

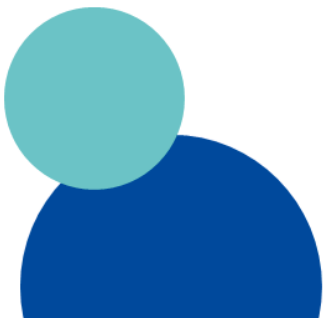


Waverley Borough Council

# Private Sector Housing Enforcement Policy

DRAFT

**Latest version number: V.02**  
**Latest publication date: November 2022**  
**Lead Officer / Team: Private Sector Housing Manager**



## 1. Document Information & Governance

### Approval & Publication:

Approving Body	Approval route requirement	Publication Type	Publication requirement	Review frequency	Document owner	Next Review Date
<i>e.g. Executive, Council,</i>		<i>Internal/ external</i>	<i>Required by x legislation</i>	<i>e.g. Annual</i>		
<i>E.g. Management Board</i>	<i>There are no legal or constitutional requirements for approval</i>	<i>Internal</i>	<i>There are no legal or constitutional requirements for publication</i>			

### Version Control Information:

*[Please ensure changes to your document are recorded in the Version Control History section below. As a guide versions 0.1, 0.2, etc. are used until document is published when it becomes V1. The v2, v3, v4 would indicate new versions following a review and v1.1, v2.1, would indicate in year smaller corrections to the document] – remove.*

Version	Version Status (Draft, Approved /Published Internally or Externally)	Date	Version Comment	Version Author
V0.1	Draft	05/01/2022	Creation of the document	Simon Brisk
V0.2	Amended Draft	17/11/22	Minor layout amendments	Simon Brisk
V0.3	Approved Draft		Approved by Management Board	
V0.4	Final Approval		Approved by the Executive	
V1	Published		1 <sup>st</sup> Publication	
V1.1	Draft		In year corrections	
V1.2	Final Approved & Re-Publication		In year correction approval by Management Board	
V2			Full Annual review	

### Impact Assessments and Consideration:

Impact Assessment Type	Required / Not Required	Date Completed	Impact Assessments and Considerations Comment	Assessment Owner
Equality Impact Assessment				
Data Protection Impact Assessment				
Climate Change				

## 2. Contents

1. Document Information & Governance .....	2
Approval & Publication: .....	2
Version Control Information: .....	2
Impact Assessments and Consideration: .....	2
2. Contents.....	3
3. Introduction .....	5
4. Identifying The Need For Action.....	5
5. Requiring Information.....	6
6. Powers Of Entry .....	6
7. Inspections.....	7
8. Informal Action .....	7
9. Formal Action.....	8
10. Serving A Statutory Notice or Order .....	9
11. Housing Act 2004 .....	9
12. Emergency Measures.....	11
13. Works in Default .....	11
14. Rent Repayment Orders.....	12
15. Formal Cautions .....	13
16. Prosecution .....	13
17. Civil Penalties.....	14
18. Banning Orders .....	15
19. Database of Rogue Landlords and Property Agents .....	16
20. Houses in Multiple Occupation (HMOs).....	17
21. Overcrowding .....	18
22. The Redress Scheme.....	19
23. Smoke and Carbon Monoxide Alarm Regulations 2015 .....	19
24. Minimum Energy Efficiency Standard (MEES) .....	20
25. Electrical Safety Standards .....	20
26. Other Legislation Enforced by Private Sector Housing.....	20
27. Rented Properties .....	22
28. Owner Occupiers.....	23
29. Empty Dwellings .....	23
30. Mobile Homes, Caravan Sites and Camping Sites.....	24

31. Charges for Enforcement Action ..... 25

32. Recovery of Debts ..... 26

33. Complaints ..... 26

Appendix 1: Civil Penalties under the Housing and Planning Act 2016..... 27

Appendix 2: Statement of Principles for determining financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ..... 31

Appendix 3: Financial penalties under the Minimum Energy Efficiency Standard ..... 35

DRAFT

### **3. Introduction**

The aim of this policy is to set out how the Council will deal with housing defects and other issues in private sector dwellings in the Borough and how it uses its enforcement duties and powers. It also provides a background to the legislation and guidance on which it is based. It should be read in conjunction with the Waverley Borough Council Enforcement Policy for Regulatory Services, which provides a summary of the Council's enforcement powers and the principles of application.

This policy sets out what owners, landlords, managing agents and tenants of residential properties can expect from the Council's Private Sector Housing (PSH) Team when regulating standards. The policy will ensure consistency of approach among Council Officers whilst allowing members of the public to know what to expect from the service.

The PSH Team is part of the Council's Strategic Housing and Delivery Service and aims to protect the health and wellbeing of our residents by ensuring that their homes are properly maintained, safe and suitable for occupation.

Our aim is to raise standards in the Borough, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if it is not possible to achieve improvements through informal means, then enforcement action may be necessary to protect the public and the environment.

In order to regulate private sector housing, the PSH Team will conduct pro-active and re-active property inspections, routinely respond to requests for visits and investigate complaints of disrepair, overcrowding and other housing hazards. The PSH team will request information, carry out inspections, process licence applications, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.

### **4. Identifying The Need For Action**

Enforcement action will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures could lead to effective resolution. We will apply the enforcement policy in every case and make a decision about whether to proceed to formal enforcement action having considered the individual circumstances. In making our decision we will consider relevant factors such as the harm caused or potential for harm to be caused to individuals, the public and the environment.

We will only depart from this policy if there are exceptional circumstances, which will be properly documented. In these situations the Head of Service must approve the enforcement action in consultation with the Borough Solicitor.

## 5. Requiring Information

Authorised Officers have the power to require:

- Any person with an interest in a property to provide details about its ownership and occupation under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
- Electrical and gas safety certificates in relation to Houses in Multiple Occupation under Section 234 of the Housing Act 2004;
- Documents to enable them to carry out their powers and duties under Section 235 of the Housing Act 2004;
- Specified information for the purpose of deciding whether to apply for a Banning Order against the person under Section 19 of the Housing and Planning Act 2016;
- Specified information for the purpose of deciding whether to make an entry in the database of rogue landlords and property agents or to keep an entry up-to-date under Section 35 of the Housing and Planning Act 2016.

Officers will routinely use these powers and it is an offence not to produce the required information as requested or to provide false or misleading information. To address non-compliance, formal action will be considered such as a simple caution, financial penalty or prosecution (see below).

For specific housing purposes the Authority also has the power to:

- Obtain and use Housing Benefit and Council Tax information under Section 237 of the Housing Act 2004;
- Request and use tenancy deposit information under Section 212A of the Housing Act 2004; and
- Access and use information contained within the database of rogue landlords and property agents under Section 39 of the Housing and Planning Act 2016.

## 6. Powers Of Entry

Entry to a property is usually required to enable the PSH Team to carry out its statutory functions. Officers will normally make an appointment to visit in the first instance and will give at least 24 hours' notice to both the occupiers and owners of our intention to enter properties to inspect them. Officers will carry written authorisation to carry out inspections.

Powers of entry will allow officers, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take other people with them, take appropriate equipment or materials with them and take measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The PSH Team will exercise its statutory powers to gain entry without giving prior notice to investigate suspected non-compliance with housing related legislation or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers may include:

- To protect the health and safety of any person or to protect the environment without avoidable delay;
- To determine if a property is a House in Multiple Occupation (HMO) requiring a licence;
- To check whether the owner has failed to comply with the conditions of a HMO licence or has breached the HMO Management Regulations;
- Joint working with other agencies such as the Police, Immigration Enforcement or Fire Service.

The PSH Team may apply to the Magistrates Court/Justice of the Peace for a Warrant to Enter Premises if entry has been refused or refusal is reasonably anticipated, or giving notice would defeat the purpose of the visit, or the premises are unoccupied and immediate access is necessary. Before applying for a warrant we will consider all the circumstances of the case and ensure that a warrant is a proportionate and reasonable action. A warrant under this section includes the power to enter by force, if necessary. Obstructing an authorised officer from entering a premises in accordance with their powers is an offence and could result in prosecution.

## **7. Inspections**

Dwellings are inspected both reactively (in response to a request or complaint) and proactively based on risk and intelligence.

Where there is reason to believe a hazard may exist but access to the property is denied or prior warning would defeat the purpose of the inspection, the Council can apply to the Magistrates Court to obtain a warrant to enter the property without prior notice.

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

Once a property has been inspected, the Officer will assess any hazards found and consider what action to take. The actions can be broken down into “informal” and “formal” action.

## **8. Informal Action**

Informal action will generally be considered as the first step unless the problem is of a serious nature and there is an imminent risk to health and safety. In most circumstances tenants will be advised to contact the landlord about the problem first if they have not already done so.

Informal action may include provision of advice and information and issuing verbal or written requests for action.

The PSH Team will aim to write to the owner, managing agent or landlord within 10 days of the inspection outlining the nature of the problem/s identified and requesting confirmation of the remedial action to be taken to remedy the hazard or defect and when this will happen.

Action taken by the owner or landlord will be monitored and if necessary follow up letters, emails and telephone calls will be used in an effort to ensure the remedial works are carried out informally. A re-inspection will normally be carried out to confirm that the identified faults have been corrected.

In some cases the Officer may decide to take no action, for example where the nature of the defect is negligible or where the occupiers would prefer that the Council does not take any action at that time.

Circumstances in which informal action is likely to be appropriate include situations where:-

- The act or omission is not serious enough to warrant immediate formal action;
- The individual or company's past history suggests informal action will achieve compliance;
- The Officer's confidence in the management of the property or premises is high;
- Standards are generally good suggesting a high level of awareness of statutory responsibilities;
- The time period allowed to seek compliance does not present a significant risk to public health.

## 9. Formal Action

Formal action will be considered where the informal approach has not been successful in ensuring compliance or in situations where Officers consider that the risk to the health and safety of the occupiers is high enough to warrant formal action without an informal stage.

Some legislation requires formal action to be taken straight away, for example illegal eviction or a breach of the HMO Management Regulations.

Where formal action is considered necessary, the Council has a range of options available including:

- serving a statutory Notice or Order;
- taking emergency action;
- carrying out works in default of a statutory notice;
- applying for a Rent Repayment Order;
- issuing a formal caution;
- prosecution;
- issuing a civil penalty;
- applying for a Banning Order.

Where practicable decisions to serve formal enforcement Notices and Orders will be taken by the Case Officer in consultation with the Private Sector Housing Manager.

Before making a decision to take formal action, Officers will have regard to:-

- The seriousness of the hazard and whether it poses an imminent risk to health or safety;
- The tenure of the occupier;



- Whether the Council has a duty or a discretionary power to take action;
- Whether the occupiers or visitors are in a vulnerable group with respect to the hazard;
- Whether or not the occupancy is likely to change;
- The owner's ability or willingness to undertake remedial action;
- The owner's past history in terms of compliance;
- The officers' confidence in the management of the property;
- The likely effectiveness of the various enforcement options; and
- The views of the owners and occupiers.

There are statutory rights of appeal against Notices, Orders, financial penalties and associated decisions made by the Council. These appeals will normally be made to the local First-tier Tribunal (FTT) who may confirm, quash or vary the decision. Details of these rights and information on making an appeal will be provided by the Council when the action is taken.

## 10. Serving A Statutory Notice or Order

Formal action will usually involve the service of a statutory Notice or Order. Most Notices require the recipient to commence and complete remedial works within specified time limits.

The recipient of the Notice or Order will be informed of the reason that the action is being taken and the Notice or Order will clearly state the required actions to be taken, the timescales in which they should be completed and the potential penalty for non-compliance with the requirements of the Notice or Order.

## 11. Housing Act 2004

The Housing Act 2004 is the main piece of legislation enforced by the PSH team. The Act and secondary legislation covers key areas of the team's work such as regulating housing conditions and HMO licensing.

Part 1 of The Housing Act 2004 is concerned with assessing housing conditions and reducing health and safety hazards using the Housing Health and Safety Rating System (HHSRS). The HHSRS covers 29 potential hazards in the home. It is a risk assessment approach which looks firstly at the likelihood of someone becoming ill or injured and secondly, how badly harmed a person could be as a result. Guidance about inspections and assessment of hazards is provided in the [HHSRS Operating Guidance](#).

There are two categories of possible hazards:

- **Category 1 hazards** represent a serious risk to health and safety and the Council has a duty to take appropriate action to see these hazards reduced;
- **Category 2 hazards** represent a less serious risk and, although it does not have a duty to take action, the Council has the power to take appropriate action to reduce these hazards.

Where a category 2 hazard is present the Council will take enforcement action where it is considered appropriate to the particular circumstances of the case. The following circumstances will be considered when deciding whether to take enforcement action in relation to Category 2 hazards:

- A sufficiently high Category 2 hazard exists in addition to one or more Category 1 hazards;
- Where a member of the vulnerable age group for the specific hazard is present who would derive benefit from having the Category 2 hazard addressed;
- Where the cumulative effect from multiple Category 2 hazards creates a more serious situation;
- Where specific local hazards have been identified and targeted for action.

The following options are available to the Council under Part 1 of the Act when considering the most appropriate course of action:

- Serving a **Hazard Awareness Notice** to formally notify the owner that a hazard has been identified;
- Serving an **Improvement Notice** to require remedial works;
- Making a **Prohibition Order** to prevent the use of all or part of the dwelling or to restrict occupation by particular numbers or descriptions of people;
- Taking **Emergency Remedial Action**;
- Making an **Emergency Prohibition Order**;
- Making a **Demolition Order** under the Housing Act 1985;
- Declaring a **Clearance Area** under the Housing Act 1985.

Officers will use the [Housing Health and Safety Rating System Enforcement Guidance](#), published by the ODPM in February 2006, to determine the most appropriate course of action from the above list and will adhere to the relevant consultation requirements set out in the legislation for taking into account the views of occupiers, owners and other stakeholders. Regard will also be given to the Listed Building status and the impact any course of action would have on the local environment.

In the case of fire hazards, the Council has a duty to consult with Surrey Fire and Rescue Service, so far as it is practicable to do so, before taking enforcement action.

Housing Act 2004 Notices and Orders will be accompanied by a "Statement of Reasons" explaining why one type of enforcement action was taken rather than another.

Improvement Notices and Prohibition Orders can be suspended, such that a specified time period elapses or specified event occurs (e.g. a change of occupancy) before the suspended Notice or Order comes into operation.

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

Charges will be made for certain formal enforcement action that the Council takes under the Housing Act 2004.

If a Notice or Order under the Housing Act 2004 is complied with or amendments are required as a result of new information, a “Revocation Notice” will be served confirming that the original Notice or Order has been withdrawn.

Failure to comply with the Notice or Order is a criminal offence and the following sanctions will usually be considered:

- Carrying out works in default;
- Applying for a Rent Repayment Order;
- Formal caution;
- Prosecution;
- Civil penalty.

## **12. Emergency Measures**

Where the Council is satisfied that a category 1 hazard presents an imminent risk of serious harm to the health and safety of occupiers or visitors of a premises, it can take emergency measures. This includes taking Emergency Remedial Action to reduce the hazard to an acceptable level or serving an Emergency Prohibition Order to prevent occupation of the premises (or part of the premises) with immediate effect.

The Council may take emergency action in addition to other enforcement action in respect of the property.

## **13. Works in Default**

The Council will consider carrying out works in default or remedial action where the legislation allows. It will typically be appropriate:

- Where actions have been required by a Notice and have not been completed within the agreed timescale or reasonable progress has not been made towards their completion; or
- Where Emergency Remedial action is taken under the Housing Act 2004.

In these cases, the Council may organise and carry out the work itself or appoint an agent to complete the work on its behalf and recover the cost of works from the property owner, including any additional costs such as a warrant of entry and any administrative costs. In some cases interest may be also be chargeable.

Any charges for works in default will be made in line with our published fees and charges. The Council’s charges are reviewed annually and agreed formally by the Council.

Any unpaid charges for the works and associated costs will be placed as a land charge on the property. This means that when the property is sold any outstanding debt has to be repaid including any interest accrued on the initial charge.

In determining whether works in default or emergency remedial action is appropriate, Officers will consider the following:

- the effects of not carrying out the work on the health, safety and wellbeing of the occupiers of the property concerned;
- Any urgency for the works to be undertaken;
- the wishes of the occupiers;
- the reason/s for the work not being carried out in the first place;
- the costs and complexity of carrying out the works.

The Council may also consider prosecution or a civil penalty in addition to carrying out works in default. The Council may also pursue enforced sale of a property where the legislation allows.

## **14. Rent Repayment Orders**

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

The offences for which an application for a RRO can be made are:

- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)
- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (under section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (under section 95 of the Housing Act 2004)
- Breach of a Banning Order (under section 21 of the Housing and Planning Act 2016)

The Council can prosecute and also apply to the First-tier Tribunal for a RRO. Where the landlord has been convicted of the offence, the First-tier Tribunal must award the RRO and must require that the amount to be repaid is the maximum it has the power to order.

There does not have to be a conviction but in order for the Tribunal to issue a RRO, it will need to be satisfied beyond reasonable doubt that one of the offences listed above has been committed.

We will always consider applying for a RRO where a landlord has been convicted of one of the above offences and at least one of the tenants affected was in receipt of housing benefit or universal credit. We will also consider applying for a RRO where a landlord has been issued with a civil penalty for one of the above offences.

We will have regard to [Rent Repayment Orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#) and we will notify the landlord if we intend to apply for a RRO and consider any representation received.

The Council is allowed to retain the income it receives from rent repayment orders. This income will be used to increase our housing enforcement activity within the Borough.

The Council will also offer advice, guidance and support to assist tenants who are not in receipt of housing benefit or universal credit to apply for a RRO in the circumstances above.

## 15. Formal Cautions

Where someone has committed an offence and fully accepts responsibility for the offence, Officers may offer a formal caution where there is sufficient evidence to warrant a prosecution but it is not in the public interest to do so.

Formal cautions may be considered where:

- The defendant has admitted their guilt;
- The defendant has not committed the same type of offence previously;
- There is no record of any offences by the defendant within the previous two years;
- The defendant understands the significance of the caution and agrees to be given a formal caution; and
- The defendant agrees for the facts of the case being made public by means of the Council's website and media releases.

If the defendant agrees to receive a formal caution, the Council will seek to recover the costs of the investigation as part of the formal caution process.

The decision to offer a formal caution must be authorised by the Head of Service, in consultation with the Private Sector Housing Manager and the Borough Solicitor.

A record of the caution is kept by the Council and it may subsequently influence a decision to instigate prosecution proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

## 16. Prosecution

The Council will only proceed with a prosecution where there is sufficient and reliable evidence that an offence has been committed and it is in the public interest to do so.

Each case that the PSH Team deals with is unique and must be considered on its own facts. However, there are several factors that, if present, would make prosecution more likely to be considered:

- It is not appropriate to issue a civil penalty or formal caution or the offender has refused to accept a formal caution;
- The offender has provided false information;

- Obstruction or assault is involved;
- The offence was motivated by discrimination;
- The victim of the offence is vulnerable;
- Actual harm has occurred or the occupiers have been placed at serious risk of harm;
- The offender has committed similar offences in the past, whether in Waverley or in other local authority areas;
- Poor attitude of the offender towards the offence;
- The offence was a deliberate action carried out to make financial gain;
- The offender is operating a relevant business and should be aware of their legal obligations;
- The likelihood of a significant sentence;
- The need to deter others from committing the same offence.

Officers will generally warn the persons accused that their actions, or lack of action, has made them liable before considering a prosecution against them. However Officers may pursue prosecution without prior warning in exceptional cases, for example where there is a serious risk to health and safety or the environment.

The decision to prosecute must be authorised by the Head of Service, in consultation with the Private Sector Housing Manager and the Borough Solicitor. In deciding to proceed with a prosecution, regard will be made to the [Code for Crown Prosecutors](#).

Where the Council takes prosecution proceedings, it will seek to recover its full costs of the proceedings. This is likely to include the Officers' time in preparing the case as well as all legal costs associated with bringing the case to court.

The Council will also consider taking proceedings under the Proceeds of Crime Act 2002 following a successful prosecution.

## 17. Civil Penalties

The Housing and Planning Act 2016 enables the Council to impose a civil penalty of up to £30,000 as an alternative to prosecution for the following offences:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004)
- Contravention of an Overcrowding Notice (section 139 of the Housing Act 2004)
- Failure to comply with the HMO Management Regulations (section 234 of the Housing Act 2004)
- Breach of a Banning Order (section 21 of the Housing and Planning Act 2016).

Only one civil penalty can be issued (as an alternative to prosecution) for each of the offences listed above except for breaches of the HMO Management Regulations, for which a civil penalty can be issued for **each** separate breach.

The same burden of proof is required as with a criminal prosecution, meaning that the offence must be proved within reasonable doubt. The difference with this sanction is that the judgement is made by the local housing authority rather than the Court.

The Council will normally consider using its powers to issue a civil penalty in the first instance. However we will seek alternative measures, such as formal cautions or prosecution, in cases of repeat offenders or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

The Council's use of civil penalties will be in line with statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016. Further information can be downloaded at [Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#).

The Council is allowed to retain the income it receives from civil penalties. This income will be used to increase our housing enforcement activity within the Borough.

The factors used by the Council to decide on the level of the civil penalty are outlined in Appendix 1 of this policy.

## 18. Banning Orders

The Housing and Planning Act 2016 also enables the Council to apply to the First-tier Tribunal for a Banning Order against a residential landlord or a property agent who has been convicted of a Banning Order offence.

A Banning Order bans a landlord or property agent from letting properties or engaging in letting agency or property management work in England for a defined period of time, which is at least 12 months.

Housing related offences regarded as Banning Order offences include:

- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)
- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (under section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (under section 95 of the Housing Act 2004)
- Contravention of an Overcrowding Notice (section 139 of the Housing Act 2004)
- Supply of false or misleading information (section 238 of the Housing Act 2004)
- An offence under the Health and Safety at Work etc. Act 1974 where a person contravenes the Gas Safety (Installation and Use) Regulations 1998.



Banning Orders are reserved for the most serious offenders who flout their legal obligations and rent out substandard accommodation and will be decided on a case by case basis.

In deciding whether to apply for a Banning Order and how long to recommend the ban for, we will have regard to [Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#) and specifically we will consider:

- the seriousness of the offence and the sentence imposed by the Court; and
- the previous history of the offender especially in relation to other Banning Order offences.

We will also take into account the likely effect of the ban on the person and anyone else who may be affected, including:

- the harm or potential harm to the tenant, specifically in relation to vulnerable people (Banning Order offences more directly related to health and safety of tenants will be considered more harmful);
- punishment of the offender, ensuring any ban is proportionate and also reflects the severity of the offence; and
- deterrence of the offender and others from committing similar offences by recommending a sufficiently long enough ban.

Breaching a Banning Order is an offence, subject to either prosecution in the magistrate's court or a civil penalty. We will consider prosecuting or issuing a civil penalty to any landlord found to be breaching a Banning Order in our area.

## **19. Database of Rogue Landlords and Property Agents**

The Council must place a person on the database if it has successfully made a Banning Order application. The landlord will remain on the database for the period that the Banning Order has effect.

We will consider if it is appropriate to make an entry on to the database of rogue landlords and property agents when a landlord has been convicted of a Banning Order offence or received two or more civil penalties over a 12 month period.

In deciding whether to make an entry on the database, and the period of time that a landlord or property agent should stay on the database, we will have regard to the [database of rogue landlords and property agents under the Housing and Planning Act 2016 - Statutory guidance for Local Housing Authorities](#). We will consider the severity of the offence, any mitigating factors, any history of compliance or non-compliance and the deterrence effect on the offender and others from committing similar offences.

Before being placed on the database a decision notice will be served on the landlord or property agent specifying the length of time they will be maintained on the database and right of appeal. The minimum period is two years.



## 20. Houses in Multiple Occupation (HMOs)

As HMOs are considered a higher risk than single family homes, the conditions, facilities and management are more closely regulated.

Under Part 2 of the Housing Act 2004, an HMO licence is required for all rented properties that are occupied by 5 or more persons forming more than one household and where two or more of the households share facilities.

The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupiers, including the size of the rooms and the adequacy of the amenities. When assessing the maximum number of occupiers in the property, reference will be made to the prescribed standards under the Act and to the [Waverley Standards for Houses in Multiple Occupation](#).

All licences are issued with conditions that have to be complied with during the period of the licence. These will include the maximum permitted number of occupiers and households.

A fee will be charged for all licence applications as detailed in our published fees and charges.

Licences are normally issued for five years and a new licence must be applied for before the end of the licence period. However, licences may be issued for a shorter period depending on the circumstances of the case. For example, the duration of the licence may be shortened where the Council is satisfied that the property should have already been licensed or there is concern about the management of the property. No reduction in fee will apply.

All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person in accordance with the Housing Act 2004. The Council will specify the information required as part of this process and may require additional checks, such as a Disclosure and Barring Service (DBS) check, where considered appropriate. A person's fit and proper status may be reviewed if they are prosecuted for an offence, if they consistently breach licensing conditions, if there is evidence of poor management or as a result of any other factor deemed relevant by the Council.

When issuing a licence, the PSH team will provide an opportunity for interested parties to make representation regarding decisions made and the conditions applied. If an agreement cannot be reached there is a right of appeal to the First-tier Tribunal. Details of how to appeal will always be provided.

It is a criminal offence if a person controlling or managing an HMO does not have the required license. Failure to comply with any of the conditions attached to a license is also an offence. In cases where a licensable HMO property is found to be operating without a license or license conditions are not met, enforcement action will be considered in accordance with this policy.

Informal action will be taken in respect of minor breaches of license conditions so long as the breaches have not significantly affected a person's health, safety or welfare. Formal action will be considered where there has been a failure to license the property or where there have been serious and/or persistent breaches of license conditions. Consideration will also be given whether to revoke the license. The license can be revoked if the licensee or the manager is no longer a fit and proper person to own or manage the HMO.

Where landlords have been prosecuted for operating an unlicensed HMO, the Council will use Rent Repayment Orders to claim back any Housing Benefit paid whilst the HMO was unlicensed and provide tenants with information and advice on how they can claim back rent they have paid.

## Management Regulations

The HMO Management Regulations impose duties on managers of HMOs to maintain them in good repair and working order, whether or not they are subject to licensing. All identified hazards and breaches of the regulations in any HMO, whether licensable or not, will be dealt with in accordance with the enforcement approach set out in the main body of this policy.

## Management Orders

These powers will only be used as a last resort where other attempts to ensure the health, safety or welfare of occupiers have not been successful. The Council has a duty to make an Interim Management Order (IMO) where there is no realistic prospect of an HMO licence being granted. Effectively the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses.

Following an IMO the Council can apply for a Final Management Order (FMO) to be approved, which can last for up to five years. The Council may allocate a private company to manage the property.

In exceptional circumstances and where the health, safety and welfare of occupiers need to be protected, the Council may apply to the First-tier Tribunal for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme. The Council may also make an IMO for properties where a Banning Order has been made.

## 21. Overcrowding

The Council will investigate complaints from tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where the overcrowding is legitimately impacting on neighbours' health, safety or wellbeing.

Where the property is occupied by a single household an assessment of the hazard will be made using the HHSRS and appropriate action taken under Part 1 of the Housing Act 2004 where necessary.

Where the property concerned is a non-licensable HMO and does not meet the standards for room sizes, an Overcrowding Notice may be served under Part 4 of the Act to reduce the number of occupiers or to prevent new residents from taking up occupation.

Before taking enforcement action we will take into account the views of the owners, occupiers and (where appropriate) the views of parents, guardians or carers.

We will work with the Council's Housing Options team where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.

## 22. The Redress Scheme

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

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

The financial penalty will normally be £5,000, which is the maximum amount under the Order. A lower penalty will only be charged if the Council is satisfied there are extenuating circumstances.

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

Where the monetary penalty is not paid, the Council may recover the penalty through a Court order.

## 23. Smoke and Carbon Monoxide Alarm Regulations 2015

[The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#) introduced the following requirements for landlords during any period when their property is occupied under a tenancy:

- i. a smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- ii. a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation and contains a ~~solid fuel burning~~ fixed combustion appliance (not including gas cookers); and
- iii. the landlord must ensure that each prescribed alarm is in proper working order at the start of any new tenancy; and
- iv. from October 2022 ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty.

Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties under the Regulations, we are required to serve a Remedial Notice detailing the actions to be taken to comply with the Regulations. This Notice allows 28 days to complete the works.

If the Council is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the Remedial Notice, the Council must (if the occupier consents) arrange for the remedial action to be carried out.

The Council will also require the landlord to pay a penalty charge (maximum £5,000) if we are satisfied that the landlord has failed to comply with the Remedial Notice within the time allowed. The amount of the penalty charge will be in accordance with our Statement of Principles, which is set out in Appendix 2.

## 24. Minimum Energy Efficiency Standard (MEES)

[The Energy Efficiency \(Private Rented Property\) Regulations 2015](#) established a minimum energy efficiency standard for domestic privately rented properties. Since 1 April 2020 landlords must not let out properties covered by the Regulations with an EPC rating below E unless a valid exemption is in place. Where a valid exemption applies the landlord must register it on the national Private Rented Sector Exemptions Register.

Where the Council believes that a landlord may be in breach of the Regulations, we will serve a Compliance Notice requiring information from that landlord to help us decide whether there has been a breach. If we are satisfied that there has been a breach of the Regulations, we may issue a financial penalty. We may also publish details of the landlord's breach on the publicly accessible part of the PRS Exemptions Register for at least 12 months.

The maximum level of penalty varies on the type of breach under the Regulations. These are set out in Appendix 3.

## 25. Electrical Safety Standards

[The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#) made it compulsory for landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years.

Landlords have to provide a copy of the electrical safety report to their tenants and to the Council if requested. If the report requires remedial work or further investigation, landlords must provide written confirmation that the work has been carried out to their tenant and to the Council within 28 days of completing the work.

If the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties in the Regulations, we must serve a Remedial Notice on the landlord requiring remedial action. If the landlord does not comply with the Notice, we may (with the tenant's consent) arrange for the remedial action to be carried out. We may also take urgent remedial action where considered necessary.

The Council will recover the costs of taking remedial action from the landlord and we may impose a financial penalty of up to £30,000 on landlords who are in breach of their duties. The level of the penalty will be determined using the factors outlined in Appendix 1. There is a right of appeal to the First Tier tribunal.

## 26. Other Legislation Enforced by Private Sector Housing

The Private Sector Housing Team has a wide range of delegated powers covering multiple pieces of legislation. This allows the team to have a holistic and comprehensive approach to regulating the private housing sector in Waverley to keep residents safe and well. In all cases where the Council can require works by notice, we also have the power to carry out the works in default if the owner does not complete them and to charge for the works and our time. Other legislation enforced by the PSH Team in accordance with this policy includes but is not limited to:

### Environmental Protection Act 1990

The Environmental Protection Act 1990 defines statutory nuisance and provides the Council with a duty to serve an Abatement Notice requiring the owner to remedy a building defect that is prejudicial to the health of the occupiers or a nuisance to neighbouring residents. Examples of such nuisances include unchecked gas appliances causing risk of carbon monoxide poisoning, rainwater penetration through defective roof or windows and condensation resulting in mould growth.

### Public Health Act 1936

This Act provides the Council with power to require by notice the repair of defective sanitary facilities and the clearance, cleansing and, if necessary, fumigation of premises that are filthy and verminous. It also extends the statutory nuisance provisions to tents, vans, sheds (including agricultural/migrant worker type accommodation) or canal boats used as dwellings.

### Public Health Act 1961

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

### Local Government (Miscellaneous Provisions) Act 1976

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

### Local Government (Miscellaneous Provisions) Act 1982

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

### Building Act 1984

This Act includes powers for the Council to adopt an accelerated procedure for dealing with defects in buildings that amount to statutory nuisances (see EPA 1990 above), to require repairs to drainage systems and to deal with ruinous or dilapidated buildings including empty homes.

### Prevention of Damage by Pests Act 1949

The Council may serve notice on the owner or occupier of the land or property requiring works to clear, proof or treat the land from existing or likely infestations of rats and mice.

### Protection from Eviction Act 1977

This Act makes it an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy. The Act also makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her;
- or

- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;
- It is an offence to do either of the things described above intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home.

We will investigate cases of harassment and illegal eviction (actual or threatened) and in most cases the aim will be to maintain the occupier's residence in the property in peace and comfort through facilitating negotiation and conciliation between the occupier and landlord. Where this is not possible we will consider prosecution of the landlord.

#### Protection from Harassment Act 1997

This Act creates four criminal offences: harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction. The PSH Team will enforce the provisions of the Act alongside the Housing Options team and Legal Services.

## 27. Rented Properties

Before considering any action in respect of a tenanted property, the tenant/s will normally be expected to have first contacted their landlord or managing agent about the problem in writing. This applies to both private and social housing tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of a problem. Copies of correspondence between landlord and tenant, unless confidential, may be required by the PSH team before any action is taken.

There are some circumstances in which this prior contact may not be appropriate, for example:

- Where the matter appears to present an imminent risk to the health and safety of the occupiers and they have been unable to reach the landlord/managing agent;
- Where there is a history of harassment, threatened eviction or poor management.
- Where the tenant is old and frail or otherwise vulnerable;
- Where the tenant's first language is not English and this is likely to cause difficulty in communicating with the landlord;
- Where the tenant could not be expected to contact their landlord/managing agent for some other reason.

Where landlords are taking action within a reasonable timeframe, the Council will not seek to interfere with this process.

Tenants are expected to:

- Allow reasonable access to their landlord, managing agent or contractor to arrange or carry out works;
- Keep prearranged appointments or give sufficient notice of cancellation;
- Be courteous and non-threatening to our officers;

- Provide information in a timely manner when requested;
- Keep officers informed of any contact they have had with their landlord etc. which may affect the action the Council take.

Where it appears to the Officer that the problems have arisen through the lifestyle or actions of the tenants or that the tenants have not allowed the landlord to carry out the repairs, then advice will be given to the complainant and it may be appropriate that no further action is taken.

## **28. Owner Occupiers**

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupiers or other affected persons. The Council will generally not take action where a more appropriate contractual remedy exists.

Where a HHSRS inspection identifies a significant hazard, the Council anticipates that a Hazard Awareness Notice may be the most appropriate course of action. However, all Housing Act 2004 Part 1 enforcement options are available to the Council and will be considered.

Enforcement options requiring action to be taken such as an Improvement Notice or Prohibition Order will be considered in cases involving:

- Vulnerable people who are not capable of making informed decisions about their own welfare or who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect other people e.g. other occupiers, visitors, neighbours;
- Serious risk of life-threatening harm e.g. electrical hazards.

Where the condition of one property is affecting the occupier of another property or the general public, such as a health and safety hazard or statutory nuisance, appropriate enforcement action will be considered regardless of property tenure.

We will always consider the most appropriate option dependent on the circumstances of the case and will make the owner aware of any suitable financial assistance available from the Council.

## **29. Empty Dwellings**

Empty and derelict properties can blight an area, encourage crime, drug use, vermin and vandalism and may cause a nuisance. Such properties are unacceptable in an area of high housing demand such as Waverley.

The PSH team regularly review and monitor dwellings in the Borough which have been empty for a long period of time (usually in excess of 6 months). Officers will seek to identify the owner of the empty property and will attempt to work with them to bring the property back into use. Wherever possible we will assist and encourage owners to access financial assistance where it is available to help return the property back to use.

PSH Officers will work jointly with the Council Tax Team to encourage empty homes back into use and maximise Council income

In cases where a long-term empty property is not being brought back into use despite informal action, formal enforcement action may be considered including:

- Service of a section 11 or section 12 Housing Act 2004 Improvement Notice
- Service of an Empty Dwelling Management Order (EDMO) under Part 4 of the Housing Act 2004 allowing the Council to take over management of the property to facilitate it being brought back into use
- Service of a section 29 notice under the Local Government (Miscellaneous Provisions) Act 1982 to require works to prevent unauthorised entry
- Service of a section 77 or section 78 notice under the Building Act 1984 to require the owner to make the property safe or allow the Council to take emergency action to make the building safe where a building is dangerous, dilapidated or emergency works are required
- Service of section 79 Building Act 1984 notice to require the owner to take steps to address a ruinous or dilapidated property which is adversely affecting the amenity of the neighbourhood
- Service of a section 215 Town and Country Planning Act 1990 notice to require the owner to address unsightly land or external appearance of the property
- Service of a section 80 notice under the Environmental Protection Act 1990 to abate or prevent a statutory nuisance.
- Service of a Demolition Order under section 265 of the Housing Act 1985 to require demolition of an unfit property which is not economically repairable
- Make use of the enforced sale procedure under the Law and Property Act 1925 to force the owner to sell the property where there is an outstanding debt to the Council
- Service of a Compulsory Purchase Orders (CPO) under section 17 of the Housing Act 1985 to allow the Council to acquire under-used or ineffectively used properties to increase the number of houses available or improve the quality of the housing stock.

CPOs are considered the final sanction available to the Council to improve substandard private sector housing where persuasion or statutory notices have failed. CPOs can be used to return long-term empty properties, often causing blight on the environment, to residential use.

Where an empty property presents a serious or imminent risk to health and safety or is causing a statutory nuisance, appropriate formal action will be considered depending on the circumstances of each case.

### **30. Mobile Homes, Caravan Sites and Camping Sites**

The PSH Team's main involvement with caravan (including mobile home) sites is the duty to licence applicable sites (holiday and residential) under the Caravan Sites and Control of Development Act 1960.

We will also licence applicable camping sites under the Public Health Act 1936. If the land is to be used as a camping site by the public for more than 42 days consecutively - or 60 days in a year - a licence is required. There are exceptions for organisations that hold camping exemption certificates.



We will normally issue a licence unless the site does not have the correct planning permission, planning permission is to expire within 6 months or the applicant has had a site licence revoked in the previous three years.

Where a caravan site is operating without a site licence application having been made, and the site is not exempt from the requirement for a caravan site licence, the Council will consider prosecution of the site owner if informal attempts to secure compliance have been unsuccessful. Complaints about unlicensed sites will be investigated in conjunction with the Council's Planning Department.

Licences are issued with conditions to ensure the health, safety and welfare of the residents. Most site licence conditions will be in accordance with the published model standards. However we may include additional conditions specific to the site where considered necessary.

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Appropriate enforcement action will be taken in relation to any breaches of the licence conditions, based on the risk of the breach in relation to occupiers' health, safety or welfare.

The Mobile Homes Act 2013 introduced the power to serve a Compliance Notice in respect of breaches of site licence conditions in relevant protected sites in the first instance unless any of the factors for prosecution are relevant and immediate prosecution is considered necessary. Where a Compliance Notice is served and the works are not carried out, the Council may prosecute the site owner and/or carry out the works in default.

The Council may also take emergency action to rectify a breach in a site licence condition, in a relevant protected site, which results in an imminent risk of serious harm to anyone on the site.

The Council can also reclaim its expenses for carrying out works in default and for administrative costs in determining what action to take and serving enforcement notices.

### **31. Charges for Enforcement Action**

The Housing Act 2004 allows the Council to make a reasonable charge as a means of recovering expenses incurred in respect of certain enforcement action.

The Council will normally charge for the administration costs in respect of the following actions:

- Improvement Notice
- Prohibition Order
- Emergency Remedial Action
- Emergency Prohibition Order
- Demolition Order.

The amount of expenses charged will take into account the time spent by Officers in carrying out investigations and inspections, assessing the housing hazards, the subsequent consideration of any action to be taken, consultations and the drafting and serving of the Notice or Order.

The person upon whom the Notice or Order is served will be responsible for paying the expenses incurred by the Council in taking the action.

The fees and charges levied by Waverley Borough Council for enforcement action will be made in line with our published fees and charges, which are reviewed annually.

In certain cases, this charge can be varied or withdrawn at the discretion of the Private Sector Housing Manager e.g. where the works on the Notice have been completed within the time period allowed.

Where charges for enforcement action are lawfully incurred and levied they will be registered as a local land charge. This means that when the property is sold any outstanding debt has to be repaid including any interest accrued on the initial charge.

## **32. Recovery of Debts**

We will pursue all debts owed as a result of enforcement charges or charges for carrying out works in default and ancillary costs, unpaid invoices or unpaid financial penalties.

We will also consider the following measures where the legislation allows and it is appropriate to do so:

- Registering a Local Land Charge on the property where the responsible person is unable to settle the debt or cannot be traced;
- Require that the rent is paid to the Council instead of the landlord until the debt is repaid. This would be considered where the property is rented and there are no or low mortgage repayments;
- Enforce the sale of the property to recover costs or the money owed in the relevant Court, including the County Court. This would be considered where the property is empty or is rented but with multiple debts already registered.

## **33. Complaints**

Statutory appeal rights exist where Notices are served or charges levied and these are set out in the legislation. Where enforcement action is taken, detailed information will be provided regarding the statutory rights of appeal.

If you are dissatisfied with any aspect of the service provided by the PSH Team, please contact us in the first instance using the contact details below. If you are still not happy with the outcome of this approach you can make a complaint via the Council's Complaints Procedure, which is available on the Council's website or on request.

You can contact the Private Sector Housing Team:

- By telephone on 01483 523421
- By email at [privatesectorhousing@waverley.gov.uk](mailto:privatesectorhousing@waverley.gov.uk)
- By writing to Private Sector Housing, Waverley Borough Council, The Burys, Godalming, Surrey GU7 1HR.

## Appendix 1: Civil Penalties under the Housing and Planning Act 2016

The civil penalties charging structure has been developed in accordance with the guidance issued to local authorities by the Department for Communities and Local Government in “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.

The Guidance recommends that the following factors should be taken into account:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained from committing the offence.

### Determining the severity of offence

There are three levels of culpability:

- **Deliberate** – An intentional breach by a landlord or property agent or flagrant disregard of the law. For example failure to comply with an Improvement Notice.
- **Reckless** – An actual foresight of, or willful blindness to, the risk of offending but deciding to take the risk nevertheless. For example failure to comply with a strict liability in the HMO Regulations.
- **Negligent** – The failure of the landlord or property agent to take action to avoid the offence but should have been aware of the risk involved. For example partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.

### Determining the harm to tenants

There are three levels of severity:

- **Level 1 (major impact)** – Serious and substantial risk, including imminent risk, to the health and safety of vulnerable groups, with potentially life threatening results or loss of limbs. Housing hazards that may present such a risk include carbon monoxide exposure, fire and electrical hazards, risk of explosion or structural collapse and exposure to asbestos or radiation. This is not an exhaustive list and it also includes property management failings that could lead to a major risk to the occupiers, neighbours or community and/or intentional discrimination.
- **Level 2 (moderate impact)** – Moderate risk to the health and safety of occupiers and/or immediate neighbours, leading to injury or disease requiring prolonged treatment and/or hospital admission. Housing hazards that may present such a risk include risk of falls on stairs or between levels, collision and entrapment and any other hazards or management issues that could lead to a risk to the occupiers including vulnerable groups.

- **Level 3 (minor impact)** – Risk of injury or disease to the occupiers resulting in treatment at the doctor's. Housing hazards that may present such a risk include damp and mould, hygiene and sanitation defects and any other hazards or management issues that could lead to a risk to the occupiers.

## Determining the charge

The final civil penalty amount is made up of two main financial elements – the **investigative** charge and the **punitive** charge. There may also be a third financial element imposed if the Council successfully defends an appeal to the First-tier Tribunal.

When setting a civil penalty, the Council will take into account the cost of investigating the offence/s and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal. These costs will be calculated for each of the offences that are covered by civil penalties by considering the number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs. If an investigation leads to more than one civil penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each civil penalty.

The guiding principle to the punitive charge is to ensure that, after all the other factors have been considered and applied, the civil penalty that is set removes the financial benefit that has been gained from committing the offence i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

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

The maximum level of fine permitted under the legislation is £30,000. The tables below provide an indication of the level of fine that is likely to be appropriate.

Factor	Score 10	Score 20	Score 30	Score
Severity of Offence - score should reflect severity of offence and whether actions were deliberate	Negligent – isolated incident, due to lack of awareness, possibly some effort made to remove risk	Reckless – knowingly committed offence without regard to consequences	Deliberate – intentional breach or flagrant disregard of law	
Track Record of Offender - previous history of offending and/or willingness to comply	No previous history of non-compliance	Some low level previous history	Previous history of non-compliance & enforcement action	

Harm to Tenants - impact on tenants, vulnerable groups, discrimination	Minor risk of harm to tenants. No vulnerable groups affected.	Moderate risk of harm. Vulnerable group may be affected. Possible discrimination.	Major risk of harm with vulnerable group affected or intentional discrimination.	
Deter & Prevent - level of penalty required to prevent reoffending	Penalty will prevent reoccurrence	Penalty likely to deter repeat offending	Repeat offending likely unless penalty is very high	
Removal of Financial Benefit - level of financial benefit gained from offence, including asset values and rental income	Small or no financial gain from non-compliance	Moderate financial gain from non-compliance, moderate assets & income	High financial gain, significant assets & income	
			Total Score	

Score	Fee
50-60	£1,000
61-70	£5,000
71-80	£10,000
81-90	£15,000
91-100	£20,000
101-150	£30,000

### Defence charges

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

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

The Council will robustly seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal. Therefore, each civil penalty notice that is unsuccessfully appealed will have the penalty increased appropriately for each person who has incurred the civil penalty.

### Financial means to pay a financial penalty

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

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

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

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

DRAFT

## **Appendix 2: Statement of Principles for determining financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### **Summary**

This statement sets out the principles that Waverley Borough Council (the Council) will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

### **Introduction**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) requires landlords who let properties under a tenancy to provide and undertake the following:

- a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a ~~solid fuel burning~~ fixed combustion appliance (excluding gas cookers); and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy;
- ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty

Note: The Regulations do not apply to registered providers of social housing, licensed houses in multiple occupation, live-in landlords, leases of seven or more years, student halls of residence, hostels and refuges or NHS accommodation.

### **Enforcement**

Where the Council has reasonable grounds to believe that:

- there are no or an insufficient number of smoke alarms or Carbon Monoxide detectors in the property as required by the regulations: or
- the smoke alarms or Carbon Monoxide detectors were not working at the start of a tenancy of licence

Then we must serve on the landlord (this may include the letting agent if they are the immediate landlord) a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. It is a statutory duty on the Council to serve the Remedial Notice.

If the Council is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the Remedial Notice within 28 days, we must arrange for remedial action to be taken (where the occupier consents).

Under Regulation 8, the Council may also require the landlord to pay a penalty charge if the Council is satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice has failed to take the remedial action specified in the notice within the period specified.

## Background

Regulation 13 requires the Council to prepare and publish a statement of principles, which it proposes to follow in determining the amount of a penalty charge.

Where a penalty charge is made, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

The aim of financial penalties will be to:

- deter non-compliance;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- reimburse the costs incurred by the Council in undertaking works in default.

## Criteria for Imposing a Financial Penalty

In considering whether to impose a financial penalty, the Council will look at the evidence concerning the breach of the Remedial Notice. This could be obtained from a property inspection or from information provided by the tenant or agent that no remedial action has been taken.

Landlords need to take steps to demonstrate that they have complied with the Regulations e.g. by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords should also take steps to demonstrate that they have met the requirement to test alarms at the start of the tenancy. For example this can be achieved by tenants signing an inventory form to confirm they were tested and were in working order at the start of the tenancy.

A financial penalty charge will be considered appropriate if the Council is satisfied that the landlord, who had been served with a Remedial Notice, had failed to take the remedial action specified within the time period specified.

## Procedure for Charging a Financial Penalty

Under the Regulations, the Council is required to follow a number of procedural steps before requiring a financial penalty to be paid.

The penalty can only be charged where a Remedial Notice has been served, which will give 28 days to take action (for example, to install alarms).

The Council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a Penalty Charge Notice setting out the following:



- the reasons for the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- how payment of the charge must be made; and
- the name and address of the person to whom a notice requesting a review may be sent.

## The Financial Penalty

Fire and carbon monoxide are two of the 29 hazards prescribed under the Housing Health and Safety Rating System and often result in death or serious injury. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety. Carbon monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The provision of smoke and carbon monoxide alarms does not place an excessive financial burden on a landlord. The cost of the alarms is low and they can be installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or carbon monoxide poisoning event far outweigh the cost of installing alarms.

Regulation 8(2) states the penalty charge must not exceed £5,000.

The Council has determined that the standard charge for non-compliance will be the maximum £5,000. However a reduction of 50% will apply in respect of a landlord who has not previously received a penalty charge under this legislation and who makes the payment within 14 days of service of the Penalty Charge Notice.

In determining this level of penalty charge, the Council has considered the following factors:

- The penalty needs to be at a level which is significant enough to deter non-compliance;
- The cost of compliance with the Regulations is minimal;
- The consequences of non-compliance can be serious or fatal for tenants;
- The landlord should already have complied with the requirements of the Regulations prior to service of the Remedial Notice;
- The landlord will have been given the opportunity to comply with the Regulations following service of the Remedial Notice;
- There is a defence under the Regulations that the landlord has taken all reasonable steps to comply with the duty.

The Regulations state that the period specified for payment of the charge must be not less than 28 days beginning with the day on which the Penalty Charge Notice is served.

The Council may, in exceptional circumstances, exercise discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the Penalty Charge Notice. This request must be made within 28 days beginning on the day on which the Penalty Charge Notice was served.

In conducting the review, we will consider any representations made by the landlord and serve notice of our decision whether to confirm, vary or withdraw the Penalty Charge to the landlord.

A landlord who is served with a notice confirming or varying the Penalty Charge Notice may appeal the Council's decision to the First-tier Tribunal.

DRAFT

## Appendix 3: Financial penalties under the Minimum Energy Efficiency Standard

### Maximum Penalties

Where the Council decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty up to the maximum limits set by the Regulations. The maximum penalties are as follows:

- Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the local authority may impose a financial penalty of up to £2,000 and may impose a publication penalty;
- Where the landlord has let a sub-standard property in breach of the Regulations for a period of 3 months or more, the local authority may impose a financial penalty of up to £4,000 and may impose a publication penalty;
- Where the landlord has registered false or misleading information on the PRS Exemptions Register, the local authority may impose a financial penalty of up to £1,000 and may impose a publication penalty;
- Where the landlord has failed to comply with the Compliance Notice, the local authority may impose a financial penalty of up to £2,000 and may impose a publication penalty.

The maximum amount that the Council can charge per property is £5,000.

### Determination of appropriate penalty

The proportion of the maximum penalty we will apply will be in accordance with the matrix below:

	Low culpability	High culpability
Low harm	25%	50%
High harm	50%	100%

### Factors affecting culpability

High – Landlord has a previous history of non-compliance with housing related regulatory requirements and/or landlord has failed to comply with requests to comply with these Regulations. Landlord knowingly or recklessly supplies incorrect information.

Low – First offence under these Regulations, no previous history of non-compliance with housing related regulatory requirements. Complex issues partially out of control of landlord have led to non-compliance.

### Factors affecting harm

High – Very low EPC score. Vulnerable tenants occupying property for an extended period of time since non-compliance.

Low – No vulnerable tenants. Higher EPC score close to minimum accepted EPC rating.