

<b>Subject:</b>	<b>Private Sector Housing Enforcement Policy</b>	
<b>Date of Meeting:</b>	<b>18<sup>th</sup> September 2019</b>	
<b>Report of:</b>	<b>Executive Director for Housing Neighbourhoods &amp; Communities</b>	
<b>Contact Officer:</b> Name:	<b>Alison Perkins</b>	<b>Tel: 01273 292413</b>
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<b>Ward(s) affected:</b>	<b>All wards</b>	

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Recent legislative changes have introduced new powers to tackle private sector landlords who do not maintain their privately rented properties to a safe, secure and warm standard. The Council is required to have regard to the Regulators' Code when regulating private rented housing standards, which came into force 6th April 2014 under the Legislative and Regulatory Reform Act 2006. This provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.
- 1.2 A Private Sector Housing Enforcement Policy has been developed to reflect these changes and detail how the council will regulate standards and tackle empty homes. The Enforcement Policy will enable consistency of approach and sets out what residents can expect from the service. The policy also contains a process for appeal against enforcement action and/or legal proceedings.
- 1.3 Fees, charges and fines will be imposed where landlords fail to comply with requests and these are calculated to cover reasonable expenses incurred. In addition, civil penalties will also be considered, which are an alternative to prosecution for certain housing offences under the Housing Act 2004, and the maximum penalty is £30,000. (Full details are in appendix 2 of the policy). This policy sets out the approach to how these will be calculated, along with indicative amounts.
- 1.4 A lot of work is carried out with landlords to try and avoid formal Enforcement Action and so the purpose of this policy is for those few cases where a more formal approach is required to ensure properties are safe and well managed.
- 1.5 Following adoption of the policy, detailed procedures will be produced to enable implementation.

**2. RECOMMENDATIONS:**

- 2.1 That Housing Committee approve the Enforcement Policy, including the approach to fees, charges and fines charges and methods of debt recovery.

- 2.2 That Housing Committee note that procedures will be devised and the policy implemented from April 2020
- 2.3 That the Committee agree the approach to fees, charges and fines, along with indicative amounts. These will be kept under review and if significant changes are considered necessary, these will be brought back to Committee.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 Local Authority Private Sector Housing Teams play a vital role in making sure people in private rented properties have somewhere safe, secure and warm to live.
- 3.2 The private rented sector (PRS) has grown significantly in recent years, with it now being the second largest housing tenure, with an increasingly diverse range of tenants. Brighton and Hove has a higher than average number of privately rented homes, including Houses in Multiple Occupation, making up over 30% of the housing stock.
- 3.3 Whilst the vast majority of private landlords maintain their properties to a good standard there remains a small minority of landlords who do not, resulting in tenants living in conditions that are below acceptable standards. The government is committed to clamping down on these rogue landlords and have introduced legislation providing new tools to help local authorities force landlords to improve the condition of their properties or leave the sector completely. Provision is made to recoup some of the costs of enforcement from landlords through fines, charges and civil penalties.
- 3.4 The table below shows that the majority of referrals for action are resolved informally with only a small minority requiring formal Enforcement Action

Date	2018/19	19/20 (to date)
Number of Referrals	645	518
Number resolved informally	639	518
Number resolved formally	6	0

- 3.5 The Enforcement Policy details how the council will regulate standards in the PRS and tackle empty homes in Brighton and Hove. It also provides a background to the legislation and guidance.
- 3.6 Initially the approach is to ensure private sector landlords, and companies who are letting out private accommodation are provided with assistance, information and education to understand what is required to comply with regulatory standards and laws. We will generally aim to secure compliance informally in the first instance.

- 3.7** If such requirements are not met, enforcement action will subsequently be taken using a risk based approach and relevant intelligence to ensure we prioritise the most urgent cases.
- 3.8** The Policy clarifies the service we provide and the process tenants need to follow in order for us to be able to enforce accommodation standards.
- 3.9** The policy covers Houses in Multiple Occupation as well as individual flats and houses.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 We are under statutory duties to enforce standards in the private rented sector.
- 4.2 In some circumstances, we have a duty to act, whilst in other circumstances we have powers to act. These are outlined in the policy.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 There is no legal requirement to consult, however we are considering engagement with various stakeholders to monitor the effectiveness of the policy.

#### **6. CONCLUSION**

- 6.1 The Private Sector Housing Enforcement Policy mirrors the legislation governing minimum standards of private rented accommodation to ensure properties are safe, secure and warm.
- 6.2 Brighton and Hove has a disproportionately large private rented sector, which provides accommodation for a broad range of people, some of which are vulnerable and /or at the poorer end of the market. It is therefore important that we have a policy setting out our approach to safeguard standards, taking action where appropriate.
- 6.3 Whilst recognising that not all costs are recoverable, with limited resources it is important we maximise the possibilities of recovering costs of enforcement.

#### **7. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 7.1 The net budget for the Private Sector Housing team, which includes the enforcement function, is £0.190m for 2019/20.

*Finance Officer Consulted: Monica Brooks*

*Date: 29/10/19*

##### Legal Implications:

- 7.2 As is referred to this document is covered by the Regulators Code under section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), The Legislative

and Regulatory Reform (Regulatory Functions) Order 2007 is applicable to Parts 2 – 4 of the Housing Act 2004.

- 7.3 The regulators code requires us to have regard to the code when developing policies and procedures that guide their regulatory activities. While certain aspects of regulatory activity will not be covered, the majority set out in the draft policy will be and therefore it is sensible to apply it across the whole policy.
- 7.4 The enforcement policy complies with the regulator code. It should be noted that there are certain elements of the regulators code, which may not sit comfortable with changes under the GDPR, and so certain elements around information sharing need to be carefully considered.

*Lawyer Consulted:*

*Name Simon Court*

*Date: 4.10.19*

**Equalities Implications:**

- 7.1 An Equalities Impact Assessment is planned. The policy will provide clarity regarding the action the council can take when standards of private rented accommodation fall below legal thresholds.
- 7.2 In drafting this report, we have considered the Public Sector Equality Duty pursuant to s149 Equalities Act 2010. In our view, this policy which is directed at improving housing stock will benefit many vulnerable groups who often find themselves in rented accommodation due to their circumstances. Historically public health colleagues have identified that the elderly were one of the largest groups living in property that was unsuitable. Many in the group were in the private rented sector. We also note that it is often the case that the BME community are disproportionately represented in private rented accommodation. A clear Enforcement Policy dealing with standards of private rented accommodation has the benefit of providing better clarity for tenants to understand their rights and also for Landlords to understand their responsibilities. The proposed 'assistance, education and information' approach (before enforcement steps are taken) will be beneficial to landlords and companies who may not have a grasp of the legal requirements in the UK. An EIA will be kept under review in relation to the implementation and impact of the new Policy.

**Sustainability Implications:**

- 7.3 None

**Any Other Significant Implications:**

- 7.4 None

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Private Sector Housing Enforcement Policy

### **Documents in Members' Rooms**

1. Private Sector Housing Enforcement Policy

## **Appendix 1**

### **Part 1 General Policy Provisions**

#### **1. Introduction and Scope**

Brighton & Hove is a popular place to live, which has affected the cost of buying and renting in the city and resulted in high property prices and high rents. The city has a higher than average number of privately rented homes including Houses in Multiple Occupation, with demand for housing in the city outstripping supply. The council believes that the private rented sector should be well-managed and that everyone has the right to live in decent, safe accommodation.

This Policy details how the Council will regulate standards in Private Rented Housing and tackle empty homes in Brighton and Hove. It also provides a background to the legislation and guidance on which it is based.

It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council Officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed against.

In developing this policy, we must remain impartial to both landlord and tenant to be fair to both sides. We will give help and advice to achieve our aim but we must also be firm in taking enforcement action if appropriate.

#### **2. Aims**

The Private Sector Housing Team is part of the Council's Neighbourhoods, Communities and Housing Directorate and aims to protect and improve lives by ensuring private rented homes are safe and warm.

Our aims for compliance are to provide assistance, information and education; working with landlords, lettings and management companies, tenants, and owners of long-term or nuisance empty properties and other interested parties to help them comply with regulatory requirements and laws. If such requirements are not met, we will target enforcement action using a risk based approach and relevant intelligence to make sure that we prioritise the most urgent cases.

The main themes of this policy are to ensure that the council takes appropriate action, to achieve the following general aims:

- Tenants of private landlords live in homes that are free of unacceptable hazards and risks to their health and safety
- All licensable private rented properties are licensed and all licensing conditions are met
- Where private housing remains empty for an unreasonable amount of time and/or becomes an eyesore and nuisance to neighbouring properties.

The policy applies to all private sector homes in the city and long-term empty properties.

The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principles-based

framework for how regulators should engage with those they regulate. The Council is required to have regard to the Code when regulating private rented housing standards. For further information see:  
[www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code)

### **3. General Principles**

- Openness**

We will provide clear information and advice either verbally or in writing on regulations, standards and enforcement work;

- Proportionality**

We will take into account the risk to health and safety, any protected characteristics of landlords, owners or tenants, the severity of any breach or non-compliance and the impact on those interested parties or local communities;

- Consistency**

We will ensure that our actions are in line with legislation and other regulatory requirements.

- Relevant legislation and guidance**

This policy has been written taking into account relevant legislation, guidance and best practice.

- Human Rights and Equality Issues**

Enforcement action will be conducted in a manner which does not conflict or undermine the principles of the Human Rights Act 1998 and the Equalities Act 2018. Any enforcement decisions will be made with consideration of the council's equality and inclusion policy statement and strategy

- Vulnerable groups**

Any enforcement action taken will take into account the vulnerability of the interested parties and that at some point in the future the property may be occupied by someone who is vulnerable.

- Safeguarding**

Where we are carrying out compliance and enforcement work and we become aware of issues relating to the safeguarding of children and vulnerable adults, we have a duty to make the appropriate referrals to ensure the welfare of those persons at risk are protected.

- Working in partnership**

We foster and maintain good working relationships with partner services to help ensure all homes in the city, across all the different tenures, including long term empty properties are well managed and maintained.

- Housing Strategy**

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need and this is acknowledged in the Council's Housing Strategy. A key priority for this strategy is to provide professionally managed and well maintained homes. We will work with landlords to improve and sustain good quality accommodation

and will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property.

## **4. What to expect from us**

### **4.1 Landlords**

- Whilst the onus is on the landlord to find out and be aware of their responsibilities, we will always attempt to advise you of the legislation and help you understand how you can comply with it
- We will advise you of any action you need to take to comply with the legislation and will ask you to respond with your proposal of how you intend to comply with any requirements of any Notice or Licence
- If we are satisfied with your proposal, we will work with you to agree reasonable timescales for compliance
- If we are not satisfied with your proposal or how the work is progressing, we will initiate formal action in a proportionate manner as appropriate to the circumstances
- A charge will generally be made for the service of a statutory notice, further details are given in Appendix 2
- In making any decision to prosecute or apply a civil penalty, we will have regard to how serious the offence is, the benefit of enforcement action and whether some other action would be appropriate

### **4.2 Tenants**

- We will expect you to advise your landlord of any issues within your property, preferably in writing, before contacting us for further advice and guidance
- We will advise you as to what action we can take and advise you of the expected timescales
- We will expect you to cooperate with the landlord to get the works carried out (including providing access at all reasonable times), and to advise us of any action taken by the landlord

### **4.3 Owner-Occupiers**

- We will expect owners to maintain the properties they live in without any intervention from us. Enforcement action will be considered if there is an imminent risk to a person's life

### **4.4 Owners of Empty Homes**

- We will work proactively with owners of empty homes to encourage and assist in bringing their empty homes back into use
- Where an empty property is having detrimental impact on the neighbouring area enforcement action will be considered as appropriate
- If owners fail to take responsibility for their properties, are not willing to engage or negotiations have failed, and where there is little prospect of a property being brought back into use voluntarily, enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered

## **5. Situations where a Service may not be provided**

Where any of the following situations arise, consideration will be given to not providing or ceasing to provide a service:

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
- Where the tenant's only reason for contacting the Private Sector Housing Team, in the opinion of the Council, is in order to pursue a position on the housing register
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow-up letter or appointment card
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers
- Where there is found to be no justification for the complaint, on visiting the property
- Where the tenant unreasonably refuses to provide the Council with relevant documentation

## **6. Our Approach to Enforcement Work**

### **6.1 Advice and Guidance**

We will provide authoritative, accessible advice around Private Sector Housing. The Council's website is used to provide general information, advice and guidance to make it easier for landlords, agents, home owners and others to understand their obligations. It is provided in clear, concise and accessible language, using a range of appropriate formats and media.

We will consult with landlords' associations and other appropriate stakeholders when developing the content and style of this guidance. When offering compliance advice, the Private Sector Housing Team will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.

We welcome enquiries from home owners and landlords about complying with minimum standards and ensuring homes are safe and warm. However, the Service will not act as a consultant for home owners or landlords, and is not able to complete detailed assessments for specific properties (such as party wall issues or fire safety risk assessments).

### **6.2 Risk Assessment and Triage of Requests for Assistance**

Following the receipt of a request for assistance or complaint about poor housing conditions, an initial 'risk assessment' will normally be carried out in order to 'triage' cases according to their apparent severity. Follow-up advice or action will be dependent on the outcome of the initial risk assessment and we may not always carry out a visit to the property. In making the assessment, we also take account of any safeguarding issues and vulnerability of the occupant.

Complaints about Social Housing properties will be referred to the Providers to investigate in the first instance. However, where intervention is deemed necessary to protect health and safety, we will do so.

## **6.3 Inspections, Other Visits and Information Requirements**

No inspection will take place without reason. Inspections and other visits will take place in response to a reasonable complaint or request for service or where poor conditions have been brought to our attention:

- In accordance with any risk-based programmes that may be undertaken
- In accordance with statutory inspection requirements (such as for mandatory licensing of houses in multiple occupation, HMOs)
- Or on receipt of relevant intelligence

Unless the visit is intended for advice purposes only, the landlord or his or her agent will be contacted and given the opportunity to accompany the Investigating Officer at the visit.

We will focus its resources on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor conditions. The Service will endeavour not to ask for unnecessary information or to ask for the same piece of information twice.

## **7. Authorisations and Powers to carry out Enforcement Work**

### **7.1 Delegation and decision-making**

Decisions about the most appropriate enforcement action will be made in line with this policy and based on professional judgement, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government

The Executive Director for Neighbourhoods Communities & Housing has the delegated authority in accordance with the 'Council's Scheme of Delegation to Officers' within the Council's constitution to take certain action under a range of legislation. The Executive Director delegates these powers to other officers.

A decision to instigate a prosecution will be made by the Private Sector Housing Manager (as delegated by the Executive Director for Neighbourhoods Communities & Housing) in consultation with Legal Services.

### **7.2 Authority to Investigate or Enforce**

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Brighton and Hove City Council has in relation to regulating housing standards. Powers are also contained in the Housing Act 1985 (as amended), and other legislation, such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, the Public Health Acts 1936 and 1961, the Mobile Homes Act 2013, Prevention of Damage By Pests Act 1949, the Building Act 1986, and the Housing and Planning Act 2016. This is not a complete list of the powers available.

### **7.3 Authorisation of Officers**

Only Officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Scheme of Delegation sets out the delegated powers given to Officers. Officers who undertake criminal investigations will be conversant with the provisions of all relevant criminal investigation law. Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. To prevent any implication that the officer has taken sides, officers will usually only attend in response to a witness summons.

## **7.4 Powers of Entry and Power to Require Information**

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- The Officer has given 24 hours' Notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No Notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations). If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

Also, for Emergency Remedial Action and Emergency Prohibition Orders under s40 of the Housing Act 2004, right of entry is at any time and notice may be given by pinning it to the door.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

The Housing and Planning Act 2016 made amendments to the Housing Act 2004 to enable the sharing of certain data held by the Tenancy Deposit Protection (TDP) schemes on Private Rented Sector properties, landlords and managing agents with local housing authorities in England. From 6 April 2017, Tenancy Deposit Protection (TDP) schemes are required to provide specific information they hold on tenancies in England to Local Housing Authorities who request the information.

The Council must only use the data:

1. For a purpose connected with the exercise of their functions under Parts 1-4 of the Housing Act 2004 in relation to any premises (in general improving housing conditions, licencing of HMOs, selective licencing of other accommodation and management orders)
2. for the purpose of investigating whether an offence has been committed under any of those Parts in relation to any premises

## **8. Accountability of the Service**

The Service will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions that it takes. Employees will provide a courteous, prompt and efficient service and will identify themselves by name. A contact point, telephone number and email address will be provided.

## **8.1 Complaints about the Service**

Complaints about our service will be handled in line with the Council's corporate complaints procedure. In the event that a person is not satisfied with the service provided, they should initially contact the Private Sector Housing Team to discuss their complaint. The Council will deal with all complaints in the strictest confidence and wherever possible will attempt to resolve your complaint informally. If a person is still unhappy they can contact the council's customer feedback team at:

<https://www.brighton-hove.gov.uk/content/council-and-democracy/feedback-about-council-services/make-a-complaint-using-our-corporate>

The customer feedback process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal.

If you are still dissatisfied you can discuss your complaint with your local ward Councillor, MP or raise your complaint with the Local Government Ombudsman.

## **8.2 Appeals**

Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. Appeals regarding enforcement action under the Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber). For the southern area this is:

Residential Property Tribunal Service  
First Tier Tribunal (Property Chamber)  
Ground Floor  
Residential Property  
Havant Justice Centre  
The Court House  
Elmleigh Road  
Havant  
PO9 2AL

Tel: 01243 779394

Email: [rpsouthern@hmcts.gsi.gov.uk](mailto:rpsouthern@hmcts.gsi.gov.uk)

All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served.

## **9. Application of the Policy**

All Officers must have regard to this policy when making enforcement decisions.

## **10. Monitoring and Review of the Policy**

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters. Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs. Where housing or other related legislation is introduced, which is enforced by the Council and permits the imposition of any monetary

penalty or penalty charge the Council will seek to fully implement any duty or power conferred upon it.

This policy will be reviewed every three years and amended to reflect any change in legislation, corporate policy or official guidance.

## **11. Related policies and Supporting documents**

We will ensure this policy aligns to our approach to enforcement across the authority.

Related policies include:

- Housing Strategy
- Homelessness Strategy

These are available on the council's website at

<https://www.brighton-hove.gov.uk/content/housing/general-housing/housing-strategy-2015>

<https://www.brighton-hove.gov.uk/content/housing/general-housing/policies-and-strategies-general-housing>

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

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

A copy of the Guidance on rent repayment orders can be accessed via:

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

A copy of the Regulators Compliance code can be downloaded from:

<https://www.gov.uk/government/publications/regulators-code>

A copy of the Enforcement Concordat: Good Practice Guide can be downloaded from:

<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

## **12 Contact and enquiries information**

If you have any comments or queries on this policy, please contact either:

The Private Sector Housing Team  
Brighton & Hove City Council  
Room G3  
Hove Town Hall  
Norton Road  
Hove, BN3 3BQ

By Email: [psh@brighton-hove.gov.uk](mailto:psh@brighton-hove.gov.uk)

By telephone: 01273 293156

The Empty Property Team  
By Email: [emptyproperties@brighton-hove.gov.uk](mailto:emptyproperties@brighton-hove.gov.uk)  
By telephone: 01273 293297 / 293035

## **Part 2 Specific Enforcement Areas**

### **13. Housing Health & Safety Rating System (HHSRS)**

The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method, for assessing and dealing with poor housing conditions. All officers using this will be suitably trained.

HHSRS is a calculation of the effect of 29 possible hazards on the health of occupiers. The legislation provides a range of actions for addressing identified hazards. It is a two-stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence which results in a numerical rating. The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant. The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as Category 1 hazards when considering action. Bands D to J, the less severe (rating less than 1,000 points) are known as Category 2 hazards. HHSRS provides a score for each hazard identified and does not provide a single score for the dwelling as a whole. It can be applied to all residential premises, whether owner-occupied or rented.

The Council has a duty to take appropriate action in response to a Category 1 hazard. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use.

The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazards. There is a power to deal with category 2 hazards. This is where the risk to health and/or safety is present but not so significant. The Council will exercise this power in the following circumstances:

- where there are category 1 hazard(s) also present at the residential unit of accommodation
- where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventative action is taken
- where there are a number of category 2 hazards which would present a hazard to occupiers

#### **13.1. Compliance and Enforcement Actions following HHSRS inspection**

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally and within a reasonable amount of time.

Where this approach fails, the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

When considering formal enforcement action, following an HHSRS inspection, we will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent, or respond to a serious breach or to deal with an imminent risk to health or safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

We will ensure that clear reasons for any enforcement action are given and complaints and appeals procedures are explained. A Statement of Reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action.

The decision to use enforcement action will depend on the severity of the non-compliance. Factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- The culpability of the responsible party
- Evidence that suggests that there was premeditation in the commission of an offence
- Whether the alleged offence involves a failure to comply in full or in part with the requirements of a statutory Notice or order
- Whether there is a history of previous warnings or the commission of similar offences
- Aggravated circumstances such as aggressive or violent behaviour

The range of action that will be considered includes:

- Hazard Awareness Notices (s.28 & s.29)
- Improvement Notices (s.11 & s.12)
- Prohibition Orders (s.20 & s.21)
- Emergency Remedial Action (s.40)
- Emergency Prohibition Order (s.43)
- Demolition Order (s.265 Housing Act 1985)
- Clearance Area Action (s.289 Housing Act 1985)

**Hazard Awareness Notice** – notice advising the person on whom it is served of category 1 and/or category 2 hazard(s) at the property. These will usually be issued where there is a less serious hazard present. There is no right to appeal a hazard awareness notice.

**Improvement Notice** – notice requiring the person on whom it is served, to take the remedial action specified in the notice in relation to the hazards found, within a specified timescale.

**Prohibition Order** – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property.

**Emergency Remedial Action** - this will be considered where there is an imminent risk of serious harm and a Category 1 hazard is present. The Council will take the action necessary to mitigate and/or remove this risk where the person responsible cannot be contacted and formal action will be taken to recover the full costs incurred.

**Emergency Prohibition Order** – same as a prohibition order but the order will take effect immediately. This is only available where a Category 1 Hazard is present.

**Demolition Order** – an order requiring the demolition of the property. This is only available where a Category 1 Hazard is present.

**Declaring a Clearance Area** – an area which is to be cleared of all buildings. This is only available where Category 1 Hazards are present.

In determining what action to take, the Council will use their judgement to take account of the current or potential occupants.

The Council can also issue **Suspended Improvement Notices** and **Suspended Prohibition Orders**. These are usually used where the condition of a property presents a risk to health and safety, but the property is unoccupied or not occupied by a vulnerable person. Suspended Notices will be reviewed at least every 12 months.

Notices will include reasonable time limits having regard to the seriousness of the defects and/or contraventions and contain a statement of reasons as to why the notice was served.

The notice/order will contain all required information as specified by the relevant Act or Regulation.

All appropriate persons will be notified of the formal action, e.g. tenants, mortgagees etc.

Information on how the HHSRS will be applied to each tenure is set out in **Appendix 1**

### **13.2 Review of Enforcement Action**

If there is a change in the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers), the current state of any outstanding enforcement action will be reviewed by the investigating officer, in consultation with his or her line manager, to ensure that it is still appropriate and proportionate to the risk posed from the identified hazard(s).

### **13.3 Retaliatory Evictions**

Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice. On 1st October 2015, a number of provisions in the Deregulation Act 2015 came into force. These provisions are designed to protect tenants against unfair eviction. Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served, or is intending to serve, either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the 'no fault' eviction procedure (a section 21 eviction). The landlord is also required to ensure that the repairs are completed.

In order to rely on the protection against retaliatory eviction that the Deregulation Act 2015 provides, a tenant must approach the landlord in writing in the first instance. If, after 14 days from the tenant making a complaint, the landlord does not reply, that reply is inadequate, or they respond by issuing a Section 21 eviction notice, the tenant should approach the Private Sector Housing Team and ask us to carry out an inspection to verify the need for a repair. We will then undertake an HHSRS inspection, following the correct s239 Notice procedure to notify the landlord of the inspection. If the inspection verifies the tenant's complaint, the enforcement officer will take appropriate action. If the council serves an Improvement Notice or Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure.

We will work with landlords to understand their obligations and the implications of this legislation, and will work alongside the Housing Options team to provide support, advice and guidance to the tenant in these circumstances.

The Government intends to introduce a new, fairer deal for both landlords and tenants in the private rented sector. As part of this new deal, the Government is proposing to put an end to ‘no-fault’ evictions by repealing section 21 of the Housing Act 1988. Under the new proposals, a tenant could not be evicted from their home without good reason.

## **14 Enforcement Notices and Orders**

### **14.1 Power to Charge for Notices and Orders**

The Council has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action.

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable will be a local land charge.

Where charges can be made, these will be set in line with all relevant guidance. Details are given in **Appendix 2**

### **14.2 Revocation and Variation of Notices and Orders**

Under the Housing Act 2004, The Council must revoke an Improvement Notice or Prohibition Order once they have been complied with.

If part of the work required within an Improvement Notice or Prohibition Order is carried out, or if agreed with the Case Officer, then the Notice can be varied to allow alternative works or additional compliance time.

### **14.3 Failure to Comply with Notices and Orders**

If a Notice is complied with, no further action will be taken. However, if the Notice is not complied with, the Council will consider the following options, taking into account the circumstances of each case:

- Prosecution;
- Carrying out the works in default;
- Carrying out the works in default and prosecution;
- Whether a simple caution is appropriate;
- Civil Penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

The Council will take action to recover its costs in connection with works in default, including admin charges of up to 30% of the cost of the works.

The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

#### **14.3.1 Prosecution**

Prosecution will be considered in all cases of noncompliance, but having regard to all other possible options. This will be carried out in conjunction with the Legal Services Team

#### **14.3.2 Works in Default**

Works in Default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate, Officers will report to the Private Sector Housing Manager who will consider approval based on the following information;

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned
- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties

The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

In the case of Officer time, the Council will calculate costs as follows:

- The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database
- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.

The expenses incurred are to be recovered from the person(s) on whom the Notice or Order has been served ("the relevant person"). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person.

The expenses will carry interest from the date of service until payment of all sums due under the demand at a rate specified at the time. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

### **14.3.3 Simple Cautions**

The Council may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple cautions can only be issued where:

- There is evidence an offender is guilty
- The offender is eighteen years of age or over
- The offender admits they have committed the crime
- The offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead.

Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before.

### **14.3.4 Civil Penalties**

A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

The maximum penalty is £30,000 – there is no minimum set.

The decision to issue a financial penalty will be made on a case by case basis, and the amount of penalty will be determined in accordance with statutory guidance.

More details of the Council's approach to determining the level of Financial Penalty can be found in **Appendix 2**

## **15. Rent Repayment Orders**

Rent Repayment Orders (RROs) can be applied for in respect of the following offences committed after 6th April 2017:

- 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
- Breach of a banning order made under Section 21 of the Housing and Planning Act 2016
- 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

The powers to apply Rent Repayment Orders to offences related to HMOs can be applied to a range of offences:

- Offences in relation to licensing of Houses of Multiple Occupation (section 72(1))
- Offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

The maximum amount of rent, either to a tenant for rent paid or to the council for housing benefit or universal credit paid, that can be recovered is capped at 12 months. The Council must apply to the First Tier Property Tribunal for an RRO. The Council will consider application for RROs in all cases where a successful prosecution has been achieved.

A notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations.

## **16. Banning Orders**

A Banning Order prohibits a landlord or managing agent convicted of ‘Banning Order offences’ under the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017, from undertaking activities in connection with letting a property for a period of at least 12 months.

Rogue landlords who flout their legal obligations and rent out accommodation which is substandard following prosecution, will be referred to the First-tier Tribunal for application of a banning order.

A banning order will last a minimum of 12 months. There is no statutory maximum period for a banning order.

The Council will apply for Banning Orders to be made where:

- the evidence justifies this course of action
- it is considered to be in the public interest to protect tenants against rogue landlords
- it is in line with the Council’s overall enforcement policy, and
- it is in line with the guidance issued by the Ministry of Housing and Communities

A banning order means that the subject of the order cannot:

Let housing in England

Engage in English letting agency work

Engage in English property management work

Hold a license under Part 2 or Part 3 of the Housing Act 2004

Once a banning order has been issued, it will be possible to include details in the database of rogue landlords and property agents.

## **17. Rogue Landlord Database**

Under the provisions within the Housing and Planning Act 2016 the Government established and maintains a nationwide database to record details of Landlords and Managing Agents given a Banning Order or convicted of certain offences.

Application to have Landlord/Agents details entered on the database is a statutory duty where a Banning Order has been given and is at the discretion of the Housing Authority in other circumstances.

The Council will apply to have Landlord’s details entered on the database where there is a duty to do so, and in other cases where the law allows discretion when it is in the public interest to do so.

## **18. Statutory Nuisance provisions**

Under the Environmental Protection Act 1990, the Council must take action to deal with a Statutory Nuisance if it exists, is likely to occur or recur. We would deal with a statutory nuisance, which could affect residential occupiers under section 79 of this act. There are two parts to this as it applies to any premises in such a state as to be

- prejudicial to health or
- a nuisance.

A general inspection of the premises would take place, to confirm the details of the complaint and to assess the situation. The complainant will be made aware of what further steps will be taken (if any). It may be necessary to visit other premises to determine the cause of the nuisance. If access to other premises is refused, power of entry may be invoked.

If any action is taken, the complainant will be informed and sent a copy of any letter or the Abatement Notice, where possible.

The Abatement Notice itself is served on the “person responsible for the statutory nuisance”, which in this case would be the ‘owner’ of the premises. Where the person cannot be found or the nuisance has not yet occurred, the Notice is served on the ‘owner or occupier’ of the premises.

Enforcement of the Notice can be done by a prosecution for non-compliance with the Notice in the Magistrates Court, or by carrying out works in default, or both.

## **19. Overcrowding**

We will investigate complaints from tenants living in privately rented properties about overcrowded living conditions or where overcrowded conditions are legitimately impacting on neighbours’ health, safety or welfare. Wherever possible we will resist taking action that would lead to homelessness but will seek to reduce any serious hazard of overcrowding using suspended notices where appropriate.

It is a criminal offence to contravene an overcrowding notice served under the Housing Act 1985 and we will consider taking enforcement action against those who do.

We can also take enforcement action to deal with ‘crowded’ conditions following an HHSRS assessment under provisions in The Housing Act 2004.

Officers will use the most appropriate legislation on a case by case basis.

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

The regulations impose obligations upon landlords to ensure that tenanted properties are provided with smoke alarms and carbon monoxide alarms.

Reg 4(1) says; A relevant landlord in respect of a specified tenancy must ensure that -

(a) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy-

(i) a smoke alarm is equipped 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 equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and

(b) 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.

Where the Council has reasonable grounds to believe that the requirements of these Regulations have not been met by a landlord, there is a duty on the Council to serve a ‘remedial notice’.

A remedial notice must-

- specify the premises to which the notice relates;
- specify the duty or duties that the local housing authority considers the landlord is failing or has failed to comply with;
- specify the remedial action the local housing authority considers should be taken;
- require the landlord to take that action within 28 days beginning with the day on which the notice is served;
- explain that the landlord is entitled to make written representations against the notice within 28 days beginning with the day on which the notice is served;
- specify the person to whom, and the address (including if appropriate any email address) at which, any representations may be sent; and
- explain the effect of regulations 6, 7 and 8, including the maximum penalty charge which a local housing authority may impose.

The remedial notice will confirm the provisions for a review, and the appeal procedures.

Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action and a power to require payment of a penalty charge.

### **Indicative Penalty charges for non-compliance are outlined in Appendix 2**

## **21. Homes (Fitness for Human Habitation) Act 2018**

On 20 March 2019 a new law came into force to make sure that rented houses and flats are ‘fit for human habitation’, which means that they are safe, healthy and free from things that could cause serious harm.

If rented houses and flats are not ‘fit for human habitation’, **tenants** can take their landlords to court. The court can make the landlord carry out repairs or put right health and safety problems. The court can also make the landlord pay compensation to the tenant.

Tenants can use the Homes Act immediately if they signed their tenancy agreement contract on or after **20 March 2019**. If they signed their contract before 20 March 2019, they will have to wait until **20 March 2020** before they can use the Homes Act (unless they sign a new tenancy or their tenancy becomes a monthly rolling contract). See the Guidance detailed below for further information:

<https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018>.

If tenants ask us to visit to provide a report for evidence to support their case, we will not act solely as consultants for this purpose. We will follow our usual procedures and take the appropriate action as necessary, which may involve contacting the landlord. We may be able to provide a short, factual statement of the findings of our visit and offer limited advice, but tenants should seek their own independent legal advice.

## **22. Houses in Multiple Occupation (HMOs)**

### **22.1 HMO Licensing**

It is a national legislative requirement that all houses in multiple occupation (HMOs) with five or more unrelated occupiers, who share facilities must be licensed. The aim of

licensing is to ensure that every licensable HMO is safe for the occupants and visitors, and is properly managed. The responsibility for applying for a licence rests with the person having control of or the person managing the property.

In March 2018, Brighton & Hove City Council introduced a discretionary Licensing Scheme across the city, as a way to improve the safety standards and living accommodation for the benefit of tenants of smaller HMOs and other residents. The responsibility for applying for a licence under this scheme also rests with the person having control of or the person managing the property.

It is an offence under the Housing Act 2004, not to licence a property, which falls under either scheme. The Council will prosecute where a person fails to apply for such a licence.

When considering the Amenities required in a House in multiple occupation regard will be made to the Brighton and Hove HMO Standards. These include minimum room sizes, along with bathing facilities and cooking amenities. The HMO Standards can be found on the website at: <https://new.brighton-hove.gov.uk/housing/private-housing/houses-multiple-occupation>

## **22.2 HMO licencing offences and Management Orders**

### **Licensing Offences**

The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of licence condition
- Supplying incorrect information in a licence application

In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO) by a First-tier Tribunal (Property Chamber) under sections 96 and 97 of the Housing Act 2004. The Council may also decide to apply a Civil Penalty for certain offences using the Housing and Planning Act 2016.

A RRO requires repayment of rent received by the landlord over a period of up to 12 months. The Council will usually consider applying for such a measure if the landlord has received rent that has been paid by Housing Benefit.

Where an unlicensed HMO is identified, the Council will assess whether there are good reasons why an application has not been received. If there are no good reasons, the Council will look to take formal proceedings with a view to prosecution in the courts or by way of issuing a Civil Penalty.

If a landlord of an unlicensed HMO approaches the Council for licensing and the landlord fully cooperates with the Council, including addressing any management, safety or amenity issue within an agreed timescale, the Council would not normally take enforcement action.

Generally, any breach of licence condition will be dealt with informally initially. However, if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue legal proceedings.

### **Interim and Final Management Orders**

An Interim Management Order (IMO) transfers the management of a residential property to the Council for a period of up to twelve months. The circumstances in which

an order can be made are discussed below. In particular, the IMO allows the Council possession of the property against the immediate landlord, and subject to existing rights to occupy can;

- Do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- Spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property
- To create new tenancies (with the consent of the landlord).

Under an IMO the Council must pay to the relevant landlord (that is the person(s) who immediately before the order was made was entitled to the rent for the property) any surplus of income over expenditure (and any interest on such sum) accrued during the period in which the IMO is in force. It must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant person.

The Council must take enforcement action in respect of a licensable property (which means an HMO subject to Part 2, or other residential property subject to Part 31) by making an IMO if:

- The property ought to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future. An IMO may not, however, be made on these grounds if an effective application is outstanding with the authority for the grant of a licence or a temporary exemption notice or if such a notice is in force
- The Private Sector Housing Team is satisfied that the Health and Safety Condition isn't met and, therefore, it would not have granted an application for a licence
- The Private Sector Housing Team intends to revoke the licence on one or more of the grounds specified in Parts 2 or 3 of the Act, other than the property has ceased to be licensable, and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person)
- The Private Sector Housing Team is satisfied that when the licence is revoked the Health and Safety Condition test will be met

### **Final Management Orders**

In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years. Such powers will only be used in exceptional circumstances and will be agreed by the Head of Housing and Community

Enforcement. A FMO cannot be made unless an IMO or another FMO was already in force. An FMO transfers the management of the house to the Private Sector Housing Team for the duration of the order. In particular, the FMO allows the Council;

- Possession of the property against the immediate landlord, but subject to existing rights of occupation
- To do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- To spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property;
- To create new tenancies (without the consent of the landlord).

### **Management Order Management Schemes**

The Council must adopt a management scheme for a property subject to an FMO. The scheme must set out how the Council intends to manage the house. In particular, the management scheme must include:

- The amount of rent it will seek to obtain whilst the order is in force
- Details of any works which the Council intends to undertake in relation to the property

- The estimate of the costs of carrying out those works
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time
- In general terms how the authority intends to address the matters that caused the Council to make the order. The Council must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

### **Temporary Exemption Notices**

Where a landlord is, or shortly will be taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. In exceptional circumstances a second TEN can be served for a further three-month period. A TEN will be served where the owner of the HMO states in writing that steps are being taken to make the HMO non- licensable within 3 months.

### **22.3 Raising Standards in all HMOs**

Under current legislation many HMOs do not currently require a licence. These include houses containing self-contained flats. Many of these still pose a significant degree of risk to occupants and/or have a history of being poorly managed. The Council will continue to regulate such HMOs through enforcement of the HMO Management Regulations and by use of the Housing Health and Safety Rating system.

### **22.4 Fire Safety in HMOs**

Statistically, HMOs have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in event of a fire and adequate fire precautions. The actual level of fire protection and detection required will be determined by a risk assessment. When requiring fire safety works, the Council will have regards to the LACORS Fire Safety Guidance document.

The Private Sector Housing Team is generally the lead enforcing authority for fire safety in HMOs, however where an HMO contains communal areas, a Fire Risk Assessment must be carried out in accordance with the Regulatory Reform Order which is ENFORCED by East Sussex Fire & Rescue Service. For clarification, and/or general fire safety guidance, contact the Private Sector Housing Team.

### **22.5 HMOs and Planning Legislation**

Planning and HMO licensing are separate and governed by different pieces of legislation. HMO licensing is concerning the safety and welfare of the tenants, so if tenants are present, we have to ensure the property complies, even if they are occupying without Planning permission.

We will liaise with the Planning Team where this is the case and decide on the approach on a case by case basis. We may, for example: grant a licence for a period of time until the situation is regularised; or not grant a licence until the situation is regularised.

Landlords may wish to seek independent advice in relation to planning and HMO's as there are a number of variables. For instance where there is in force an Article 4 Direction under the Town and Country Planning Act 1990 (as amended) then there must be planning permission for a smaller HMO.

Larger HMOs also require Planning Permission in all areas.

Further information can be found on the council website:

<https://www.brighton-hove.gov.uk/content/planning/planning-applications/planning-permission-houses-multiple-occupation>

## **22.6 HMOs, Noise and Antisocial Behaviour**

If we receive any complaints about noise or other anti-social behaviour from a licenced property, we would in the first instance, write to the Owner, Managing Agents and Tenants about the issue, reminding them of their responsibilities under the provisions of the HMO Licence. We would subsequently ask for proof that the owners had addressed the issue with the tenants.

The Name and Address of the licence holder and the Managing Agents are detailed on the HMO Register which is available on the Council's website, so the neighbour could approach them directly regarding the noise issues should they wish in addition to / or instead of an approach to us. The register can be found on our website with the following link:

<https://new.brighton-hove.gov.uk/housing/private-housing/register-hmo-licences-brighton-hove>

Also, if the noise is frequent, the person complaining should approach the Noise Team in Environmental Health. Their contact details are on the website at this link:

<https://www.brighton-hove.gov.uk/content/environment/noise-pollution-and-air-quality/report-a-noise-problem>

In addition, both the University of Sussex and University of Brighton have teams that support community liaison where issues arise with their students living in the private rented sector. We liaise with them where appropriate.

## **23. Empty Homes**

Empty homes can be a blight on our community as well as a wasted housing resource. Our approach will be to work alongside owners of empty homes with a solution-based approach to support and encourage voluntary action. However, we are also committed to using appropriate enforcement action where owners fail to take responsibility for their properties, reasonable negotiations fail or there is little prospect of the property being bought back into use voluntarily.

A number of factors will be considered in deciding the best course of action for an empty home. For more information please see the [Empty Homes Strategy](#) (to be updated/reviewed) or contact the Empty Property Team at [emptyproperties@brighton-hove.gov.uk](mailto:emptyproperties@brighton-hove.gov.uk)

The Council will provide advice and assistance to the owners of empty properties to help bring the home back into use. It will however also consider using any of the following enforcement options:

- Empty Dwelling Management Orders

Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the

property for up to seven years, reclaiming any management and refurbishment costs from the rental income.

- Compulsory Purchase Orders

CPOs can be made under s17 of the Housing Act 1985 or s226 of the Town & Country Planning Act 1990. They allow local authorities to purchase properties in specific circumstances without the owner's consent.

- Enforced sale procedure

The Law of Property Act 1925 allows the recovery of debt secured by a registered charge by forcing the sale of a property. In situations where the Council has served notices requiring the owner to ensure that their property is not unsafe or having a negative impact, but they have failed to act, the Council may be forced to carry out the works in default. If the costs incurred are not paid, the Council will register a charge against the property and should the owner still not pay this debt, the Council can commence legal proceedings to sell the property to recover the costs. An enforced sale under a different procedure can also be used to recover Council Tax arrears.

- Other provisions

If a property is unsafe or causing, or is likely to cause, a nuisance to the locality, there are several legislative tools available to the Council to ensure that the condition of the property is improved.

These include:

- Town and Country Planning Act 1990, Section 215: To tackle land or buildings adversely affecting the appearance of the neighbourhood
- Housing Act 2004: To make sure properties are safe and suitable to live in for potential occupiers
- Building Act 1984 Sections 77, 78 & 79: To deal with dangerous or dilapidated buildings, structures or unsightly land/property affecting the area
- Anti-social Behaviour Crime and Policing Act 2014 (Community Protection Notice): To require an owner to deal with the accumulation of rubbish or overgrown gardens
- Local Government (Miscellaneous Provisions) Act 1982, Section 29: To secure or board up properties
- Environmental Protection Act, 1990, Section 80: To deal with nuisance caused by waste or rubbish, or because repairs are needed at property
- Prevention of Damage by Pests Act 1949, Section 4: To treat and/or prevent rat or mice infestations.

Further information can be found on our website

<https://www.brighton-hove.gov.uk/content/housing/general-housing/what-council-can-do-about-empty-properties>

## **24. The Redress Schemes for Letting Agency Work and Property**

The Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 requires that a person who engages in lettings agency work, or property management work must be a member of a redress scheme for dealing with complaints in connection with that work.

This is currently enforced by the Trading Standards team of the council who can be contacted via

trading.standards@brighton-hove.gov.uk

<https://www.brighton-hove.gov.uk/content/business-and-trade/trading-standards>

## **Appendix 1**

### **Application of HHSRS to each tenure**

The Housing Health and Safety Rating System (HHSRS) outlined above applies all tenures of housing. Furthermore, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Social Housing Provider. Generally, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not usually able to do so.

For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

#### **Owner-Occupiers**

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

- Vulnerable elderly people who are judged incapable of making informed decisions about their own welfare
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- Hazards that might reasonably affect persons other than the occupants
- Serious risk of life-threatening harm such as electrocution or fire

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

#### **Social Landlords**

Housing Providers exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by the Homes and Communities Agency (HCA). Housing Providers normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not normally take formal action against Housing Provider unless:

- It is satisfied that the problem in question has been properly reported to the Housing Provider and
- The Housing Provider has then failed to take appropriate action and

The tenant has initiated a complaint through the housing providers complaints system regarding their inactivity

If the Council determines that it is appropriate to take action, it will then normally notify the Housing Provider that a complaint has been received and/or a hazard identified and seek the Housing Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action and will then determine which of the available enforcement options is the most appropriate, considering the facts of the case.

#### **Private Landlords**

The Council will have regard to the principles of statutory guidance and relevant guidance and will initially seek to proceed informally.

Formal action will be initiated immediately if a hazard in question is judged by the Council:

- To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach
- Where a serious hazard exists and retaliation eviction as defined by the Deregulation Act 2015 is in process or is likely to occur

Initially, officers may visit the tenants at the property in an informal capacity. If arranging a formal inspection however, the Council will write to the landlord (or his/her relevant agent) to confirm their involvement and the time and date of the visit. Following the inspection, the Council will explain the nature of any hazard(s) identified in writing and seek the landlord/agent's proposals for remedying the problem. Unless the Council already holds the required information, a Requisition for Information Notice may also be served at this point.

Following the inspection, the Council will not normally need to take any further action to discharge its duties as long as:

- Satisfactory proposals and timescales for the work to be carried out are received and agreed within approximately 14 days
- The work is carried out to a satisfactory conclusion within agreed timescales Landlords are expected to either:
  - Provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or
  - To ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council

The failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

If the Council receives:

- No response from the landlord/agent or
- A response it judges inadequate or
- Proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard) or
- In the event of retaliation eviction as defined by the Deregulation Act 2015 is in process or is likely to occur

it will proceed with formal action by taking the most appropriate enforcement action in accordance with this Policy.

### **What is expected of Tenants**

Before considering taking any action in respect of a tenanted property, the tenant(s) will normally be required to contact their landlord about the problems (preferably in writing), allowing a reasonable time period for the landlord to make representation. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property.

Where the matter appears to present an imminent risk to the health and safety of the occupants, and the tenants can not reach their landlord / agent, it is expected that they will continue to try to contact their landlord, even if this is after they have contacted the Private Sector Housing Team.

Copies of correspondence between the landlord and tenant should be provided for Officers.

In certain situations, tenants, will not be required to write to their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household

Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

Housing Provider tenants have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner and also a final right of appeal to the Housing Ombudsman Service. However, if the Housing Provider has not taken appropriate action to deal with problems with the property, then the Council will investigate and take appropriate action.

## **Appendix 2**

### **Setting levels of fees, charges and fines**

#### **1. Housing Act 2004:** making a charge for the service of Notices under Part 1.

##### **Power To Charge**

Section 49 of the Housing Act 2004 local authorities gives the local authority discretion to levy a charge, (currently unlimited), as a means of recovering expenses incurred in:

- Determining whether to serve the notice (Improvement Notices, Emergency Remedial Action, Prohibition Orders);
- Identifying any action to be specified in the notice (Improvement Notices);
- Serving the notice (Improvement Notices, Emergency Remedial Action Prohibition Orders);
- Serving copies of the Notice on persons as owners of premises (Prohibition Orders).

##### **Person To Charge**

In the case of Improvement, Emergency Remedial Action or Hazard Awareness Notices, the charge can be recovered from the person on whom the notice is served.

In the case of a Prohibition Order, the charge can be recovered from any person on whom a copy of the order is served who is an owner of the premises.

##### **Notice Of Charge (The Demand):**

A formal demand for payment of the charge for enforcement will accompany any notice served, unless waived following discussion with the Private Sector Housing Manager.

The demand has effect 21 days after service if no appeal is made on the original Notice, and is registerable as a Local Land Charge.

For the purposes of enforcing the demand, the Council has a power of sale under the Law of Property Act 1925, one month from the date on which the demand takes effect.

##### **Calculation of Charge**

It is essential that charges levied can be justified and it is proposed that a series of relevant costings be established to cover the standard work undertaken in enforcement.

For service of notices, the following timed items will be included:

- inspection including travel time;
- evaluation of inspection, preparation of defects schedule and specification;
- administration costs in typing, serving and recording of notices.

Having determined the total time taken for the tasks listed above, the cost will be calculated against our hourly chargeable rates.

##### **Waiving Of Charge**

Where an Officer has reason to believe that the application of a full charge is not appropriate they will discuss the case with the Private Sector Housing Manager to determine whether the charge should be applied.

## **2. Housing act 2004: Charges for Works in Default of a Notice**

Section 31 and Schedule 3 to the Act enables the Council to take the action required by an improvement notice itself, with or without the agreement of the person on whom the notice was served.

Where the Council takes action with the agreement of the person served with the improvement notice the works are to be taken at their expense. Where the Council takes action without agreement, it will recover expenses reasonably incurred. Such expenses may be registered as a local land charge on the property.

The council may make an admin charge on top of works in default costs.

## **3. Housing & Planning Act 2016: Civil Penalties**

### **Background**

A civil penalty is a financial penalty imposed by a local authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004.

The maximum penalty is £30,000 – there is no minimum set.

The decision to issue a financial penalty will be made on a case by case basis.

### **Factors Affecting Level of Financial Penalty Imposed on Landlords and Agents**

In determining an appropriate level of penalty, the Council will have regard to statutory guidance, which sets out the following factors to take into account when deciding on the appropriate level of penalty:

1. Severity of the offence
2. Culpability and track record of the offender
3. The harm caused to the tenant
4. Punishment of the offender
5. Deter the offender from repeating the offence
6. Deter others from committing similar offences
7. Remove any financial benefit the offender may have obtained as a result of committing the offence

### **Determining Financial Penalty**

These guidelines indicate the minimum financial penalty the council is likely to impose for each of the offences under the Housing Act 2004 that may attract a financial penalty, as an alternative to prosecution for offences. Any deviation from the levels set out below, due to mitigating circumstances, will be referred to the Private Sector Housing Manager for decision on a case by case basis.

**Culpability:**

	<b>Factors to consider</b>
<b>Very High</b>	Deliberate failure to comply with legal obligations
<b>High</b>	Knew or ought to have known that they were in breach of their legal responsibilities. Non-compliance over a long period or ignoring concerns raised by Officers, tenants or others
<b>Medium</b>	Offence committed through an act or omission which a person exercising reasonable care would not commit
<b>Low</b>	Offence committed with little fault, for example, Significant efforts were made to address the risk although they were inadequate or failings were minor and occurred as an isolated incident.

**Harm:**

	<b>Factors to consider</b>
<b>High</b>	Conditions pose a high risk of serious adverse effects to the health and mental wellbeing of the tenant(s) or Vulnerable people were put at risk
<b>Medium</b>	Conditions pose a medium risk of serious adverse effects to the health and mental wellbeing of the tenant(s) and / or visitors
<b>Low</b>	Conditions pose a low risk of adverse effects to the health and mental wellbeing of the tenant(s) and / or visitors

Having determined the culpability and harm levels, the matrix below should be referred to in order to calculate the starting point for the civil penalty:

	<b>Harm</b>	Low	Medium	High
<b>Culpability</b>				
Low		£500	£1000	£2000
Medium		£1000	£2000	£5000
High		£2000	£4000	£10000
Very High		£5000	£15000	£25000

Consideration could be given to further adjustments from the starting point to take into account aggravating and mitigating features. Set out below is a non-exhaustive list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

Aggravating factors include:

- History of failing to comply with obligations
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity

- Established evidence of wider/community impact
- Obstruction of justice
- Landlord or agent of multiple properties which may include licensed HMOs
- 

Factors reducing seriousness or reflecting personal mitigation:

- Steps taken to remedy the problem
- High level of co-operation with the investigation, beyond that which will always be expected
- A history of good communication and compliance
- Co-operation and acceptance of responsibility in the case in question
- Serious medical conditions requiring urgent, intensive or long-term treatment

### **Early Payment Discounts**

The Council may consider applying the following discounted rates to any imposed financial penalties in the following circumstances:

- In the event that the offender complied with the identified breach [for example by making an application to licence a previously unlicensed address] within the representation period at the ‘Notice of Intent’ stage, the Council would reduce the level of any imposed financial penalty by 20%; (amount subject to change)
- A discount of 20% of the original calculated financial penalty should the penalty be paid within a specified time period [normally 28 days] (amount subject to change)

### **Appeals Against Notices of Charge**

Appeals must be made within 21 days of the date of service of the Notice to the First Tier Property Tribunal. For the southern area this is:

First Tier Tribunal (Property Chamber)

Ground Floor

Residential Property

Havant Justice Centre

The Court House

Elmleigh Road

Havant

PO9 2AL

Tel: 01243 779394

Email: [rpsouthern@hmcts.gsi.gov.uk](mailto:rpsouthern@hmcts.gsi.gov.uk)

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

The regulations impose obligations on landlords to ensure that tenanted properties are provided with smoke alarms and carbon monoxide alarms.

A remedial notice can be served for non compliance. This will confirm the provisions for a review, and the appeal procedures.

Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action and a power to require payment of a penalty charge.

Indicative Penalty charges for non-compliance are as follows: (There are guideline figures and will be considered on a case by case basis)

First offence £1500 Reduced to £750 if paid within 14 days

Second offence £3,000 No reduction for early payment

Any additional offences £5,000 No reduction for early payment

In determining the level of the fixed penalty notice the Council will consider the likely costs it will incur and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a second or third offence reflects the seriousness of the offence and is designed to deter repeat offending.

While these charges will be set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice, will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.

In doing so the reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the fixed penalty notice the reviewing officer will inform the landlord by service of notice of their decision. The 50% reduction for a first offence will apply to any revised charge set should payment be within 14 days of service of the revised notice.

Crime & Disorder Implications:

1.1 None

Risk and Opportunity Management Implications:

1.2 None

Public Health Implications:

1.3 None

Corporate / Citywide Implications:

1.4 As part of our Homelessness Prevention Agenda, and driving down our use of temporary accommodation, we are expanding access to the Private Rented Sector for homeless households. This policy will support that agenda by ensuring properties are well maintained.