

## LONDON BOROUGH OF HAMMERSMITH & FULHAM

**Report of:** Cabinet Member for Housing and Homelessness, Cllr Frances Umeh

**Date:** 26/04/2024

**Subject:** **Private Sector Housing Enforcement Policy**

**Report author:** Ed Shaylor, Assistant Director, Housing Standards

**Responsible Directors:** Bram Kainth, Strategic Director of The Environment  
Sukvinder Kalsi, Strategic Director of Finance

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### SUMMARY

The Private Sector Housing Enforcement Policy (“the Policy”) relates to powers available to regulate the Private Housing Sector and has been written in compliance with the Regulator’s Code. Specific enforcement policies are attached (as appendices to the over-arching policy) in relation to financial penalties for relevant housing offences. In this Policy, Private Housing means residential dwellings (ie not hotels) which are not owned by the Council. It also means social housing if the Council is not the landlord.

The Policy aims to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. It is intended to ensure that any person exercising a regulatory function to which the Policy applies must have regard to the principles that regulatory activities should be transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is necessary.

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### RECOMMENDATIONS

1. That the Cabinet Member for Housing and Homelessness approves the Private Sector Housing Enforcement Policy (“the Policy”) at Appendix 1 appended to this report.
  2. That the Cabinet Member for Housing and Homelessness authorises the Strategic Directors of Environment and Finance, and officers delegated in turn by them, to implement the Private Sector Housing Enforcement Policy (“the Policy”), **appended to this report as Appendix 1**, and specific enforcement policies appended **as Appendices 2 to 7**, and to publish the Policy on the Council’s website.
  3. That these recommendations, if approved, will be implemented and published from 1<sup>st</sup> June 2024.
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**Wards Affected:** All

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<b>Our Values</b>	<b>Summary of how this report aligns to the H&amp;F Values</b>
Building shared prosperity	The council aims to encourage private landlords to provide accommodation for renters to live and work in the area
Creating a compassionate council	The council supports tenants in private rented accommodation to live in safe and healthy conditions
Doing things with local residents, not to them	The council provides advice for tenants and guidance to landlords and regularly seeks the views of landlords and tenants
Being ruthlessly financially efficient	Income from licensing schemes is used to improve conditions in the private rented sector through education and (where necessary) enforcement
Taking pride in H&F	The council's aims for satisfaction with living conditions in H&F to be above the national average
Rising to the challenge of the climate and ecological emergency	Rented properties will be required to have a minimum energy efficiency rating, and landlords can be required to make improvements where they do not.

## **Financial Impact**

Approval and implementation of the recommended policy is not expected to have any direct financial implications. The enforcement action will be undertaken by existing resource (as is currently the case), within existing approved service budgets. Any income generated as a consequence of the enforcement activity (such as financial penalties) may contribute to service costs, subject to the legislative power.

*Kellie Gooch, Head of Finance (Environment), 22 January 2024.*

*Verified by Andre Mark, Head of Finance, 22 January 2024*

## **Legal Implications**

This policy has been developed with regard to the [Regulator's Code](#) under Section 22 of the Legislative and Regulatory Reform Act 2006 ("the 2006 Act") and the Regulatory and Enforcement Sanctions Act 2008.

As required by section 21 of the 2006 Act the Policy is based on the following Principles:

- Transparency
- Accountability
- Proportionality

- Consistency
- Targeted only at those cases where action is needed

The Policy commits the Council to good enforcement policies and procedures based on those principles.

The legislative bases for financial penalties for housing offences are provided by:

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended in 2022) (Section 150(1) of the Energy Act 2013)
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (Chapter 2 of the Energy Act 2011)
- Electrical Safety Standards in the Private Rented Sector Regulations 2020 (Sections 122/123 Housing and Planning Act 2016)
- Housing Act 2004 as amended by the Housing and Planning Act 2016
- Tenant Fees Act 2019 (This is a Trading Standards matter and is contained in the Environmental Health and Regulatory Services Enforcement Policy)

The Rent Repayment Orders and Financial Penalties (Amounts Recovered) Regulations 2017 (SI 2017/367) prescribe that local authorities can use any money recovered under a housing financial penalty to meet the costs and expenses incurred in connection with carrying out any of their enforcement functions in relation to the private rented sector.

There is no legal requirement to hold a public consultation.

The Council has a statutory duty as a Local Housing Authority to enforce relevant housing legislation. The Private Sector Housing Enforcement Policy sets out a useful framework in which officers of the Council will operate when considering the most appropriate course of enforcement action for failure to comply with legislation including the use of informal and formal action and the imposition of financial penalties. The policy sets out what action the Council can take and the reasons why.

*Provided and verified by Rachel Silverstone, Senior Property Solicitor, Legal Services, 16/1/2024.*

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## **Background Papers Used in Preparing This Report**

None

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## **DETAILED ANALYSIS**

### **Proposals and Analysis of Options**

10. The Policy relates to the duties and powers vested in the Council and delegated to officers to deal with substandard conditions in, and the management of, private housing; and public health hazards or nuisance arising from private housing.

11. The Council's Private Sector Housing team deals with housing hazards and housing related public health nuisances, through the investigation of complaints, carrying out inspections, giving advice, licensing and the enforcement of offences, breaches of regulations or failure to meet required standards.

12. The aim of the Policy is to consider how best we can:

- Encourage and promote compliance
- Improve confidence in compliance processes for those we regulate
- Focus on high risk issues
- Provide encouragement for compliant landlords
- Understand and minimise the negative economic impacts of our activities
- Minimise the costs of compliance for those we regulate
- Ensure we discharge our duties with regard to the Equalities Act 2010.

### **Reasons for Decision**

13. To approve the Policy as an addendum to the Council's Environmental Health Enforcement Policy.

14. The decision to take (or not to take) enforcement action is a serious one and it is important that we have a policy in place that ensures fairness and consistency.

15. To ensure that the Council's enforcement policy complies with the Regulators' Code, by keeping the policy under constant review.

16. An enforcement policy for the Environmental Health Service Group was [adopted under a key decision on 2 March 2015](#). It was also decided that any future minor amendments and updates, following annual reviews, be approved by the Cabinet Member. The most recent amendment was approved by the Cabinet Member for Social Inclusion and Community Safety in June 2023. Since then, responsibility for Private Sector Housing has transferred to the Cabinet Member for Housing and Homelessness who is asked to approve this Policy.

17. The use of the powers provided by the Housing and Planning Act 2016, including the power to impose financial penalties for Housing Act offences, were [delegated to officers by Cabinet on 3 December 2018](#). A broad statement of principles how the level of a penalties would be decided was also approved on that date. An amendment to the Council's Environmental Health Enforcement Policy was approved, to take account of the enforcement powers introduced by the 2016 Act. This policy provides a more detailed and current method by which the level of a financial penalty will be calculated, and confirms the authorisation of officers to use the enforcement powers contained in the Regulations listed in paragraph 6 above.

18. Private Sector Housing Officers, Team Leaders and Managers have appropriate delegated authority to enforce these powers in the Registers of Authorities for the Economy (in relation to powers delegated by the Local Housing Authority) and Environment Departments which have been updated at full Council in November 2023.

## **Equality Implications**

19. Due regard will be taken to the Public Sector Equality Duty as set out in s149 of the Equality Act 2010 in carrying out enforcement functions and an Equality Impact Assessment has been completed.
20. The Policy has low relevance in relation to its impact on the Public Sector Equality Duty, but contributes towards the corporate priorities of the council, open and transparent decision making. Records will be maintained of protected characteristics of those on whom enforcement action is taken, where this is relevant and necessary to ensure that such action is taken proportionately and fairly.

## **Risk Management Implications**

21. Failure to meet new and existing statutory requirements is specifically addressed in the Environment Department's risk register. Controls in place to mitigate this risk include training, internal auditing, periodic updates of the scheme of delegation and the business planning process.

*Approved by Jules Binney Risk and Assurance Manager on 22/1/2024*

## **Climate and Ecological Emergency Implications**

22. Enforcement of housing standards includes excess cold and excess heat in residential dwellings under the Housing Health and Safety Rating System and the Energy Efficiency Regulations 2015, which determine that landlords must maintain effective hot water and space heating installations, and a minimum level of energy efficiency in tenanted accommodation. The net effect of these enforcement powers is likely to be positive in terms of reduced environmental impact, but there is currently no regulatory power to oblige landlords to install particular types of installation or use specific energy sources. Aside from these considerations, there are few implications from this enforcement policy in this regard.

*Approved by Hinesh Mehta, Assistant Director Climate Change, 04/01/2023*

## **Procurement implications**

23. Not applicable in this case.

## **Consultation**

24. Business engagement, consultation and feedback is actively encouraged by the Regulators' Code. Work is ongoing to set up landlord and tenant focus groups to hear their views about our approach to enforcement.
25. It is intended that there will be ongoing consultation with landlords and tenants, which will help inform any future revisions, to any agreed policy.
26. The Policy will be published on the internet and distributed on request.

## **LIST OF APPENDICES**

**Appendix 1** Private Sector Housing Enforcement Policy

**Procedures for establishing the level of penalty:**

**Appendix 2** The Smoke and Carbon Monoxide Alarm Regulations 2015

**Appendix 3** Energy Efficiency (Private Rented Property) Regulations 2015

**Appendix 4** Electrical Safety Standards (Private Rented Sector) Regulations 2020

**Appendix 5** Housing Act 2004 as amended by the Housing and Planning Act 2016

**Appendix 6** Procedure for establishing the level of severity of an offence

**Appendix 7** Consequences of financial penalties and appeals