Harlow Council

Working together for Harlow

Private sector housing enforcement policy

Introduction

This policy sets out how Harlow District Council (the council) intends to secure effective compliance with the Housing Act 2004 and other relevant legislation while minimising the burden to the council, individuals, organisations, and businesses.
It sets out what owners, landlords, their 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 whilst allowing members of the public to know what to expect from the service.
This policy deals with housing enforcement in all residential dwellings including privately rented, socially rented, owner occupied properties and Houses in Multiple Occupation (HMOs).

Our approach

Where the council deems it appropriate, we will work with other departments and service providers. We will also target our resources to ensure the serious cases are tackled.
We will provide information in plain English and accessible formats where possible and publicise the availability of our services. We will be open about our priorities, policies and procedures and we will ensure that officers explain the options available to property owners, landlords and tenants, and their reasoning for pursuing any given course of action.
Enforcement action referred to in this policy includes the formal requirement to take action or carry out remedial work and penalties for offences under housing law (and associated legislation). Typically, enforcement options could be:

- The service of notices/orders
- A simple caution
- A financial penalty
- Prosecution in the Magistrate's Court
- Works in default with recovery of costs

Principles of good enforcement

The local authority must comply with any statutory requirement placed upon it and align its procedures with best practice. Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution but includes the provision of advice.

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

- The Human Rights Act 1998
- Enforcement Concordat
- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 – Codes of Practice
- The Criminal Procedures and Investigations Act 1996
- The Code for Crown Prosecution
- Enforcement Guidance issued under section 9 of the Housing Act 2004

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

Regulators code

We are committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and when carrying out our regulatory activities we will do so in a way that is transparent, accountable, proportionate, and consistent.

Transparent: We will be open in our approach, explain our decisions and publish our policies and strategies.

Accountable: We will be accountable for the efficiency and effectiveness of our service and the decisions we make. We will be clear when we can help and when we cannot in line with the legislation available to us and where possible signpost customers to other agencies who may be able to assist them.

Proportionate: reflecting the nature, scale and seriousness of any breach or noncompliance. This will ensure that the most serious risks are targeted first and means in some cases that we may take informal action.

Targeting: We will target properties and people that pose the greatest risk, including owners and landlords who evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

Fairness and consistency: We will treat all service users fairly and ensure that our enforcement practices are consistent. We will have regard to national guidance, codes of practice and best practice to inform our decision making. We will provide details on how to appeal against decisions and be open and fair in this approach.

In certain instances, we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.

Authority to investigate or enforce

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that the Council has in relation to regulating property standards in its capacity as local housing authority. Powers are also contained in the Housing Act 1985 as amended and other legislation, such as the Environmental Protection Act (this list is not exhaustive).

This policy deals with housing enforcement in all residential dwellings, houses in multiple occupation and empty dwellings.

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. A notice is not required where entry is to ascertain whether an offence has been committed. 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 upon written application. A warrant under this section includes power to enter by force, if necessary.

The council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with exercising its function and investigations as to 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.

Inspections

The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS). It is a calculation of the effect of 29 possible hazards on the health of occupiers and any visitors. The legislation provides a range of actions to address these hazards.

The process of a HHSRS is two stage: the inspection and the subsequent calculations. HHSRS calculation provides a combined score for each hazard identified, however it does not provide a single score for the dwelling as a whole.

The scoring of any hazard combines the likelihood of an occurrence taking place (within 12 months) and then the range of probable harm outcomes that may arise from that occurrence. A numerical value is then provided which is then converted into bands (from A to J).

Bands A to C (ratings of 1,000 points and over) are considered to be the most severe and are known as Category 1 hazards. 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 is the most appropriate course of action.

Bands D to J, are less severe (rating less than 1,000 points) and known as Category 2 hazards. This process is repeated for each of the hazards present within the dwelling. The council has a power to take action in response to Category 2 hazards. If the council decides to take action for category 2 hazards, it will consider taking action in the following circumstances:

- Where a Category 2 hazard falls within Band D or E and there is one or more Category 1 hazards.
- Where the cases involve a vulnerable person that would benefit from having Category 2 hazards addressed.
- Cases in which a premises suffers from multiple Category 2 hazards, which when considered together, create a more serious situation.
- Where a stock condition survey highlights specific local hazards relating to that type of dwelling.
- Any other exceptional case determined by the Head of Environmental Health.

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.

Whilst there are 29 hazards that can be assessed using the HHSRS, the following hazards are those most frequently identified in Harlow:

- Excess cold (due to low energy efficiency from expensive or inadequate heating and/or inadequate insulation).
- Damp and mould.

- Falls on stairs and steps.
- Falls on the level.
- Fire.

Enforcement options

A staged approach is taken to enforcement wherever possible to ensure solutions are initially sought through advice, co-operation, and agreement. However, where this is not successful there will be cases where formal action is necessary, and this may ultimately lead to prosecution or other summary action.

There may also be circumstances, such as when there is an imminent risk to health, where it may be necessary to take formal action in the first instance. Below identifies the different courses of action that are available and the criteria that officers will use to choose which are the most appropriate in each case.

Interested parties will be informed of the appropriate course of enforcement action when this decision has been made. In determining the most appropriate action, regard will also be given to the listed building status and the impact any course of action would have on the local environment.

Urgent action without consultation can be taken where health and safety hazards pose an imminent risk to the occupants of premises or other members of the public.
The options for formal action to remedy a hazard under Part 1 of the Housing Act 2004 are:

- Improvement Notice (including Suspended Notice).
- Prohibition Order (including Suspended Order).
- Emergency Remedial Action.
- Emergency Prohibition Order.
- Hazard Awareness Notice.
- Demolition Order and clearance area declaration.

There is a right of appeal to the First Tier Tribunal against formal notices or orders. Details on how to appeal will always be included when formal notices or orders are served.

Power to charge for enforcement action

Under Section 49 Housing Act 2004 the council is entitled to make a reasonable charge to recover certain administrative and other expenses in connection with inspection of the premises, subsequent consideration of action and service of notices. The charges are based on an assessment of the time undertaken by the officer involved in the case from inspecting the property, preparing the case, to drafting and serving the notice.

Where charges for enforcement action are lawfully incurred and levied, they will be invoiced directly to the relevant person or may be registered as a local land charge. This means that when the property is sold the debt must be repaid including any interest accrued on the initial charge. These charges will be made in line with our published fees and charges.

Unpaid debts and invoices

We will pursue all debts owed as a result of enforcement charges, charges for carrying out works (as well as any other charges), unpaid invoices or unpaid financial penalties.

The council may consider enforcing the sale of the property to recover costs or recovering the money owed in the relevant court, including the county court.

Non-compliance with notices

Where there has been a breach of the law, options available to the council include offering a simple caution, issuing a financial penalty or prosecution. The most appropriate course of action will be considered on a case by case basis.

Before a decision is taken on which option to take if any, the alleged offence will be reviewed in line with the Crown Prosecution Service's Code for Crown Prosecutors - The Full Code Test which contains two stages: (i) the evidential stage followed by (ii) the public interest stage. We will review our approach as necessary to ensure it remains reasonable, proportionate and in line with current guidance. We will also seek legal advice where appropriate to ensure we are consistent and objective in our decisions.

If a notice is complied with, no further action will be necessary. However, if the notice is not complied with the council will consider the following options:

- Prosecution.
- Civil penalty.
- Carrying out the works in default.
- A combination of the above.
- Administering a simple caution.
- Granting of additional time for compliance. This will only be for extenuating circumstances and must be requested and formally agreed with the council.

Determination of the most appropriate course of action will be in accordance with this policy.

Factors which inform enforcement decisions

The decision on which enforcement option to take will be a judgement based on the circumstances of the case and will take account of factors which include (but not exclusively):

- Any previous history of non-compliance or lack of cooperation with the council.
- The length of time over which the offence has been committed.
- The condition of the property taking into account Part 1 of the Housing Act 2004 and relevant management regulations including the type and severity of the hazard.
- The likely exposure of vulnerable individuals to a hazard.
- The impact of the action on the occupier of the premises concerned.
- Financial or other gain by not complying with housing legislation, for example, failure to apply for a licence as soon as required to do so.
- Any adverse health and safety, and environmental impact of the action.
- Relevant guidance and protocols that are in place.
- The degree to which the property is being effectively managed.

Financial penalty

The Housing and Planning Act 2016 introduced the option of a financial penalty (civil penalty) for some offences as an alternative to prosecution. The financial penalty policy is a standalone policy 'civil penalties policy' and gives full details on how the council will apply financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016.

Specific offences where a financial penalty may be imposed as an alternative to prosecution include:

- 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 of contravention of an overcrowding notice (section 139 of the Housing Act 2004).
- Failure to comply with management regulations in respect of houses in multiple occupation (section 234 of the Housing Act 2004).
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

Circumstances where a financial penalty may be considered appropriate include:

- A direct offence where an informal approach has not been successful in achieving compliance, including where there is a history of non-compliance.
- Failure to comply with an Improvement Notice.
- A flagrant or serious breach of the law.

In all the above cases, the same burden of proof is required as with a criminal prosecution, meaning the offence must be proved beyond reasonable doubt. The difference with this decision is that the judgement will be made by the local housing authority rather than the court.

To ensure our proposed action is objective, reasonable, and proportionate to the individual case we will:

- Follow the procedural requirements under the legislation and the guidance (see our civil penalties policy).
- Follow our internal procedures having regard to the Code for Crown Prosecutors.
- Internally review our proposed action before making a final decision.

Prosecution in the magistrates or crown court

Offences will be considered for prosecution in accordance with the legal, evidential, and public interest tests within the Code for Crown Prosecutors.

Prosecution will be considered in similar circumstances to financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016 and are likely to be appropriate for 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.

Works in default

This will be considered where it is in the interests of the health and safety of the occupants. The works in default will be carried out only after the service of a notice e.g. Improvement Notice. Any works undertaken will be recharged or placed as a land charge on the property.

Simple caution

A simple caution is an alternative to prosecution. It may typically be used where it is appropriate to the offence and likely to be effective in preventing further non- compliance with the law. A simple caution may be appropriate for minor offences or where there is a practical expression of regret by the offender. However, a caution will only be given where the offender admits the offence, understands the significance of the caution, and gives their informed consent to the caution. A simple caution will be recorded and be used to inform future decisions on prosecution and may be cited in any subsequent court proceedings.

Houses in multiple occupation (HMO) licensing

An HMO is a building or part of a building occupied by more than one household as their only or main residence, and there is some sharing or lack of basic amenities. This includes houses containing bedsits, hostels, and shared properties. A full definition is given under Section 254 and Schedule 14 Housing Act 2004. HMOs of three or more storeys, with five or more occupants require a licence. HMOs owned by registered providers of social housing (RPs), the police, health authorities and certain other organisations are exempt, as are certain compliant buildings properly converted into flats.

Licences will be granted where the property is deemed suitable for occupation as an HMO and the following is fulfilled:

- The property has full planning permission to convert to an HMO - this applies to all applications because of a town-wide HMO Article 4 direction.
- The property must meet our minimum amenity standards for HMOs.
- The property must have a suitable fire safety system.
- The sleeping area of any room - not including ensuites - must be at least 4.64 m2 for a child, 6.51m2 for an adult, 9.28 m2 for two children, 10.22 m2 for two adults (an adult is anyone over 10 years old).
- The manager of the house – or an agent – must be considered to be ‘fit and proper’ (for example they have no criminal record or breach of landlord laws or code of practice).
- The property must not have any covenants restricting its use to a single-family dwelling.

The licence will specify the conditions that the licensee must meet. A breach of conditions may result in the licence being withdrawn. The operation of an HMO in contravention of a licensing requirement is an offence.

Selective licensing

The Housing Act 2004 allows for the introduction of selective licensing schemes and additional licensing schemes. These are not currently considered appropriate to be adopted within Harlow, but this matter will be kept under review.

Unlicenced HMOs

The council has a legal duty to ensure that HMOs within the district that are required to be licensed are licensed. It is a criminal offence not to licence an HMO that is required to be licenced.

HMO owners and managers who ignore the requirement to obtain a licence are also more likely to put residents at risk in unhealthy, unsafe, or overcrowded conditions. As a result, we will gather evidence and prioritise enforcement action on unlicensed HMOs. Where we find evidence that a licensable HMO is operating without a licence, formal proceedings will be immediately considered against the owner or manager, when in the public interest. This likely to be the issue of a civil penalty notice.

When a licence is issued, conditions will be attached to the licence and these conditions will be monitored. Inspections after a licence has been issued may be undertaken on a risk assessed basis and to monitor licence conditions.

Non-compliance with licensing conditions

If it is found that a licence holder is failing to comply with any licence conditions, the following action may be taken:

- For a minor first-time breach that doesn't put the residents' health and safety at risk, the licence holder will usually be advised in writing that he is failing to comply with a licence condition and the steps required to remedy the breach.
- If the licence holder fails to comply with this communication, or the breach is considered serious, or this is not the first-time breach of conditions, then prosecution or imposition of a civil penalty may be considered.
- If there is a successful conviction for a breach of a licence condition, or a breach is considered to be serious, or a repeated breach of conditions occurs, the council may consider revoking the HMO licence.

Revocation

This action may be taken for the offence failing to satisfy the conditions of the licence without reasonable excuse.

Interim and Final Management Orders

These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers has failed. Interim Management Orders (IMOs) can be made where there is no realistic prospect of a property licence being granted. By making an IMO 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 that 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 occupants need to be protected, the council may apply to the First Tier Tribunal (Property Chamber) 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.

Rent Repayment Order

Where a licence is required, and notice has not been received to notify the local authority the tenants or council may make an application to the Residential Property Tribunal for a Rent Repayment Order. This requires the landlord to repay rent to the tenants for up to 12months.

Banning order - this prohibits landlords and agents who has committed relevant offences from letting or managing residential properties. A banning order prohibits a person from:

- Renting out residential accommodation.
- Engaging in letting agency work.
- Engaging in property management work.

A banning order also prohibits a person from holding an HMO licence or a licence granted under a selective licensing scheme. Local authorities must revoke a licence when it has been granted to a person who subsequently becomes subject a banning order.

A local authority must put anyone subject to a banning order on the national database of rogue landlords and agents.

Overcrowding

The act provides local authorities with power to investigate complaints in respect of overcrowded living conditions of any HMO where no interim or final management order is in force, and it is not required to be licenced under part 216. Such complaints may be received from private sector tenants, third parties concerned about children or vulnerable adults living in overcrowded conditions, or where overcrowded conditions are legitimately impacting on a neighbours' health, safety, or welfare.

Council officers will liaise as necessary where enforcement action could likely result in a family having to move out of their home, to mitigate the impact of any subsequent action.

Empty properties

Where a residential property is found empty, the council's empty homes policy will apply. Owners of empty dwellings will be encouraged to bring them back in to use through a range of informal action but where this is not successful then enforcement will be considered to address the problems and bring the property back into use. Examples of such powers include the use of empty dwelling management orders, compulsory purchase orders, and enforced sale.

Boarding up properties

The council has powers to board up properties that are insecure after all efforts have been made to contact and work with the owner, to make the property safe and correct any hazards found in the properties. When deemed appropriate to do so, the council will consider taking such action and will detail works required and the reasons why, e.g. prevention of unauthorised entry. The council will look to recover expenses reasonably incurred where such works are undertaken.

Other legislation

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 housing sector in Harlow to keep residents safe and well.

Other legislation enforced by the PSH team in accordance with this policy includes, but not limited to:

- Housing and Planning Act 2016.
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, enacted under the Energy Act 2013.
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, enacted under the Enterprise and Regulatory Reform Act 2013.
- Environmental Protection Act 1990.
- Housing Act 1985.
- Public Health Act 1936 and 1961.
- Prevention of Damage by Pests Act 1949.
- Building Act 1984.
- Local Government (Miscellaneous Provisions) Act 1976.
- Local Government (Miscellaneous Provisions) Act 1982.
- Local Government and Housing Act 1989.

Energy efficiency in private rented property

Energy efficiency regulations ('the regulations') establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions:

Since 1 April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an Energy Performance Certificate (EPC) rating of band F or G.

Since 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of F or G (as shown on a valid EPC for the property).

Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

Under prescribed circumstances within the regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The council will:

- Check that properties in the district falling within the scope of the regulations meet minimum levels of energy efficiency.
- Issue a compliance notice requesting information where it appears that a property has been let in breach of the regulations.
- Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirement to comply with a compliance notice or has provided false or misleading information on the exemptions register.

The council will have regard to guidance in the application of this legislation, the penalty amount and the publication of the penalty.

Smoke and carbon monoxide alarm regulations

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords of private rented accommodation to:

- Have at least one smoke alarm installed on every storey of their rental property which is used as living accommodation.
- Have a carbon monoxide alarm in any room used as living accommodation which contains a solid fuel burning appliance.
- Ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

This policy gives specific consideration in relation to the above legislation, and Appendix 1 provides a statement of principles that the council will apply in exercising its powers to require a relevant landlord to pay a financial penalty, which it will follow when determining the amount of a penalty charge.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The regulations require landlords to ensure that certain electrical safety measures are put in place. Landlords are required to comply with the regulations before a new tenancy begins. Since 1 April 2021, all specified tenancies come under the regulations.

The landlord must:

- Ensure the electrical installation in the residential premises is inspected and tested by a qualified person at intervals not exceeding 5 years.
- Provide a copy of that report to the tenant within 28 days.
- Provide a copy of the report within 7 days if requested by the council.
- Ensure any remedial work as specified is carried out within 28 days.

This policy gives specific consideration to the above legislation. Appendix 1 provides a statement of principles that the council will apply when exercising its powers to require a relevant landlord to pay a financial penalty. The council will follow this when determining the amount of a penalty charge.

The level of penalty charge has been set in the civil penalty matrix in our civil penalties policy.

The council may, with the consent of the tenant, arrange to carry out remedial work if a landlord does not comply with a remedial notice or if the report indicates that urgent remedial action is required, and the landlord has not carried this out within the period specified in the report. The charges for remedial action undertaken are set through the fees and charges regime set by Harlow Council and reviewed on an annual basis.

Redress scheme

Redress schemes for lettings agency and property management work

All letting agents and property managers must belong to one of two government-approved schemes:

- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

The council will take action where is it satisfied that, on the balance of probability, someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

The council may impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager and further penalties may be applied if they continue to be in breach of the legislation

Tenure

The HHSRS applies equally to all tenures, therefore all enforcement options are available to the council regardless of whether the premise in question is owner occupied, privately rented or registered providers (RP) property. The council considers that owner-occupiers are usually in a position to take informed decisions regarding the maintenance of their property and are therefore able to prioritise finances accordingly. Where applicable they can then apply for local authority assistance towards the works. However, tenants and particularly non-RP tenants, are not usually able to do so. For this reason, the council judges that it is appropriate for its powers to be applied accordingly to each tenure.

Owner-occupiers

The council anticipates that Hazard Awareness Notices will be issued frequently and considers this to be an appropriate course of action. However, the use of Improvement Notices, Prohibition Orders and their emergency equivalents will be considered in the following circumstances:

- Vulnerable elderly people who are judged not capable 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.

- Any other exceptional case determined by the Head of Environmental Health in consultation with the Housing Manager.

Unless the hazard is deemed to pose an imminent risk of serious harm, the council will contact the owner to explain the nature of the hazard and confirm the action intending to be taken. The council will take account of any proposals or representations made by, or on behalf of the owner. The council will take into account the opinion of the relevant welfare authority when considering both the vulnerability and capability of such persons and therefore what action will be taken (where necessary).

Tenants

If tenants are unhappy about their housing conditions, they are expected to give their landlord the opportunity to resolve any problems before the council become involved. Unless there are exceptional circumstances, the PSH team will generally not visit a property at the request of a tenant unless the tenant has first been in contact with their landlord or agent to try and resolve the matter.

Example of exceptional circumstances include, but not exclusively:

- An imminent risk to health and safety.
- A history of harassment/threatened eviction/poor management practice.
- Where the tenant could not reasonably be expected to contact their landlord/managing agent due to the special circumstances of the case e.g. vulnerability.

This does not preclude the council from making unannounced visits to properties where it feels it appropriate to do so.

Where the matter appears to present an imminent risk and the council become involved to try and quickly resolve the matter, it is still expected that tenants will make every effort to contact their landlord.

Where landlords are taking action in a reasonable time frame then 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 (agent or builder etc.) which may affect the action the council take.

The council will consider withdrawing its service if the above conditions are not followed.

Landlords and managing agents

We will work with landlords and managing and letting agents to help them comply with their legal obligations and advise them of the legislation that applies and how to comply with it.

Where we are aware of other requirements outside of our remit or best practice in the sector, we will advise landlords where to seek further assistance.

If there are serious hazards identified in a rented property, we will undertake enforcement action requiring relevant defects to be repaired or improvements made. If a landlord proposes reasonable alternative works or solutions, we will consider these along with the required outcome.

We will consider each case on its own merits and only take enforcement action when it is considered appropriate. If enforcement action is taken, we will explain why such action is necessary.

Where we need to take enforcement action we will usually charge for this action as the legislation allows.

Where a landlord has shown a history of non-compliance, is not fully cooperative or the risk is serious, we may go straight to formal action.

In making a decision to prosecute or issue a financial penalty, we will have regard to the seriousness of the offence, the benefit of the sanction and whether some other action would be appropriate. Where we prosecute, we will look to recover all of our costs.

Social landlords

Registered providers of social housing (RPs) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by boards (which typically include tenant representatives) their performance is also scrutinised by the Homes and Communities Agency and Tenant Services Authority. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting repairs or problems and will have set out the response times to achieve this.

The council will not normally take formal action against an RP unless it is satisfied that the problem in question has been properly reported to the RP has then failed to take appropriate action. If the council determines that it is appropriate to take action it will then normally notify the RP that a complaint has been received and will seek the RP's comments and proposed action. Only in cases where it has been deemed that an unsatisfactory response has been received will the council take further action and review what enforcement options are available in order to determine the most appropriate course of action.

Feedback

We encourage comments on our service and we will use them to actively improve what we do. You can contact the Private Sector Housing team:

- By email at env.health@harlow.gov.uk
- By writing to Environmental Health, Harlow Council, Civic Centre, The Water Gardens, Harlow, CM20 1WG.

Appendix 1: Statement of principles for determining a penalty charge

Introduction

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

Purpose of the statement of principles

The council are required under Regulation 13 to prepare and publish a statement of principles and must have regard to this statement on every occasion when deciding on the amount of any penalty charge.

The council's power to impose financial penalties

In recent years legislation has been introduced which has provided the enforcing authority with a power to impose and charge a financial penalty in prescribed circumstances. These are three such enactments that are specifically referred to in this document:

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

In anticipation of further legislative provisions being introduced enabling the imposition of a civil penalty, the principles detailed in this document will be applied in setting any charge.

The scope of the document

Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires the council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

The Environmental Health department of the council acknowledge that such a statement is a legislative requirement and have produced this document to publicise the principles that will be adopted in any circumstance that permits the imposition of a financial penalty.

The council may revise its statement of principles and, where it does so, it must publish the revised statement.

Where a financial penalty is charged, 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.

General principles and factors to be applied to the imposition of a financial penalty

The primary purpose of the council's exercise of its regulatory powers is to protect the interests of the public.

The primary aims of any financial penalty will therefore be to:

- Change the behaviour of the landlord/agent concerned.
- Deter future non-compliance by landlords/agents.
- Eliminate any financial gain or benefit from non-compliance with the regulations.
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- Reimburse the cost incurred by the council in undertaking work in default and fulfilling its enforcement duties.

In determining the amount of any financial penalty to be charged the council will consider the following factors:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord/agent.
- Whether the non- compliance was deliberate or resulted from a matter of which the landlord/agent should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord/agent concerned.
- Any history of previous contraventions of Housing or Housing related legislation.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.
- The degree of responsibility held by the landlord/agent for the noncompliance.
- The cost incurred by the council in enforcing the relevant provision.
- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

Financial penalties applicable to specific legislation

The Smoke and Carbon Monoxide Alarms (England) Regulations 2015

The Smoke and Carbon Monoxide (England) Regulations 2015 introduce the following requirements for all landlords during any period beginning on or after 1 October 2015 when a premises is occupied under a tenancy:

- A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
- 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.
- 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.

Enforcement

A remedial notice will be served on the landlord within 21 days where the local housing authority has reasonable grounds to believe that:

- There are no or insufficient number of smoke alarms or carbon monoxide alarms in the property as required by the regulations.

Or

- The smoke alarms or carbon monoxide alarms were not working at the start of a tenancy.

The notice will require provision of the appropriate alarms and will give the landlord 28 days to comply.

Failure to comply with the remedial notice will result in the issue of a penalty charge notice.

Level of penalty charge

The penalty charge shall be set at £2000 for the first offence but this will be reduced to £1000 if paid within 14 day period.

For any subsequent offences the penalty charge will be set at the maximum of £5000 with no reduction for early payment.

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

Every person/company managing a property that they do not own is required to belong to one of the two recognised redress schemes by the following pieces of legislation:

- Enterprise and Regulatory Reform Act 2013: Enterprise and Regulatory Reform Act 2013.
- Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc) (England) Order 2014 (SI 2014 No. 2359): Redress Scheme Order

The approved schemes are:

- Property Redress Scheme www.theprs.co.uk
- The Property Ombudsman https://www.tpos.co.uk

We may periodically undertake checks of persons/companies managing property within the district to ensure they are current members of one of the approved schemes. If they are found not to be, enforcement action will be taken following the relevant guidance enforcement toolkit

Level of penalty charge

This guidance states that a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.

Our policy therefore is to impose the maximum £5,000 penalty for failure to comply.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions.

From 1 April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an Energy Performance Certificate (EPC) rating of band F or G.

From 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of F or G (as shown on a valid EPC for the property).

Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

Under prescribed circumstances within the regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The council will:

- Issue a compliance notice requesting information where it appears that a property has been let in breach of the regulations.
- Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirements of the regulations.

Level of penalty charge

This guidance states that a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.

Our policy therefore is to impose the maximum £5,000 penalty for failure to comply.
If a local authority confirms that a property is (or has been) let in breach of the regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of

the breach for at least 12 months. Local authorities can decide on the level of the penalty, up to maximum limits set by the regulations.

The maximum penalties amounts apply per property and per breach of the regulations. They are:

- Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.
- Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.
- Up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register.
- Up to £2,000 and/or publication for failure to comply with a compliance notice.

The maximum amount you can be fined per property is £5,000 in total.

The publication penalty will apply for a period of 12 months. This means that the council will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register for a period of 12 months.

The level of financial penalty for each case will be decided in line with the civil penalties policy.

Recovery of penalty charge

The council may recover the penalty charge as laid down in the regulations i.e on the order of a court, as if payable under a court order.

Sums paid may be used by the authority under any of its functions, but in particular, will be used to assist in the enforcement and promotion of standards in private sector housing.

Review in relation to a penalty charge notice

The landlord can request in writing that the local authority review the penalty charge notice.

The request for a review must be made within 28 days on which the penalty charge notice is served.

The local authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice.

The Executive Director Housing will be the decision maker in relation to any representations.

The Executive Director Housing, in making the decision, will consider the following:

- Whether the facts of the matter support the service of the penalty charge notice.
- The decision to serve the penalty charge notice was correct.
- The amount of the penalty charge was reasonable having regard to any mitigating or other circumstances submitted with the request for review.

Appeals

A landlord who is served with a notice confirming or varying a penalty charge may appeal to the First Tier Tribunal against the local authority's decision.

Review of statement of principles

This statement will be reviewed as a minimum annually and published with the fees and charges for Private Sector Housing.

The statement of principles was considered and agreed by the Portfolio Holder for Housing on 14 July 2023.

Contact

Private Sector Housing Team:

- Post: Environmental Health, Harlow Council, Civic Centre, The Water Gardens, Harlow, CM20 1WG
- Email: env.health@harlow.gov.uk

Revisions

This policy was last updated on 14 July 2023. The next review date is 13 March 2029.