

# **Private Sector Housing Enforcement Policy**



**Author:** R Le-Brun  
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# PUBLIC PROTECTION SERVICE

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<b>Introduction.....</b>	<b>2</b>
<b>The Purpose and Method of Enforcement .....</b>	<b>3</b>
<b>The Principles of Enforcement.....</b>	<b>4</b>
A. Proportionality.....	5
B. Targeting .....	5
C. Consistency.....	6
D. Transparency .....	6
E. Accountability .....	7
<b>Investigation .....</b>	<b>7</b>
<b>Enforcement.....</b>	<b>8</b>
Authorisation of Officers.....	8
Powers of Entry.....	9
Obstruction of Officers .....	9
Enforcement Options .....	10
No Action .....	11
Written warning and advice.....	11
Hazard Awareness Notices.....	11
Enforcement Notices.....	12
Emergency Remedial Action .....	12
Improvement Notices .....	12
Prohibition Notices .....	13
Formal Action for Non-Compliance .....	13
Works in Default.....	13
Simple Cautions.....	14
Prosecution.....	15
Relevant Person.....	16
Public Interest Factors.....	16
Revocation of Licenses .....	17
Conflicts of Interest .....	17
Publicity .....	17
Penalties .....	18
<b>Amendments to Enforcement Policy Additional Guidance .....</b>	<b>18</b>
<b>Further Information .....</b>	<b>19</b>
<b>APPENDIX A – CHARGES FOR FORMAL ACTION .....</b>	<b>19</b>
<b>APPENDIX B – Table of Amendments Issued .....</b>	<b>21</b>
<b>APPENDIX C – Council Enforcement Guidance .....</b>	<b>22</b>
<b>APPENDIX D – Draft of Amendment Document.....</b>	<b>23</b>

## Introduction

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## **PUBLIC PROTECTION SERVICE**

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1. The purpose of the London Borough of Harrow's Housing Enforcement Policy is to ensure compliance with Housing legislation to protect residents and tenants in the private rented sector, but without placing excessive burden landlords

2. This Enforcement Policy sets out the general principles and approach, which the London Borough of Harrow will follow when enforcing housing legislation as the "**Local Housing Authority**". It will be used in conjunction with statutory Codes of Practice and guidance issued by the Department of Culture and Local Government (DCLG).

It will also take into account future guidance issued by Government, including the Department for Culture and Local Government and Regulatory Reform Statutory Code of Practice for Regulators.

3. The above will be achieved through education, advice and regulatory enforcement, where necessary through prosecution. It remains the primary responsibility of the Duty Holder to ensure their premise(s) complies.

4. This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code (the 'Code').

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

5. The London Borough of Harrow will ensure that all appointed officers are competent and are trained in the use of this policy, we will work with any relevant body to ensure the policy remains contemporary.

6. The London Borough of Harrow regards the principal of prevention as better means of dealing with compliance than enforcement and will offer information and advice to those the Council regulates, and seek to secure compliance avoiding bureaucracy or excessive cost. Individuals and businesses ('Duty Holders') are encouraged to put safety first and be proactive in approach.

7. It should be noted that compliance to housing requirements will save the person / company money, especially in terms of preventing enforcement action and penalties, and the vast majority of requirements are those of time not money. This is emphasised in the workings of the Councils' Public Protection Service, where works requiring financial input will have a direct effect safety and reducing risk, as well as meeting mandatory housing standards.

### **The Purpose and Method of Enforcement**

8. The London Borough of Harrow's Private Sector Housing Enforcement function is to ensure that the requirements as set out in paragraph 1 (one).

This is achieved through balance of planned risk based inspections, reactive complaint investigation and enforcement. This approach ensures the principles of risk as well as ensure an intelligence, evidence based approach.

9. The purpose of enforcement is to:

- Ensure that duty holders take action to deal immediately with serious risks to the health or safety of the tenant and others,
  - Promote and achieve sustained compliance with the law,
  - Ensure that those that breach statutory requirements are held to account, which may include bringing alleged offenders before the courts.
  - Prevent harm and secure justice, when appropriate, against any person or company who behave in a reckless manner, or where there has been a serious breach of duty.
10. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, or to assist such claims.
  11. The London Borough of Harrow has a range of interventions at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer information and advice, both face to face and in writing. This may include a warning that in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may also serve improvement notices, prohibition notices, remedial notices, demolition orders, issue simple cautions<sup>1</sup>, revoke licences they may prosecute.
  12. Formal (Simple) Cautions and prosecution are important tools to ensure individuals and businesses are held to account for breaches of the law, where it is appropriate to do so in accordance with this policy. The London Borough of Harrow will use any one of these measures in addition to revoking a licence or issuing improvement or prohibition notices.
  13. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, The London Borough of Harrow will have regard to the principles of enforcement set out in this statement and any related hazards identified. Each case will ultimately be assessed on its specific merits.
  14. The London Borough of Harrow will use discretion in deciding when to investigate or what enforcement action may be appropriate. Officers must refer to this policy, and associated guidance, when determining enforcement action, and must discuss proposed actions with the Head of Service. Such judgements will be made in accordance with the principles of the Enforcement Concordat, the Regulators Compliance Code and Regulatory Reform Act 2006.

## The Principles of Enforcement

15. The London Borough of Harrow believes in firm but fair enforcement of housing law. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions. These principles should apply both to enforcement in particular cases and to the management of enforcement activities as a whole.

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<sup>1</sup> A simple caution is a statement by an officer that is accepted in writing by the duty holder, that the duty holder has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought. 'Simple cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence. Enforcing authorities should take account of current Home Office guidelines when considering whether to offer a simple caution.

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## A. Proportionality

16. Proportionality means relating enforcement action taken to the risk<sup>2</sup> to public health. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by The London Borough of Harrow to achieve compliance or bring businesses or individuals to account for non-compliance should be proportionate to any risks to public health, or to the seriousness of any breach, which includes any actual or potential harm arising from the breach of the law.
17. In practice, applying the principle of proportionality means that London Borough of Harrow will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.
18. Some duties are specific and absolute. Others require action so far as is reasonably practicable. London Borough of Harrow will apply the principle of proportionality in relation to both kinds of duty.
19. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where those responsible must control risks so far as is reasonably practicable, London Borough of Harrow considering protective measures taken by the person / company must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.
20. London Borough of Harrow will expect relevant good practice to be followed. Ultimately, the courts determine what is reasonably practicable in particular cases.
21. Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

## B. Targeting

22. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to serious risks, where the hazards and risks are least well controlled or against deliberate offences. Action will be primarily focused on breaches of the law or those directly responsible for the risk and who are best placed to control it.
23. The London Borough of Harrow has systems for deciding which inspections, investigations or other regulatory interventions should take priority according to the nature and extent of risks posed by a businesses operation. The duty holder's management competence is important, because a relatively low risk property poorly managed can entail greater risk to tenants or the public than a higher risk property (e.g. 3 storey House in Multiple Occupation) where proper and adequate controls measures are in place. High risk premises, such as Houses in Multiple Occupation, will receive regular inspections so that London Borough of Harrow can give public assurance that such premises are properly controlled.
24. Any enforcement action will be directed against duty holders responsible for a breach. This may be landlord in relation to disrepair and identified premise hazards; letting and managing agents; owners of properties; 3<sup>rd</sup> parties connected to the properties; or the tenants themselves. Where several duty holders have responsibilities, the London Borough of

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<sup>2</sup> In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of the harm occurring, and the severity of any harm

Harrow may take action against more than one when it is appropriate to do so in accordance with this policy.

25. The London Borough of Harrow will ensure that an appropriate senior officer of the duty holder is also notified when officers issue improvement or prohibition notices; revoke licences, issue formal cautions or prosecute.

### **C. Consistency**

26. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
27. Duty holders managing similar risks can expect a consistent approach from the London Borough of Harrow in the advice tendered; the use of enforcement notices; decisions on whether to prosecute; and in the response to incidents and complaints.
28. The London Borough of Harrow recognises that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.
29. The London Borough of Harrow has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

### **D. Transparency**

30. Transparency means helping duty holders to understand what is expected of them and what they should expect from The London Borough of Harrow. It also means making clear to businesses and individuals, not only what they have to do, but where relevant, what they should not. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
31. Transparency also involves the London Borough of Harrow having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.
32. This statement sets out the general policy framework within which The London Borough of Harrow should operate. Businesses and individuals also need to know what to expect when an officer calls and what rights of complaint are open to them.
33. The following can be expected when an officer visits a business:
  - When officers offer businesses and individual's information, or advice, face to face or in writing, including any warning, officers will tell them what to do to comply with the law, and explain why. Officers will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
  - In the case of improvement notices the officer will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and in the Officers opinion what legislation has been breached.
  - In the case of a prohibition notice the notice will explain why the prohibition is necessary.

## **E. Accountability**

34. Regulators are accountable to the public for their actions. This means that The London Borough of Harrow has policies and standards (such as the above four enforcement principles) against which they can be judged and mechanism for dealing with comments and handling complaints.
35. The procedures for dealing with comments and handling complaints are available from The London Borough of Harrow. In particular, they:
  - Describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and
  - Explain about the right of appeal to a Residential Employment Tribunal in the case of statutory notices.

## **Investigation**

36. The London Borough of Harrow uses discretion in deciding whether incidents and complaints should be investigated. Such decisions will be risk based and depend on the evidence available at the time, and after initial investigation
37. Investigations are undertaken in order to determine:
  - Causes;
  - Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
  - Lessons to be learnt and to influence the law and guidance;
  - What response is appropriate to a breach of the law
38. To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The London Borough of Harrow recognises that is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.
39. The London Borough of Harrow will carry out a site investigation where there has been a reported complaint that is likely to lead to a category one hazard under the Housing Health & Safety Risk Rating Scheme (HHSRS)
40. In selecting which complaints to investigate and in deciding the level of resources to be used, The London Borough of Harrow will take account of the following factors;
  - The severity and scale of potential or actual harm;
  - The seriousness of any potential breach of the law;

- Knowledge of the duty holder's past health and safety performance;
- The enforcement priorities;
- The practicality of achieving results;
- The wider relevance of the event, including serious public concern

### **Enforcement**

41. Enforcement action will be based on an assessment of the risk to health of the tenants and others (this risk is the probability of harm to health occurring due to non-compliance with the law) and not constitute a punitive response to minor technical contraventions of the legislation.
42. The Council will be guided by the Statutory Guidance issued by Government (and Government Departments), especially the Department of Culture and Local Government (DCLG) and any other guidance produced by statutory bodies.
43. The Housing Act 2004, and related regulations, will set down the requirements of enforcement and the evidential test to be achieved, including through the setting of the minimum standard of compliance. These principles, documented throughout this enforcement policy, are used to formulate policy and procedures related to enforcement by Officers enforcing under the Housing Act 2004.
44. Much of Housing sets out what must be achieved, but not how it must be done. Advice on how to achieve goals is often set out Government guidance, especially related to specific requirements under the Act and associated regulations. In considering whether the law has been complied with, officers will need to take relevant guidance, best practice and case law into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.
45. All officers when making enforcement decisions shall abide by this policy and guidance issued in conjunction with it. Any departure from this policy must be exceptional, capable of justification, recorded and approved by the Service Manager unless there is a significant risk to the public in delaying any decision. Any proposed enforcement action relating to prosecution and simple cautions will result in completion of a Legal Review Form, and the proposed action signed off by the Service Manager.

### **Authorisation of Officers**

46. Officers authorised to undertake enforcement under Housing law must be suitably, qualified, experienced and competent for their required duties.
47. Appointment and authorisation of officers enforcing the Housing Health and Safety Risk Rating Scheme (HHSRS) shall be subject to attendance and successful completion of an associated course. An Authorisation document prepared by the Council clearly lays out the powers of officers' dependant on qualification, competence and experience.
48. It is expected that any Officer serving a formal notice under the Housing Act 2004 shall be duly trained, and passed, a suitable HHSRS course



## **Powers of Entry**

49. In accordance with Section 239 of the Housing Act 2004, at least 24 hours notice will normally be given to owners and occupiers, where appropriate and known, unless the occupier has already requested at which point an appointment will be made.
50. A duly authorised officer, under Section 239 of the Housing Act 2004, may:
  - (a) take other persons with him;
  - (b) take equipment or materials with him;
  - (c) take measurements or photographs or make recordings;
  - (d) leave recording equipment on the premises for later collection;
  - (e) take samples of any articles or substances found on the premises.
51. In appropriate circumstances, an application will be made to the Magistrates Court for a warrant to enter (e.g. if access is refused, or the premises are vacant, or giving prior notice would be counterproductive).
52. During all visits to premises, regardless of nature, Officers will show their authorisation to demonstrate authority to enter.

## **Obstruction of Officers**

53. Section 241 of the Housing Act 2004 makes it a clear offence to obstruct authorised officers in carrying out their roles. This includes offering the officer reasonable assistance in the conduct of their duties and investigations / inspections.
54. The Council regards the obstruction of or assaults (physical and/or verbal) on staff whilst lawfully carrying out their duties as a serious matter. Instances of such will be referred to senior managers with a view to instigating legal proceedings against the perpetrator.

## **Part 1 Housing Act 2004 – Housing Health and Safety Rating System**

55. Under the Housing Act 2004, the Housing Health and Safety Rating System (HHSRS) prescribes the means by which Local Authorities assess housing conditions based on risk, and allow a decision to be made about what action (if any) should be taken.
56. The HHSRS assesses 29 hazards and class them from A (highest risk) to J (lowest risk). Those classed as A, B or C are considered serious and are known as Category 1 hazards. Those forming other bands are Category 2. Any falling within Category 1, the Council has a duty to take action to rectify, but have discretion for those under Category 2.
57. The HHSRS has the benefit of looking at the risk from the point of view of the most vulnerable person, ensuring that any tenant is suitably protected. It is likely that any hazard classed as Category 1 will be subject to an Improvement Notice to seek rectification of the issue.
58. The HHSRS is applicable to any property, and can be used in owner occupied, standard rented accommodation and Houses in Multiple Occupation.

### **Part 2 Housing Act 2004 – Licensing of Houses in Multiple Occupation (HMO)**

59. Under current legislation, there is mandatory licensing of any multiply occupied premise of 3 storeys or more, with shared amenities and occupied by 5 or more persons of unrelated households.
60. Harrow has operated an Additional HMO Licensing Scheme, that is covered by discretionary licensing, and this covers all other multiply occupied (e.g. 2 storey) premises.
61. Due to the complexities of Houses in Multiple Occupation, a separate policy covering licensing is made outside of this policy, but the principles of enforcement covered within this enforcement policy shall apply.

### **Part 3 Housing Act 2004 – Selective Licensing**

62. The Housing Act 2004 allows for part or all of a Local Authority area to be subject to selective licensing, being the licensing of any private rented accommodation. Exemptions are set, but the use of such licensing allows appropriate conditions to be imposed and enforced.
63. The use of Selective Licensing is subject to strict controls, including the seeking of Secretary of State approval should more than 20% of the private rented sector in the Authority and / or more than 20% of its geographical area be affected.
64. The Department of Culture and Local Government (DCLG) published clear guidance in March 2015 stipulating what must be met
65. In line with HMO licensing, a separate policy covering licensing is made outside of this policy, but the principles of enforcement covered within this enforcement policy shall apply.

### **Enforcement Options**

66. The main options for action are:-
  - a. No action necessary
  - b. Informal action i.e. written or verbal advice
  - c. Hazard Awareness Notices
  - d. Service of Improvement Notice
  - e. Emergency Remedial Action
  - f. Emergency Prohibition
  - g. Works in Default
  - h. Simple Caution
  - i. Prosecution
67. The Council will work to ensure that enforcement decisions are consistent, balanced, fair and relate to common standards both locally and nationally. Internal guidance may be issued relating to these matters with the purpose of encouraging consistency.
68. Liaison with regional and national bodies shall take place where appropriate to ensure a consistent approach. Where possible, the Officer shall also seek the views of the landlord / owner and current occupier before deciding on the enforcement option.

## **PUBLIC PROTECTION SERVICE**

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69. Following a housing inspection an authorised officer will confirm in writing what action the officer proposes to take, if any.
70. In line with the requirements of the Housing Act 2004, the Officer shall ensure that the requirement to take action when a Category 1 hazard is identified is met, using the most appropriate method. This would not include the sole use of written or verbal advice and, as a minimum, would be the service of a Hazard Awareness Notice. Any action taken shall be done to reduce the hazard to a category 2 hazard
71. The use or non-use of the options below do not exclude the Officer using other Statutory powers to resolve a matter that has been identified, for example the use of Section 29 Local Government (Miscellaneous Provisions) Act 1982 to secure vacant premises.

### **No Action**

72. In exceptional circumstances, contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a premise is being vacated and not re-let. The decision to take no action will be recorded detailing the decision making process.
73. Where there are minor defects or breaches that will not result in any formal action, a letter can still be sent setting out the issue and providing good advice and guidance. It is unlikely any deadline for any aspect will be given, as formal follow up would not be expected.

### **Written warning and advice**

74. For some contraventions the offender will be sent a letter clearly identifying the contraventions, giving advice on how to put them right and include a deadline by which this must be done. Failure to comply could still result in a notice being served.
75. Informal action should be considered when:-
- a. Past history is good;
  - b. The contravention is insufficiently serious to warrant formal action;
  - c. Confidence in the individual/management;
  - d. Non-compliance will not pose a significant risk to safety.
76. Formal letters can be used to follow up informal warnings previously given when matters have not been addressed and have resulted in an increased risk.
77. Where deadlines are given, it is expected that a revisit / follow up action will be undertaken by the Officer.

### **Hazard Awareness Notices**

78. Section 28 and 29 of Housing Act 2004 allows for the service of a Hazard Awareness Notice.
79. A hazard awareness notice under this section is a notice advising the person on whom it is served of the existence of a hazard on the residential premises concerned which arises as a result of a deficiency on the premises in respect of which the notice is served
80. Such notices tend to be used for Category 2 hazards or where the hazard is in relation to an owner-occupied premise, and formal enforcement is not considered necessary or viable. The

notice is to raise awareness, does not have an enforcement element to it and therefore there is no appeal to its service.

81. A Hazard Awareness Notice would not be appropriate for most Category 1 hazards unless the Officer can determine that remedial action is not viable and practicable, or in the case where clear proactive action is taking place informally to remove the hazard.
82. The requirements of the legislation shall be met when such notices are used, as well as reference to guidance.

### **Enforcement Notices**

83. Notices include Improvement Notices and Emergency Prohibition Notices and are served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. The service of any formal notice shall incur a reasonable charge (see **Appendix A**) to recover administrative and other expenses incurred by the Council.

### **Emergency Remedial Action**

84. Emergency Remedial Action can be taken where there is a Category 1 HHSRS hazard and there is a imminent risk of serious harm, and there is no management order in force under Chapter 1 or 2 of Part 4 in relation to the premises
85. Emergency remedial action under this section may be taken by the authority in respect of more than one category 1 hazard on the same premises or in the same building containing one or more flats
86. It includes the power to take emergency action by forced entry to premises and recover reasonable costs including an administrative charge from the recipient of the notice, as set out in Section 42 of the Act.
87. Section 40 of the Housing Act 2004 sets out the requirements of conducting such action. It should only be used where the effect would be to adequately address the imminent risk of serious harm. If it cannot achieve this, the consideration for the use of an emergency prohibition order should be given.

### **Improvement Notices**

88. Chapter 2 of the Housing Act 2004, covers the serving of Improvement Notices to seek compliance. Section 11 covers the use of notices for the purpose of HHSRS Category 1 hazards and Section 12 covers Category 2 hazards
89. Before an Authorised Officer recommends service of an Improvement Notice he or she must be satisfied of one or more of the following:
  - That formal action is proportional to the risk to health and / or safety; or
  - That informal action will not be successful based on persistent breaches, previous failures to comply with informal action or a lack of confidence in the recipient to comply
90. Improvement Notices must be signed by a properly authorised officer who has witnessed the contraventions and is satisfied that the foregoing criteria are met.

91. When deciding upon the time period in which the Improvement Notice must be complied with, the officer must discuss with the person / company to be served on to seek agreement on a suitable period. If agreement cannot be reached then the officer must consider the cost of the works required, the ease of remedying the non-compliance and any other relevant aspect determining the period for compliance.
92. Failure to comply with a Improvement Notice will in general result in prosecution and officers must therefore be able to justify their actions in accordance with the legislation, this policy and any other relevant guidance.
93. Section 14 of the Act allows for a Notice to be suspended until a time, or the occurrence of an event, specified in the notice. The time so specified may, in particular, be the time when a person of a particular description begins, or ceases, to occupy any premises.

### **Prohibition Notices**

94. Chapter 2 of the Housing Act 2004 allows for the immediate prohibition of part or all of a premise where there is imminent risk of harm and there is no management order in force under Chapter 1 or 2 of Part 4 in relation to the premises. Such a prohibition can be suspended or varied, in line with the requirements of the legislation.
95. When considering the service of an Emergency Prohibition Notice the officer must seek the approval of the Team Leader or Service Manager.
96. Consideration must be given to the consequences of not taking immediate and decisive action if there is an imminent risk.
97. The Council shall take all reasonable steps to assist the occupants with finding alternative accommodation should it be necessary if such action is taken.
98. It would be expected that any Emergency Prohibition would lead to additional enforcement action in the form of a Simple Caution or Prosecution based on the conditions found requiring the closure. Any such action must be in line with the guidelines issues in this document relating to Prosecutions and Simple Cautions.

### **Formal Action for Non-Compliance**

99. When there has been a failure to comply with such action as an Improvement Notice, including failure to see sufficient progress in works within the timescale, then consideration must be given to follow up action.
100. It should be noted that where appropriate, for instance serious breaches, such action as described below can be taken prior to or in conjunction with action described previously.

### **Works in Default**

101. The legislation allows for works in default to be considered where formal notice has not been complied with.
93. The specifics of what works in default are allowed can depend on the requirements of the legislation, as there are regulations (e.g. Smoke and Carbon Monoxide Alarm (England) Regulations 2015) allow for carrying out of works and and issuing a penalty charge that incorporates recovery of costs and a fine element.

94. When works in default are carried out, the full costs of the works as well as an administrative fee shall be charged to ensure the Council recovers all costs. These costs would be recovered from the recipient of the original notice. The administrative costs shall be calculated at 20% of the cost of the works

### **Simple Cautions**

95. Formal (Simple) Caution will be considered by The London Borough of Harrow in the following circumstances where:

- There is sufficient evidence to prove the case;
- The offender has admitted the offence;
- The offender has agreed to be cautioned;
- The offence has not been committed by the offender before.

96. Reference should be made to Ministry of Justice Guidance and officers should consider the use of simple cautions as an alternative to prosecutions.

<https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

97. The purpose of the Formal (simple) Caution is:-

- To deal quickly and simply with less serious offences;
- To divert offenders where appropriate from appearing in the criminal courts;
- To reduce the likelihood of re-offending.

98. In considering whether a Formal (Simple) Caution is appropriate, the investigating officer must consider the following facts:

- a. Is there sufficient evidence of the suspect's guilt to meet the Threshold Test (as outlined in the Director's Guidance)?
- b. Is the offence indictable only (and the available evidence meets the Threshold Test)? If the answer is 'yes', this disposal option must be referred to a Crown Prosecutor.
- c. Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)? An admission of the offence, corroborated by some other material and significant evidential fact will be sufficient evidence to provide a realistic prospect of conviction. This corroboration could be obtained from information in the crime report or obtained during the course of the investigation. A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example if intent is denied or there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered).
- d. Is it in the public interest to use a Formal (Simple) Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors..
- e. Is the suspect 18 years or over? Where a suspect is under 18, a reprimand or final warning would be the equivalent disposal.

If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution. To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:-

- a. There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.

- b. The suspected offender must admit the offence.
- c. The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

The persons authorised to issue the cautions will be the **appropriate officer**.

### Prosecution

- 102. The London Borough of Harrow will use discretion in deciding whether to bring a criminal prosecution.
- 103. The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless The London Borough of Harrow finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.
- 104. While the primary purpose of the Housing Enforcement is to ensure that residential premises risks are controlled effectively, thus preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation The London Borough of Harrow has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution will go ahead. Where the circumstances warrant it and the evidence to support a case is available, The London Borough of Harrow will prosecute without warning or recourse to alternative sanctions.
- 105. Criminal proceedings will be taken against those persons responsible for the offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. However, we will also consider any part played in the offence by the employees of the company, including Directors, Managers and the Company Secretary. Action may also be taken against such employees (as well as the company) where it can be shown that the offence was committed with their consent or connivance or is attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy.
- 106. Prosecution will generally be restricted to persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the Council and who put the public at serious risk.

Regard should be had to the Crown Prosecution Service's Code for Crown Prosecutors which gives guidance on the decision making process for prosecutions.

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

Circumstances which are likely to warrant prosecution:-

- a. Where the alleged offence involves a flagrant breach of the law such that health, safety or well-being is or has been put at risk.

## **PUBLIC PROTECTION SERVICE**

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- b. Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
  - c. Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice.
  - d. Where there is a history of similar offences related to risk to health, safety or well-being.
107. The decision to prosecute must be taken at the earliest opportunity.
108. When circumstances have been identified which may warrant a prosecution all relevant evidence and information will be considered to ensure a consistent, fair and objective decision be made. Suspected offenders should be invited to offer an explanation before proceedings are commenced, unless circumstances dictate otherwise.
109. Before a prosecution proceeds the officer will ensure that there is relevant, substantial and reliable evidence and that an identifiable person or company has committed an offence. There must also be a realistic prospect of conviction; a bare prima facie case is insufficient. A Legal Review Form will be completed and signed off by a Service Manager and Head of Service prior to being approved.
110. Once the decision to prosecute has been made the matter should be referred to the **Proper Legal Officer** without undue delay. The referral must include a legal review form stating the reasons for bringing the prosecution.

### **Relevant Person**

111. Consideration must be given to who the relevant person / company is when considering enforcement action
112. In the case of owner-occupiers, the risk of any identified hazard is to themselves and it is unlikely that any formal action would be considered if no other person were affected. Consideration to informal methods, including the use of a Hazard Awareness Notice, should be given. This is not to rule out formal action where appropriate, where others are likely to be affected or the occupier at imminent risk.
113. With regards Registered Social Landlords (RSL), consideration shall be given to any planned works that are in place to bring their premises up to standard, and liaison will take place.
114. Consideration to suspend an improvement or prohibition will be given where appropriate, and can include where there is a change in occupancy, where the vulnerable age group is not present, or the timing of the work would not be appropriate based on conditions / occupancy requirements.

### **Public Interest Factors**

115. The London Borough of Harrow will consider the following factors in deciding whether or not to prosecute:
- The seriousness of the offence;
  - The foreseeability of the offence or the circumstances leading to it;
  - The intent of the offender, individually and/or corporately;
  - The history of offending;



- The attitude of the offender;
- The deterrent effect of a prosecution, on the offender and others;
- The personal circumstances of the offender;
- The likelihood of the offender being able to establish a due diligence defence.

116. These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. We will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

### **Revocation of Licenses**

99. In the cases of Licensed residential premises, there is an option to revoke a licence and this can include the following reasons:-

- Engaged in fraudulent activity;
- Deliberately or persistently breached legal obligations, which were likely to cause harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Obstructed an officer during their duties;
- Endangered, to a serious degree, the health, safety or well being of the public.

100. Details about licences is covered within the separate policy.

### **Conflicts of Interest**

100. There may be occasions where the Council operates the premise and issues of non-compliance are identified (eg Council Housing).

101. Visit reports and follow up letters will be issued in accordance with this policy to the Head of Service directly responsible for the Council service affected.

102. Serious breaches of law will be brought to the attention of the Chief Executive without delay as well as the appropriate head of service

103. All correspondence will clearly state the level of enforcement action that would be taken and the reason for that action in the same way as if the premises were outside of local authority control.

### **Publicity**

104. The London Borough of Harrow will make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking housing law. The London Borough of Harrow will also consider making publicly available information on revocation of licences, improvement and emergency prohibition notices served.

105. The London Borough of Harrow will also consider publicising any conviction, which could serve to draw attention to the need to comply with housing requirements, or deter anyone tempted to disregard their duties under such legislation.

## Appeals and Complaints

106. In the case of Enforcement Notices and refusal/revocation of approvals, as described, the correct appeal notes are to be given at the time the Notice is served. These notes must be adequate to clearly show the appeal process for the relevant notice, setting out:
- a. The time limit for appeals;
  - b. The place to submit an appeal, including contact details
- Should the Notes not of been given at the same time of Service, a copy must be given immediately to the recipient of the Notice and this matter recorded by the Officer.
107. In the case of written and verbal warnings issued by an officer, there is no set appeal process as no formal legal action has been initiated. Details of the appropriate line manager will be given on request, as well as details of the Corporate Complaints process.
108. Any complaint about the conduct of an officer will be immediately notified to the Team Leader, who will make a judgement on what action will taken. An officer will not automatically be withdrawn from any case by virtue of a customer complaint. The Team Leader will consider the complaint and assess if the officer has acted outside their remit and / or has acted unprofessionally towards the business concerned. All complainants will be advised of their recourse to the Councils Corporate Complaint system. Stage 1 will be investigated by the Team Leader in line with the above. Stage 2 will be carried out by the Service Manager.
109. Should further complaints be made against an individual officer and no corporate complaint submitted, a decision will be made by the Team Leader whether to send an additional officer on future visits to ensure:
- a. Verification of the officers actions; and
  - b. Protection for the officer should the complaints be made for reasons of intimidation
- This decision will be documented in the case file as well as on the database system.
110. The withdrawal of any legal action taken by an officer will not be entertained based solely on complaint regarding the officer, as recourse is available through the appeal process, unless evidence is available to demonstrate the legal action does not meet the requirements set out in this Policy.

## Penalties

111. The existing law gives considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers. The Council will always seek to recover the costs of investigation and legal proceedings.

## Amendments to Enforcement Policy Additional Guidance

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112. As may be necessary, for instance with the issuing of new guidance, amendments will be made to this Enforcement Policy. Should such amendments not deviate away from the overall spirit of this policy, such amendments will be attached to the Policy through an amendment document rather than the re-issuing of the Enforcement Policy as a whole.
113. Any such amendment document will be referenced in **Appendix B** below and signed off by the Service Manager overseeing the Housing Enforcement Function. A draft form to aid in preparing such an amendment document is shown in **Appendix D**.
114. When enforcement guidance is needed for specific service issues, such guidance will be documented and referenced in **Appendix C** below and signed off by the Professional Team Leader overseeing the Section.
115. Any matters of legal doubt will be assessed by the Councils Legal Section, prior to coming into place, where there is no clear-cut guidance, case law or precedent.

### **Further Information**

The Regulators Compliance Code  
Code of Conduct for Crown Prosecutors  
Regulators Compliance Code  
The Enforcement Concordant  
Code of Conduct for Crown Prosecutors

## **APPENDIX A – CHARGES FOR FORMAL ACTION**

Section 49 of Housing Act 2004 gives the Local Authority the power to recover certain reasonable expenses incurred in the serving of formal housing notices. A charge will normally be made where it is necessary to take the following action:

- a. Improvement Notice (Section 11 or 12)
- b. Prohibition Order (Section 20 or 21)
- c. Hazard Awareness Notice (Section 28 or 29)
- d. Emergency Remedial Action (Section 40)
- e. Emergency Prohibition Order (Section 43)

## **PUBLIC PROTECTION SERVICE**

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- f. Demolition Order (Section 46)
- g. Suspended Improvement Notice review (Section 17)
- h. Suspended Prohibition Order (Section 26)

In line with the Cabinet Decision of November 2015, these charges shall be determined by the time taken by the Officer, and based on the Officer hourly rate as set out in the Councils Fees and Charges. These fees and charges shall be reviewed annually.

For the purposes of charging, it shall only cover those areas that are allowed to be recovered, being:

- For the purposes of Improvement Notices and Hazard Awareness Notices, this includes expenses incurred in determining whether to serve the notice, identifying any action to be specified in the notice, and the actual service of the notice
- For the purposes of emergency remedial action, this includes expenses incurred determining whether to take such action and the serving of the notice
- For the purposes of prohibition notices, emergency prohibition orders and demolition orders, this includes expenses incurred for determining whether to make the order and serving copies of the order on persons as owners of premises

In addition to the above, reasonable expenses may include specialist support such as testing of electrical or gas installations.

### **Process**

In line with legislation, 24 hours Notice is given of the inspection to take place (exceptions would be where there is an emergency situation, where immediate access will be sought)

Within 14 days, Officers will endeavour to issue an informal written notice of any hazard identified and remedial work required. An appropriate time period to undertake works will be stated as detailed in a written schedule, and will be agreed with the responsible person where possible. The informal notice will set out the fact an enforcement notice shall be issued if works are not carried out, and that such notices incur a charge to recover costs. Each unit of accommodation that attracts a notice will be charged separately.

On expiry of any timescales set, a revisit will take place to determine compliance. Officers will keep full notes of such a visit. Determination will be made whether enforcement notices are required to address any outstanding works

At the time any formal notice (or order) is issued, a written request for payment shall be made. Details of the reasons for the charge, payment methods and means of appeal shall be set out. There is a 21-day appeal period against the notice before the demand becomes operable.

While the above describes the general rule, there will be times when informal notice is not given and immediate issuing of a Notice is carried out (for example, when a hazard needs to be addressed without delay). These notices shall also incur a charge for cost recovery.

There will be circumstances where a charge is not levied on serving a notice, for instance when the works are to be carried out by the landlord but the nature of the hazard are such that a notice is served to ensure liability is covered. Such a decision will be on a case by case basis, and in agreement with line management.

The Housing Health and Safety Rating System Enforcement Guidance suggests authorities should take account of the personal circumstances of the person or persons against whom the enforcement action is being taken. The degree to which authorities consider personal circumstances is at their discretion, having regard to the resources available to them. This leaves room for a suitably delegated officer to take exceptional circumstances into account to vary or quash a charge.

The Service Manager overseeing the Officer is therefore delegated to make such an operational decision

It is to be recognised that the above process is the standard to be followed, but deviations can occur as long as the spirit and the requirements of legislation are maintained. Where this occurs, the Officer shall record the reasons for such a deviation.

### **APPENDIX B – Table of Amendments Issued**

<b>Amendment Number</b>	<b>Title</b>	<b>Over-View</b>	<b>Date</b>	<b>Author</b>
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## **PUBLIC PROTECTION SERVICE**

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## **APPENDIX C – Council Enforcement Guidance**

<b>Amendment Number</b>	<b>Title</b>	<b>Over-View</b>	<b>Date</b>	<b>Author</b>
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## **APPENDIX D – Draft of Amendment Document**

### **Amendment Document 1**

#### **Heading of Amendment Document**

##### **Scope**

What areas of the enforcement policy this amendment affects

##### **Historical Framework**

Why this change has come about

**Legal Framework**

A list of the main legal controls for this subject.

**Loads of Other Headings**

As the topic demands.

**Sources of Information**

Any other reference document(s) that need referring to including any locally issued enforcement guidance

**Standard Forms etc Locations**

Briefly list the documents officers can use as examples or masters:

<b>Filename and path</b>	<b>Description</b>

**Officer Completing:**

**Designation:**

**Date:**