to the tenant. If the rent was paid partially through Housing Benefit/Universal credit then an RRO award is repaid proportionally on an equivalent basis. Where an RRO award is at least partially claimable by the Council, an application shall be made via the Council to the FTPT. If the rent was paid in full by a tenant, then an RRO application has to be made by the tenant.
 - 6.5 Whilst there is no statutory obligation on local housing authorities to support a tenant's RRO application, there is potential scope for providing such support either directly or via partner organisations on a 'no win no fee' basis. At present, only a small proportion of tenants qualified to make an RRO application after a landlord has been convicted do follow through on this. Providing adequate support for such tenants will not only be beneficial to this [at times] exploited clientele, but also ease the potential burden on the Council's limited housing supply/financial support for private tenancy deposits etc.
 - 6.6 Where a landlord has been sanctioned for an illegal eviction/harassment etc offence via an RRO as well as a prosecution, this sends a message to any prolific offenders within the borough, that there will be no benefit in taking advantage of vulnerable tenants.
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7. Enforcement – Banning Orders

7.1 Chapter 3 of the Housing and Planning Act 2016 introduces provisions for the Secretary of state to create a central database of landlords and agents who are fined or convicted of an offence. Local Authorities will be responsible for entering names on the database and maintaining the contents which includes adding details if a banning order has been imposed. All local authorities will have access to the database for the purposes of identifying landlords, agents and owners with properties in more than one borough. If implemented by the DCLG, this national database should be available by October 2017.

7.2 Section 15(1) of the Act provides the power to a Local Authority in England to apply for a banning order against a person who has been convicted of a banning order offence. It is not yet known what will constitute a banning order offence and it is envisaged that this will be defined in further Secretary of State Guidance imminently. A banning order under section 14(1) of the Act will prevent a person from:

- letting any dwelling
- engaging in letting agency work
- engaging in property management work
- doing two or more of these activities.

An Order is limited to England and must specify the duration of the order and it must last for at least 12 months.

7.3 Under the auspices of the Mayor of London, The Greater London Authority has introduced a criminal landlord database steering group. The group with members from Brent, Camden, Kingston, Newham, Southwark and Sutton, are tasked with developing a London wide rogue landlord register, to be adopted by all London boroughs in October 2017. It is anticipated that the London wide database to be administered via the GLA, should then feed into the DCLG's national database, as and when Local Authorities are required to make their inputs.

7.4 The purpose of the rogue landlord database is to enable local housing authorities to record information about and target enforcement action against any landlord who has:

- received a banning order under the Housing and Planning Act 2016
- been convicted of a banning order offence; or
- received 2 or more civil penalties over a 12 month period

It is not uncommon for rogue landlords/agents operating in Brent to be active within other London boroughs, as well as in some cases further afield within England.

7.5 The impact of these recommendations will re-enforce the Council's strong enforcement stance on landlords who do not comply with their statutory obligations and enables the Council to penalise the worst landlords by direct economic sanctions. The intention is that this will rebalance the private rental sector away from rogue landlord exploitation, towards a fairer and more equitable deal for their tenants, without a net increase in cost for the Council.

8. Enforcement – Tenancy Protection Considerations

- 8.1 The 2014 Licensing Scheme reports to Cabinet noted that there was potential for a negative impact of landlords being regulated via licensing enforcement provisions on tenants. This might arise from landlords deciding to leave the rental market rather than engage with licensing enforcement, or from evictions (potentially including illegal evictions) following or in anticipation of enforcement action. There is little evidence that landlords have withdrawn from renting in response to such interventions.
- 8.2 Although Housing and Planning Act 2016 provisions allow for an extension of PHS enforcement activities, it is crucial to note that good landlords will not be adversely affected. On the contrary rogue landlords will be relieved of the proceeds of their crimes, be driven out of the market and better compensation will now be available for their victims, i.e. tenants at the exploited end of the market.
- 8.3 Whilst there is little evidence that enforcement has led to homelessness applications, there is evidence that tenants have at times moved on to other homes within Brent or elsewhere. To establish a clearer picture of on this, Future of London (FoL) undertook a study, the findings of which will be taken into account in shaping the council's tenancy engagement approach.
- 8.4 The FoL study, looked specifically at the effect of unannounced inspections by PHS Enforcement Officers on tenants. The research, which comprised field work, data analysis and interviews with a number of stakeholders (including tenants themselves), painted a mixed picture. Some tenants' situations have improved as a result of an inspection, while others have deteriorated. Information on eviction and displacement has produced a complex range of tenant pathways, with dependent factors including awareness of rights and support structures, and level of tenant vulnerability.
- 8.5 Despite data and information limitations, the research had some clear actions for Private Housing Services to take forward:
- Do more to raise private tenant awareness of their rights before, during and after the inspections.
 - Improve and better promote tenant liaison services to tenants.
 - While the council's concern must be housing decently its vulnerable communities in priority need, people living in poor-quality HMOs are vulnerable in a different way – from poor conditions and exploitative landlords. A closer and more cooperative relationship between PHS, Housing Needs and the plethora of voluntary sector groups embedded in communities will help to protect all of Brent's communities.
- 8.6 At the time of writing, a number of unlawful eviction cases are being addressed via PHS Enforcement, Housing Needs and SSP Law working together in order to attend to the various homelessness emergencies, address the living standards concerns and collate evidence for civil and criminal litigation proceedings. The extended reach of civil penalties, rent repayment orders and banning orders in such circumstances will allow for much greater efficiency and effectiveness in meeting the overall objective of seeking to ensure that private tenants live in a premises that are "...safe, sustainable and well maintained...". Of particular note, is that private sector tenants will become increasingly aware of their rights through publicity on evictions thwarted and rent repayment orders awarded to rogue landlord victims.

For Working Flow Charts – See Appendices

9. Enforcement – Proceeds of Crime Act

- 9.1 The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. The PHS Enforcement Team will use this legislation where appropriate and in consultation with legal services

10. Interim Management Orders and Final Management Orders

- 10.1 An interim management order is made for the purpose of securing any action that the authority considers necessary, to protect the health, safety and welfare of the occupants.
- 10.2 An order can also be served in circumstances that the authority thinks are appropriate with a view to ensuring the proper management of the house pending the licence being granted.
- 10.3 The authority has a duty to make an interim management order in respect of an property where there is no reasonable prospect of it being licensed in the near future or it is necessary to protect the health, safety and welfare of the occupants.
- 10.4 Where a licence has been revoked for any reason and the property remains a licensable property an interim management order must be made if there is no reasonable prospect of the property regaining its licence.
- 10.5 Once an interim management order has been served the local authority must take over the management of the property for up to 12 months. This includes carrying out any remedial works necessary to deal with the immediate risks to health and safety.
- 10.6 If there is still no prospect of a licence being granted after 12 months then a final management order must be made which may be in force for up to 5 years. If after 5 years there is no prospect of the property being licensed a further management order must be made.
- 10.7 The council is under a duty to make Interim and Final Management Orders where necessary. The council team will instigate this action where necessary **but as a last resort**. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements.
- 10.8 Management orders can be varied or revoked at any time as a result of a request from the owner or on the local authorities initiative.
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11. Publicity

Media coverage will normally be sought in the following cases:-

- The offence is widespread in the area and coverage will assist in securing compliance by others;
- To draw attention to particular serious hazards;
- Coverage is otherwise in the public interest;
- A press release will generally 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 boroughs environment,

12. Supporting Documentation

Supporting Documentation

A copy of the Regulators Compliance code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code> .

A copy of the Enforcement Concordat: Good Practice Guide is available on request or may be downloaded from:

<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/enforcement/page46822.html>

A copy of the DCLG guidance on civil penalties can be accessed via:

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

For viewing of the DCLG Guidance on rent repayment orders please click onto:

<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>
