



PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

Spring 2020

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1. Introduction

This policy sets out Eastleigh Borough Council's approach to private sector housing enforcement. It sits under the Corporate Enforcement Strategy and covers part of the enforcement activity outlined in Appendix A for Health & Wellbeing. It upholds the principles and approaches of set out in the Corporate Enforcement Strategy of a proportionality, transparency and contributes to the aim to minimise harm, promote wellbeing & prosperity.

The Council will always follow an enforcement option that is commensurate to the nature of hazard(s) present and breach of the relevant legislation found. However, Eastleigh Borough Council will be robust in the approach to dealing with private sector housing (PSH) matters through negotiation and enforcement.

Effective enforcement is important as a means of maintaining public confidence in the quality and safety of private sector housing within the district and supporting our residents' right to live in an environment that is safe & healthy.

Enforcement powers are part of the statutory obligation placed on the Council to keep housing conditions within the district under review and take appropriate action where identified to ensure suitable standards are maintained.

2. Key Principle of PSH Enforcement

PSH is principally aimed at tackling poor and unsuitable housing conditions, the worst of which disproportionately affect the most vulnerable people in society.

Legislation, national guidance and local policies provide the framework on which PSH enforcement is undertaken.

PSH enforcement can be reactive or proactive.

- **Reactive** – reports of poor housing conditions of a residential dwelling can be made by any person including local residents, Councillors and partner organisations (such as Hampshire Fire & Rescue Service or Hampshire County Council Adult Services).
- **Proactive** – monitoring of licenced properties to ensure compliance with conditions set, targeted inspections in areas or tenures which are known to typically be in poor condition.

The nature and intensity of any investigation will differ on each case and is dependent on the type of dwelling and issue(s) reported/identified.

3. Enforcement Principles

- **Proportionality** – Any action that is taken will relate to the severity of the hazard(s) posed and/or the seriousness of the breach of legislation with due consideration given to any particular vulnerability that any of the relevant parties may have. Officers will consider the full range of powers available to them which may include no action, informal discussions, negotiation or taking formal enforcement action.

- **Consistency** – Officers act in a similar way when faced with similar circumstances. The Council will also work with other services and Authorities to ensure that consistency is maintained at a local and national level as far as possible. It does not imply uniformity; rather a full and proper consideration of all the circumstances of a case to establish what reasonable and adequate requirements will remedy the matter.
- **Transparency** – The Council will try to help people understand what the law requires of them and make clear what needs to be done to achieve compliance. The Council will also make clear what people should do if they are not happy about any action taken or a decision not to take action. The Council will also provide transparency and clarity on courses of action that will be undertaken.
- **Targeting** – Our proactive enforcement efforts will be directed towards those whose activities pose the most serious risks or create the most danger to residents and those who have a history of non-compliance.

4. How do I report poor housing conditions?

Anonymous reports will not be investigated unless they relate to a serious matter of public safety or indicate a hazard that poses an imminent risk of extreme harm or death to any occupant at the property reported.

Reports relating to rented accommodation will not be investigated where a tenant has not first informed the landlord of the issue and allowed a reasonable period of time for the landlord to respond to the matter. The exceptions being where the reports indicate a hazard that poses an imminent risk of extreme harm or death to any occupant at the property reported.

It is useful for us to have as much information as possible, such as:

- Description of the disrepair issue and which room(s)/area it is located in
- How long the item of disrepair has been present.
- When the responsible party (i.e. landlord) for the property was notified of the problem
- Following notification, the response (if any) from the responsible party.
- Address of property concerned
- Name/address/telephone number of owner/landlord/managing agent
- Name/address/telephone number of complainant
- If rented, when they started tenancy & type of tenancy agreement held.

Eastleigh Borough Council actively encourages the use of the on-line reporting forms, all of which can be found on the Council's website.

You can also contact Eastleigh Borough Council in person, by telephone on 023 8068 8000 or by letter to the following address:

Housing Enforcement
 Eastleigh Borough Council
 Eastleigh House
 Upper Market Street
 Eastleigh

For out of hours contact, please ring, 023 8068 8000 and follow the option menu (This is strictly for **emergencies** only)

5. Confidentiality

All investigations are dealt within the strictest confidence and details of the complainant will not be made known. However, while every effort is made to safeguard the confidentiality of the complainant, we cannot prevent assumptions being made by landlords/licence holders/managing agents.

6. How long will an investigation take?

An enforcement investigation can be lengthy and complex and the time taken to conclude each case will vary greatly.

On receipt of a report the Council aims to:

- Register and acknowledge the report within 3 working days.
- Undertake an initial review of the case within 15 working days.
 - The nature of the initial review will vary for each case and may consist of a desktop study, a phone call or an inspection of the property.
- Provide an update at key stages in the investigation and/or when significant progress has been made.
- Advise the person who made the report of the outcome of the investigation and if / what any further action will be taken/required.

7. What if someone makes a report about a property I'm responsible for?

If you are contacted as the owner/landlord/responsible person for a property you are entitled to know what the reported/identified issue is (but not who reported it) and you will be given an opportunity to respond. Your co-operation may be sought to remedy the matter and a period of time proportionate to the nature of the issue identified will be allowed for you to do this.

The Council will in most cases give you a chance to put matters right before taking formal action but if the issue is causing serious harm and/or you have a history of non-compliance, formal action will not be delayed by protracted discussions.

8. Investigating PSH enforcement cases

PSH enforcement covers a range of regulatory areas, each of which while having broadly the same aspects, will differ slightly. In each of the following paragraphs where there are specific differences it will be clearly identified:

8.1. Property inspection

In most cases, officers will undertake an inspection of the property in order to establish whether any offences or breaches have been committed and/or to ascertain whether any other parts of the relevant legislation needs to be applied.

8.2. Powers of Entry

The Council's authorised officers have a number of powers of entry, with The Housing Act 2004, section 239(3) or (7) is primarily used for this purpose. However, officers do also have powers of entry under the legislation listed below and these may be used instead of the Housing Act 2004 where appropriate to the investigation.

- Environmental Protection Act 1990 – Schedule 3, para. 2
- Prevention of Damage by Pests Act 1949 – Section 22
- Public Health Act 1936 – Section 287
- Building Act 1984 – Section 95
- Local Government and Housing Act 1989 – Section 97

The power of entry is to enter the land or premises at any reasonable hour for the purpose of carrying out an inspection and/or investigation either required by the legislation or in order to ascertain if any part of the relevant legislation should apply.

For most of the above powers of entry, a minimum of 24 hours' notice of the intended entry must be given to the owner/landlord/responsible party for the property. The exceptions to this being:

- Under Local Government and Housing Act 1989, 7 days' notice must be provided.
- Section 239(7) of Housing Act 2004, does not require any notice to be given, if the purpose of the inspection is in relation to sections 72, 95 or 234. These sections relate to licenced HMOs, houses required to be licensed under Part 3 and HMO management regulations respectively.

If officers are refused entry, the Council has the right to apply to the Magistrates Court for a warrant to enter the land/property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the matter under investigation.

Any person who wilfully obstructs an authorised officer acting in exercise of a right of entry commits an offence and may be liable on summary conviction to a fine, the level of which is specified by the respective legislation:

- Level 4 – Housing Act 2004, Building Act 1984
- Level 3 – Environmental Protection Act 1990, Local Government & Housing Act 1989
- Level 1 – Public Health Act 1936, Prevention of Damage by Pests Act 1949

<https://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>).

8.3. Information Gathering

There are two main legislative tools used for gathering information as part of a PSH enforcement investigation:

1. Section 16 Local Government (Miscellaneous Provisions) Act 1976 - (Requisition for Information Notice)
 - This section allows the Local Authority to request particulars of persons interested in the property.
 - Can be served on any person with an interest in the property or who use/rent the property.

2. Section 235 Housing Act 2004 - (Requisition for Documents Notice)
 - This section allows the Local Authority to request any documents that may be reasonably required in relation to a property and the person served can be reasonably expected to hold or have in their control.
 - Can be served on any person who is (or proposed to be):
 - A licence holder,
 - To be managing or having control of the property
 - To be otherwise involved in the management of the property
 - Occupies the property
 - Has an estate or interest in the property.

Failure to respond to either of the above notices within the specified time frame is a criminal offence and may lead to prosecution. These notices do not register as a Land Charge and are not included on the Council's Enforcement Register.

We may also, as part of gathering information during an investigation, refer to information held within other parts of the Council such as Council Tax records and Electoral Register, as well as some external databases such Land Registry records or Ministry of Housing and Communities & Local Government's (MHCLG) Rogue Landlord Database.

Where it is believed an offence has been committed the Council may choose to conduct an interview under caution, in accordance with the Police and Criminal Evidence Act 1984 (PACE) codes of practice as a means of gathering further information and/or to assist in determining what further action is appropriate.

9. Possible Outcomes

Some PSH issues reported are of a minor nature and formal action cannot be justified, so it is important to be aware that the Council may not address all disrepair items and will only act when it is expedient to do so. Action will only be taken where the hazards identified are of sufficient severity and/or having an unacceptable impact on the neighbouring properties. The outcome of each case will be based on the individual circumstances of each investigation.

The possible outcomes are:

- **No action taken** – either the reported issue is not within the control of the legislation under which PSH operates, or the reported issue is considered to pose a minimal hazard and/or impact and that it is not expedient to pursue.
- **Informal action** – correspondence will be sent to the relevant party identifying the hazard(s) or issues of concern and inviting them to undertake work to address these, within an appropriate time. Many people do take the positive steps required to rectify the situation and formal action is only necessary in a small number of cases.
- **Formal action** – If we are unable to resolve the matter through informal action or the hazard(s), breach or circumstances is/are so serious, the Council has the power and, in some circumstances a duty, to take formal enforcement action. The nature of the hazard(s), breach or circumstances will determine the type of formal action chosen by the Council.

10. Formal Enforcement Action

10.1. Enforcement Notices & Orders

A number of different enforcement notices & orders are available to the Council under the various legislations that may apply to PSH enforcement cases. Regardless of which legislation the notice or Order is under, all will be duly served by either hand delivery or first class post.

- **Housing Act 2004** – There is a range of enforcement notices & orders available under this legislation. The appropriate enforcement option will be determined by the authorised officer and be based on their professional judgement and where applicable guided by their Housing Health and Safety Rating System (HHSRS) assessment.

The HHSRS is set out in Part 1 of the Housing Act 2004 and is the method prescribed for assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s).

There are two categories of possible hazards:

- Category 1 – represents a serious hazard to health and the Council has a duty to take appropriate action.
- Category 2 – represents a lesser hazard and the Council has a power where it considers it appropriate to take appropriate action.

There are six main enforcement notices & orders under Part 1 of the Housing Act 2004 as briefly outlined below:

- **Hazard Awareness Notice**
This is available for both category 1 and 2 hazards and will state the nature of the hazard(s) and residential premises it relates to but does not impose any further requirements.

The notice is in effect from the date the notice was served and there is no right of appeal.

- **Improvement Notice**

This is available for both category 1 and 2 hazards and will state the nature of the hazard(s) and residential premises it relates to.

It also imposes requirements to undertake works as specified to mitigate or minimise the hazard(s). The notice will stipulate the times by which works are required to commence and be completed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the First Tier Tribunal (FTT) within 28 days from the date the notice was served.

- **Prohibition Order**

This is available for both category 1 and 2 hazards and will state the nature of the hazard(s), residential premises it relates to and clearly stipulate the purposes (which may be for all purposes) for which a part or whole of the premises are prohibited to be used.

The order comes into effect 28 days after the date on which it was served. There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

- **Emergency Remedial Action**

This is only available for category 1 hazards and allows the Council to immediately undertake works at the premises to mitigate or minimise the hazard

A notice will be served within 7 days of the action being taken and will state the nature of the hazard(s), residential premises it relates to and date on which the work was or is to be started.

The Council is permitted under the Act to recover any expenses in taking the emergency remedial action

The notice is in effect from the date served. There is a right of appeal which must be made to the FTT within 28 days from the date the notice was served.

- **Emergency Prohibition Order**

This is only available for category 1 hazards and will state the nature of the hazard(s), residential premises it relates to and clearly stipulate the purposes (which may be for all purposes) for which a part or whole of the premises are prohibited to be used.

The order is in effect from the date served. There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

- **Demolition Order**

This is only available for category 1 hazards and will state the nature of the hazard(s), residential premises it relates to and impose a requirement that the premises be vacated and demolished.

The order will specify the times on which the order becomes operative and demolition must be completed following the order becoming operative or the date on which the property is vacated.

There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

As permitted by the legislation the Council charges for most enforcement notices or orders that are served under Part 1 of the Act. Details of the current charges can be found on our website: <https://www.eastleigh.gov.uk/housing/are-you-a-landlord/housing-fees-and-charges>

- **Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**
 - **Remedial Notice (regulation 4(1))**

This shall be served where the Council is satisfied (beyond all reasonable doubt) that a landlord has breached one or more duty under regulation 3.

A notice will impose requirements of the remedial action that must be undertaken, and works must be completed within 28 days of the date of service. The notice is in effect from the date served.

There is a right to make representation in writing to the Council against the service of the notice which must be made within 21 days from the date of service.
 - **Remedial Action Notice (regulation 6(2))**

This may be served where the Council is satisfied (on the balance of probabilities) that a landlord has not complied with a remedial notice served and in so doing arrange for the required works to be undertaken.

The notice is in effect from the date served and the Council is permitted under regulation 8 to recover any expenses incurred in taking the remedial action

There is a right of appeal which must be made to the FTT within 28 days from the date the notice was served.
 - **Urgent Remedial Action Notice (regulation 10(3))**

This may be served where the electrical report indicates urgent remedial works are required and the Council is satisfied (on the balance of probabilities) that the landlord is in breach of his duty under regulation 3(4)

The Council may then arrange for an authorised person to undertake the required urgent remedial works. The notice must be served within 7 days of those works commencing.

The notice is in effect from the date served and the Council is permitted under regulation 8 to recover any expenses incurred in taking the urgent remedial action

There is a right of appeal which must be made to the FTT within 28 days from the date the notice was served.

- **Environmental Protection Act 1990 Sect. 80 Abatement Notice** – this shall be served where a Local Authority is satisfied that a statutory nuisance (as prescribed in section 79) exists or is likely to occur or recur.

A notice may impose requirements to; abatement of the nuisance or prohibition or restricting its occurrence or recurrence, execution of such works as may be necessary for that purpose, or both. The notice will specify time or times within which the requirements are to be complied with.

The notice is in effect from the date on which it was served. There is a right of appeal which must be made to the Magistrates court within 21 days from the date on which the notice was served.

- **Prevention of Damage by Pests Act Sect. 4** – this may be served where it appears to a Local Authority that steps should be taken for the destruction of rats or mice on land or otherwise for keeping the land free from rats or mice.

A notice may impose requirements to undertake any form of treatment specified and / or carry out repairs or other works as specified. The notice will specify the times by which any treatment and/or works are to be carried out.

The notice is in effect from the date on which it was served. There is no right of appeal to this notice.

- **Building Act 1984 Sect. 59** – this shall be served where it appears to the Local Authority that there is; insufficient provision for drainage, drainage infrastructure as specified in (1)(b) is defective to the point of admitting subsoil water, drainage infrastructure is in such a condition as to be prejudicial to health or a nuisance, or former drainage infrastructure no longer in use is prejudicial to health or a nuisance.

A notice may impose requirements to either; make satisfactory provision for drainage, undertake works as may be necessary for renewing, repairing or cleansing of the relevant part of the drainage infrastructure, or removal or otherwise rendering innocuous the disused parts. The notice will specify the times by which any works are to be executed

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the Magistrates Court within 21 days from the date on which the notice was served.

- **Public Health Act 1936 Sect. 83 & 84** - this shall be served where a local authority are satisfied that:
 - Sect. 83 - any premises are in such a filthy or unwholesome condition as to be prejudicial to health and/or verminous
 - Sect. 84 – any article in any premises is in so filthy a condition as to render cleansing, purification or destruction necessary, or is verminous or having in contact with is likely to be verminous.

A notice may impose requirements to undertake work specified to remedy the condition of the premises and/or articles within the premises. The notice will specify the times by which any works are to be executed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the Magistrates Court within 21 days from the date on which the notice was served.

- **Empty Dwelling Management Orders (EDMOs)**

In respect of a wholly unoccupied property and in accordance with the Housing Act 2004, Part 4, the Council may consider seeking an interim EDMO by application to First Tier Tribunal (FTT).

The Council will only consider using this power as one of last resort and where the property is in a habitable condition or can be made habitable at a reasonable cost and is likely to become occupied if this action is taken.

An EDMO gives the Council the right to possession of the property. The Council does not take over ownership but is entitled to possession of it and can prevent the owner from using it or letting someone else use it while the order is in force

There are two stages of an EDMO:

- Interim EDMO – last for an initial period of 12 months during which time the Council must work with the owner to agree a way of getting the property back into use. The Council would still need to seek the owner’s permission to let the property during this period.
- Final EDMO – lasts for a maximum period of 7 years and in this stage the owner has fewer rights in how the property is brought back into use.

If the Council does not proceed to make a final EDMO full possession is returned to the owner.

10.2. Works in default

Where the Council has issued a notice requiring specified works to be done within a set time period and those served with the notice have failed to comply, the Council has powers to carry out the works specified. This is referred to as works in default and in undertaking the works, the Council has the power to recover any and all expenses incurred as a result. Unpaid expenses can

be either pursued as a debt in County Court or registered as a land charge payable when the land/building is sold.

This can be a useful tool in ensuring the hazard(s) identified are still mitigated or minimised so they do not continue to pose a risk of harm while other formal action may be considered or taken.

Undertaking works in default does not prevent the Council taking further action in the form of a prosecution or civil penalty.

10.3. Breaches of Regulations

Failure to comply with the duties placed on a landlord under some regulations, such as the HMO Management Regulations¹ and the Electrical Safety Standard Regulations², are to “Breach the Regulations” and can thereby be an offence. Breaches of certain regulations may render a landlord liable to either a civil penalty or prosecution by the Council, separate to any other formal action the Council may take.

10.4. Civil Penalty

Under provisions granted to the Local Authority in the Housing & Planning Act 2016 the Council has the discretion, where they believe a relevant offence has been committed, to issue a civil penalty notice (CPN) in lieu of taking a prosecution. A CPN levies a fine which is payable to the Council and if it is not paid can be pursued as a debt in County Court.

Each Local Authority is required under the Act and in reference to the guidance issued by the Ministry of Housing, Communities & Local Government (MHCLG)³ to implement its own civil penalties scheme and charging structure with reference to this guidance to determine the use and level of civil penalties issued.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before issuing a civil penalty, a local housing authority should, in accordance with section 249(A)(1)⁴, be satisfied beyond reasonable doubt that a relevant housing offence has been committed.

Please see Appendix 1 (Housing Civil Penalties policy) for more details on the use & application of this option.

10.5. Prosecution

Where the Council is satisfied that an offence has been committed, whether by failure to comply with the requirements of a notice served or a direct breach of the relevant legislation has occurred, the case may be considered for prosecution. Prosecutions will be sought where it is expedient to do so and there is a public benefit to taking the case to court.

¹ Management of Houses in Multiple Occupation (England) Regulations 2006
<http://www.legislation.gov.uk/ukxi/2006/372/contents/made>

² Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
<http://www.legislation.gov.uk/ukdsi/2020/9780111191934/regulation/14>

³ Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

⁴ Housing Act 2004 (as amended) - <http://www.legislation.gov.uk/ukpga/2004/34/section/249A>

Prosecutions cannot be undertaken on cases where a CPN has already been issued for the same offence.

10.6. Enforced Sale

The Council will only consider enforced sale of a property where it is in relation to long term empty property and where it is appropriate.

This is available where a debt has been incurred e.g. following works in default, and that debt has been registered against the property on the local land charges register. This power of sale comes from the Law of Property Act 1925.

Enforced sale forces the owner to sell the property or land so as to recover their debt. The Council will only consider using this power as one of last resort. Please see Appendix 4 (Enforced Sales Policy) for more details on the use & application of this option.

10.7. Compulsory Purchase Order (CPO)

A CPO will only be considered on a PSH enforcement case where it is in relation to a long term empty property and all other possible actions or options have been exhausted to no effect.

Guidance issued by MHCLG⁵ encourages Local Authorities to make use of their CPO powers. The MHCLG is the department responsible for handling housing and planning CPOs. The Council must submit applications to confirm CPOs.

CPOs are a lengthy process but have been proven to be effective and are usually structured along the following lines:

- **Formulation** – proposal and negotiations are undertaken to see if a CPO is justified
- **Resolution** – the Council decides to serve the order
- **Order** – the CPO is submitted to MHCLG and Secretary of State
- **Objections** – the owner and local residents have a chance to object
- **Inquiry** – (if required) there is a public inquiry
- **Decision** – the order is confirmed by Secretary of State or an inspector so authorised by the Secretary of State
- **Possession** – this usually takes a minimum of 3 months following order being confirmed
- **Compensation** – the owner is compensated for the loss of the property where appropriate (although this is not always applicable where certain enforcement notices have been served)

All properties which had a CPO served on them will be sold on, preferably through auction, and monitored to ensure they are brought back into use.

⁵ Guidance on Compulsory purchase process and The Crichel Down Rules
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817392/CPO_guidance_-_with_2019_update.pdf#targetText=A%20compulsory%20purchase%20order%20should,interest%20in%20the%20land%20affected.

10.8. Banning Order

Under provisions granted to the Local Authority in the Housing & Planning Act 2016, the Council can apply to the First Tier Tribunal (Property Chamber) for a banning order against an individual and/or body corporate following conviction of a relevant banning order offence.

Banning orders are awarded for a period of no less than 12 months and can ban an individual from any of the following:

- Letting houses in England
- Engaging in letting agency work within England
- Engaging in property management work within England
- Doing two or more of the above.

Each Local Authority is required under the Act and in reference to the guidance issued by the MHCLG⁶ to develop and implement its own policy as to when to pursue a banning order and to decide the most appropriate course of action on a case-by-case basis in line with that policy. Please see Appendix 2 (Banning Orders policy) for more details on the use & application of this option.

10.9. Rent Repayment Orders

Under provisions granted to the Local Authority in the Housing Act 2004 and extended in the Housing & Planning Act 2016, the Council can apply to the First Tier Tribunal (Property Chamber) for rent repayment orders.

Rent repayment orders require a landlord to repay a specified amount of rent to either; the tenant if rental payments had been directly provided wholly or in part by them or, the Local Authority if rental payments were made wholly or in part through Housing Benefit or Universal Credit.

Each Local Authority is required under the Act and in reference to the guidance issued⁷ to implement its own rent repayment orders policy as to when a rent repayment order will be applied for and how they will determine the amount of repayment sought. Please see Appendix 3 (Rent Repayment Orders policy) for more details on the use & application of this option.

11. Investigation Standards

If you have a problem with the service provided please contact the Investigating Officer in the first instance. If you remain dissatisfied with the service provided, the action taken or the lack of action, a formal complaint can be made in accordance with Eastleigh Borough Council's Complaints Procedure. For details please visit our website: <https://www.eastleigh.gov.uk/the-council/compliments,-complaints-comments.aspx>

⁶ Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Housing Authorities https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf

⁷ Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf

Appendix 1 Housing Civil Penalties Policy

1.1 Scope

This policy will set out how Eastleigh Borough Council will use housing civil penalties, how it will decide when to levy a civil penalty as opposed to prosecuting and how it will determine the level of fine issued.

This policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed, complementing the rest of the Private Sector Housing enforcement policy.

1.2 Legislation

Under the Housing & Planning Act 2016 a local authority has the power to impose a civil penalty of up to £30,000.00 as an alternative to prosecution for certain specified offences in relation to Housing.

1.3 Considerable Offences

The following offences can be considered for a civil penalty:

Housing Act 2004

- Failure to comply with an Improvement Notice (section 30).
- Offences relating to licensing of HMOs (section 72)
 - Section 72(1) – being in control or managing an HMO which is required to be licensed but is not licensed
 - Section 72(2) – being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence.
 - Section 72(3) – being a licence holder who fails to comply with any condition of a licence.
- Offences in relation to licensing under Part 3 of the Housing Act 2004 (section 95).
 - Section 95(1) – being in control or managing a house which is required to be licensed but is not so licensed.
 - Section 95(2) – being a licence holder who fails to comply with any condition of a licence.
- Failure to comply with an overcrowding notice (section 139).
- Failure to comply with management regulations in respect of an HMO (section 234).

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020⁸

- Failure to comply with the duties placed on a private landlord (Regulation 3)

1.4 Principles of Civil Penalties

In accordance with the MHCLG guidance the charging structure has had consideration to the following principles:

⁸ The regulations are made under section 122 of Housing and Planning Act 2016. Regulations in full - <http://www.legislation.gov.uk/ukdsi/2020/9780111191934>

- **The severity of the offence** – The principle of which is the more serious the offence, the higher the civil penalty should be
- **The culpability and track record of the offender** – A higher penalty should be imposed where the offender:
 - Has a history of failing to comply their obligations, and/or
 - Their actions were deliberate, and/or
 - They knew, or ought to have known, that they were in breach of their responsibilities.
- **The harm caused to the tenant** – The principle of which is the greater the harm, or potential harm, the higher the penalty should be.
- **The appropriate punishment of the offender** – A civil penalty is not to be considered an easy or lesser option compared to prosecution. While the penalty should be proportionate, it is important that it is sufficient, that it has a real economic impact on the offender and demonstrates consequences of not complying with their responsibilities.
- **Whether it will deter the offender & others from repeat offending** – Aim being that while the penalty should be proportionate, it should equally be of sufficiently high amount to realistically deter repeat offending. An important part of this deterrence is the wider realisation amongst landlords that the Council is committed to levying civil penalties where appropriate and that the level will be of appropriately high to punish and deter further offending.
- **Whether it will remove financial benefit the offender may have obtained as a result of committing the offence** – The principle of which is ensure that the offender does not benefit from the offence. It should not be cheaper to offend than to ensure a property is properly managed and maintained in compliance with the legislation.

1.5 Determining when to issue civil penalty

A civil penalty may only be issued as an alternative to prosecution. Therefore, if a civil penalty is imposed, the offender is excluded from being prosecuted for the same offence. Equally, if a person has (or is being) prosecuted for a particular offence, a civil penalty cannot be issued for the same offence.

The Council, where it deems it necessary and proportionate to do so, will make full use of the powers to issue civil penalty notices for applicable offences.

Civil penalties can only be issued once for each of the considerable offences except those relating to management regulations in respect of an HMO (section 234), where a civil penalty can be issued per regulation breached.

Where a letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both parties as an alternative to prosecution. The level of fine imposed on each party may differ depending on the circumstances of the case.

The decision whether to issue a civil penalty notice will be made on a case by case basis and in consultation with the Council's legal services. The decision will be made by either the Senior Officer or Head of Health & Wellbeing, following a recommendation submitted to them by the case officer.

The decision whether to issue a civil penalty will be specifically recorded giving reasons for both issuing the financial penalty as well as the amount determined.

1.6 Determining level of fine

Although it is clear the Ministry expects local authorities to use the civil penalty powers provided to them robustly, the guidance indicates the maximum charge that can be imposed for an offence of £30,000 should be “reserved for the very worst offenders”. Instead, the guidance recommends that a clear and transparent charging structure be created, which takes into consideration the principles of civil penalties as outlined above.

In keeping with these principles, the Council has developed a matrix by which to calculate the level of fine imposed. All of the key principles are assessed with consideration to both the harm and the culpability.

1.6.1 Determining level of Harm

The seriousness of harm the offence had caused, or could foreseeably cause, must be assessed. When deciding the level of harm whether actual, or potential, resulting from the offence the Council will have regard to the following:

Level	Considerations
High	<ul style="list-style-type: none"> • Actual harm to an occupant and/or visitor • Serious and substantial risk of harm to an occupant and/or visitor • Serious and substantial level of overcrowding • Serious effect having a widespread impact
Medium	<ul style="list-style-type: none"> • Adverse effect on an occupant and/or visitor • Moderate risk of harm and/or broader impact.
Low	<ul style="list-style-type: none"> • Minimal adverse effect on occupant and/or visitor • Low risk of harm and/or limited impact

In determining the level of harm the Council will have regard to the person (physical injury, effect on health, psychological impact), the community (economic loss, effect on public health) and other types of harm.

The nature of harm will depend on personal characteristics and circumstances of those affected (occupant and/or visitor). Factors that indicate a higher degree of harm include where there are multiple individuals affected, if individual affected is particularly vulnerable, or if the effect is especially serious including the psychological impact.

1.6.2 Determining level of Culpability

In determining the culpability the Council will have regard to following:

Level	Considerations
Very High	<ul style="list-style-type: none"> • Deliberate acts • Purposeful intention to cause harm • Flagrant and knowing disregard for law
High	<ul style="list-style-type: none"> • Reckless in considering whether harm would be caused

	<ul style="list-style-type: none"> Failed to put in place measures that are recognised legal requirements. Ignored advice or warnings from the Council, occupants or other regulatory bodies (such as Hampshire Fire & Rescue Service). Failed to take appropriate actions after being alerted to risks. Breaches allowed to continue over a long period of time
Medium	<ul style="list-style-type: none"> Negligent in their understanding what harm their actions may cause. Systems or procedures in place for adequate management but not sufficiently adhered to or implemented.
Low	<ul style="list-style-type: none"> Failure to take reasonable care Significant attempts to comply but not fully sufficient.

1.7 Financial penalty level

Once the levels of harm and culpability have been assessed the matrix outlined below can be used to determine the most appropriate penalty level.

		Culpability			
		Low	Medium	High	Very High
Harm	Low	£2,000	£5,000	£10,000	£15,000
	Medium	£5,000	£10,000	£15,000	£20,000
	High	£10,000	£15,000	£20,000	£30,000

Where there may be aggravating or mitigating factors, consideration will be given to these and whether to apply any adjustments to the fine level determined as result of those factors. Any adjustment will be determined on the individual circumstances of each case. Any adjustment given, either up or down, will not take the fine level be beyond that of the next neighbouring fine level in the above matrix.

Aggravating factors may include, but is not limited to:

- Previous convictions
- Financial motivation to offence
- Obstruction of the investigation
- Deliberate concealment of activity/evidence
- Falsification of documentation
- Deliberate targeting of vulnerable persons

Mitigating factors may include, but is not limited to:

- Co-operation with investigation, i.e. attend PACE interview if held
- Any voluntary steps taken to address issues
- Genuine acceptance of responsibility and remorse for harm caused (potentially caused)
- Health reasons preventing reasonable compliance
- Previous good character or exemplary conduct.
- No history of previous offences
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.

1.8 Financial means to pay a civil penalty

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

It is for the offender to disclose to the Council such data that may be relevant to his financial position as will enable the Council to assess what they can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient and/or reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may reasonably be considered relevant to making such an inference.

As offenders may own more than one property in the Borough, it is likely that they will have assets that they can sell or borrow against. The Council will take into account the amount of equity that could be reasonably released either from sale or refinancing from any such properties (having made allowances for any mortgages) in determining the appropriate level of financial penalty to impose, where an offender claims to be unable to pay a financial penalty and shows they are on a low income.

1.9 Procedure for Issue of Civil Penalty

The Council will issue civil penalty notices in accordance with the proscribed procedures and requirements as set out in schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.

- The Council is required to issue a 'notice of intent'. Under this notice, the person to which it relates will have a period of 28 days in which to make written representation to the Council. The representation may be via any legible written format.
- Following the 28 day period and due consideration of any representations received being made, should the Council still propose to issue a civil penalty a 'final notice' must be served.
- There is a right of appeal to the 'final notice' either against the decision to issue and/or the amount imposed. The appeal must be made to the First Tier Tribunal (property chamber) within 28 days from the date on which the 'final notice' is served. The 'final notice' is then suspended until the appeal is determined or withdrawn.

Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings will be initiated for the same offence. The Council may, at any time either; withdraw a notice of intent or final notice, or reduce the amount specified in a notice of intent or final notice. Where the Council decides to take either action, the person to whom the notices relates will be written to.

1.10 Entry on to Rogue Landlord's Database

In accordance with statutory provision relating to the National Rogue Landlord's Database, where a person has received two civil penalties within any 12 month period for offences occurring within the Eastleigh Borough Council's area, the Council will make an entry on the national database. When considering an entry, the Council will have regard to any guidance issued by the Secretary of State for this purpose

Appendix 2 Banning Orders Policy

2.1 Scope

This policy will set out how Eastleigh Borough Council will decide when to apply for a banning order and how it will determine the length of time to request the ban is for.

This policy is designed to ensure transparency, consistency and fairness in how and when banning orders are sought, complementing the rest of the Private Sector Housing enforcement policy.

2.2 Legislation

Under the Housing & Planning Act 2016 the Council may apply to the First Tier Tribunal (property chamber) (FTT) to impose a banning order on an individual following conviction for a banning order offence.

2.3 Considerable offences

The offences for which a banning order may be applied for are listed in the statutory regulations issued in 2017⁹ and apply to convictions for these offences issued either on or after 6th April 2018.

Spent convictions should not be considered and if an absolute or conditional discharge for a relevant housing offence has been given, then that offence cannot be regarded as a considerable banning order offence.

2.4 Principles of banning orders

The MHCLG guidance sets out an expectation that banning orders should be aimed at the most serious offenders.

2.5 Length of banning order

Although the Council will not be able to determine the length of a banning order, a recommendation will be made to the FTT with accompanying reasons.

The length of a banning order is a minimum of a 12 month period but there is no statutory maximum limit set.

2.6 Determining when to apply for a banning order

The Council will consider applying for a banning order for the most serious and pernicious offenders. In doing so, the following factors will be considered:

- The seriousness of the offence
- Any previous convictions or listing on the national rogue landlord database
- The harm to the tenant caused by the offence
- Whether the punishment is proportional to the offence
- Whether it provides a sufficient deterrent to prevent repeat offending
- Whether it deters others from committing similar offences.

⁹ Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017
<http://www.legislation.gov.uk/ukdsi/2017/9780111162224/contents>

The Council, where it deems it appropriate and proportionate to do so, will make full use of the powers to apply for banning orders.

The decision whether to pursue a banning order will be made on a case by case basis and in consultation with the Council's legal services. The decision will be made by either the Senior Officer or Head of Health & Wellbeing following a recommendation submitted to them by the case officer.

2.7 Procedure for applying for a banning order

The procedure for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016.

- The Council is required to issue a 'notice of intent' to the individual within 6 months of them being convicted of the relevant offence.
- Under this notice, the person to which it relates will have a period of 28 days in which to make written representation to the Council. The representation may be via any legible written format.
- Following the 28 day period, having given due consideration to any representations received, should the Council still propose to pursue a banning order an application will then be made to the FTT.

2.8 Requests for information

Section 19 of the Housing and Planning Act 2016 gives provision to the Local Authority to be able to require that a landlord provide information for the purpose of enabling the Council to decide whether to apply for a banning order. This can include requiring the landlord to provide details on ALL properties that they own.

In relation to requests for further information made by the Council under this section:

- It is an offence to ignore or fail to provide the information requested, unless the landlord can provide a reasonable excuse.
- It is an offence to provide false or misleading information.
- Offences are punishable on summary conviction to a fine

2.9 Consequences of a banning order

Where a banning order is made, the individual will be determined not to be "fit and proper" to hold a licence under Part 2 or 3 of the Housing Act 2004 and any licences in force under those parts will be revoked.

Where a banning order is made, the individual is prohibited from:

- Letting housing in England
- Engaging in letting agency work within England
- Engaging in property management work within England; or
- Doing two or more of those things (to ensure that any order is effective and to prohibit engagement in other related activities)

It is a criminal offence to breach a banning order and is punishable on summary conviction to imprisonment, a fine, or both.

2.10 Entry on to Rogue Landlord's Database

In accordance with statutory provision relating to the National Rogue Landlord's Database, where a successful banning order has been made, the Council must make an entry on the national database. The entry is maintained for the period the banning order is in effect.

2.11 Publicity following a banning order

Where a successful banning order has been made, the Council will consider whether to publish details of these, including the name of the individual. Advice from the Council's legal services will be sought where appropriate and consideration will be given to the Ministry of Justice guidance as to whether publish sentencing outcomes¹⁰.

Information on banned landlords will be made available to tenants on written request.

¹⁰ Publicising Sentencing Outcomes: Guidance for public authorities on publicising information (including via the internet) about individual sentencing outcomes
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487464/20150413-Publishing_Sentencing_Outcomes_MoJ_Guidance_HQMCSPA-O.pdf

Appendix 3 Rent Repayment Orders (RRO) Policy

3.1 Scope

This policy will set out how Eastleigh Borough Council will decide when to apply for a rent repayment order (RRO) and has

This policy is designed to ensure transparency, consistency and fairness in how and when RROs are sought, complementing the rest of the Private Sector Housing enforcement policy.

3.2 Legislation

The Housing & Planning Act 2016 extended the provision already within the Housing Act 2004 for the use of RROs. Under these provisions the Council may apply to the First Tier Tribunal (FTT) for a RRO.

3.3 Principles of rent repayment orders

RROs are intended to have a real economic impact on an offender and demonstrate the consequences of not complying with their responsibilities. The responsible person is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by committing the offence.

3.4 Considerable Offences

The following offences under the Housing Act 2004 can be considered for a RRO:

- Section 72(1) - Failure to obtain a licence for a licensable HMO
- Section 95(1) - Failure to obtain a licence for a licensable property
- Section 30 - Failure to comply with an Improvement Notice
- Section 32 - Failure to comply with a Prohibition Order

The following other offences can also be considered for a RRO:

- Housing & Planning Act 2016, Section 21 - Breaching a banning order
- Criminal Law Act 1977, Section 6 - Used violence to secure entry to a property
- Protection from Eviction Act 1977, section 1 - Illegally evicted or harassed the occupiers

This applies for offences committed on or after the 6th April 2017.

3.5 Determining whether to apply for a rent repayment order

Where the Council has secured a successful prosecution for a relevant offence they may apply for a RRO.

The Council may also consider applying for a RRO when a relevant offence has been committed, whether or not the person responsible has been convicted. In this instance the FTT will need to be satisfied beyond reasonable doubt that the landlord has committed the offence

In deciding whether a RRO is appropriate and how much should be recovered, consideration will be given to the following:

- Whether the punishment is proportional to the offence
- Whether it provides a sufficient deterrent to prevent repeat offending
- Whether it deters others from committing similar offences.

- Removal of any financial benefit the offender may have gained as a result.

Seeking an RRO does not preclude or prevent the Council from also considering a prosecution or a civil penalty (unless the offence is being/has been prosecuted).

Where it is determined that it is appropriate and proportionate to apply for an RRO the Council will seek to recover the maximum amount possible.

The decision whether to pursue a RRO will be made on a case by case basis and in consultation with the Council's legal services. The decision will be made by either the Senior Officer or Head of Health & Wellbeing following a recommendation submitted to them by the case officer.

3.6 Procedure for applying for a rent repayment order

RROs can only be applied to the named landlord of the property. The procedure for applying for a RRO is set out in sections 41 & 42 of the Housing and Planning Act 2016.

- The Council is required to issue a 'notice of intent' to the individual within 12 months of the date on which the offence was committed.
- Under this notice, the person to which it relates will have a period of 28 days in which to make written representation to the Council. The representation may be via any legible written format.
- Following the 28 day period, having given due consideration to any representations received, should the Council still propose to pursue a RRO an application will then be made to the FTT.

A tenant can apply directly for a RRO providing that the offence relates to housing they occupied at the time of the offence and the application is made within 12 months of the offence being committed.

A tenant does not need to go through the same process as the Council, as outlined above, they need only submit a claim form directly to the FTT setting out their reasons and date to which it relates.

There is no statutory obligation on the Council to support a tenant making their own claim. However, where the Council has evidence in support of the tenant's case it will make this available to the tenant on request for the purposes of the claim.

3.7 Consequences of a rent repayment order

Rent repayment orders require a landlord to repay a specified amount of rent to either;

- The tenant if rental payments had been directly provided wholly by them; or
- The Local Authority if rental payments were made wholly through Housing Benefit or Universal Credit; or
- Both the tenant and Local Authority if rental payments were jointly paid by both, with repayment made to each in the same ratio to which the rent was originally covered.

The maximum amount of rent that can be recovered is capped at 12 months. Where a landlord refuses to pay the debt can be pursued through the County Court

Appendix 4 Enforced Sale

4.1 Scope

This policy will set out Eastleigh Borough Council's position as to when and how the Council will consider the use of Enforced Sale.

This policy is designed to ensure transparency, consistency and fairness in how and when Enforced Sales are used, complementing the rest of the Private Sector Housing enforcement policy.

This policy does not cover the right to sell a property because of Council Tax arrears, as that requires an application to court and an order for sale, whilst an enforced sale required no court action.

4.2 Legislation

The powers to carry out an enforced sale sits within the Law of Property Act 1925, there are a number of statutes which enable a charge to be placed on a property in the event of Works in Default which then confers a power of sale under the Act. The most common statutes to which this would apply are listed in the table below along with some notable differences between them. The following table is not exhaustive:

Act	Sections	Comments
Prevention of Damage by Pests Act 1949	<ul style="list-style-type: none">• S. 4 – Rats and Mice	<ul style="list-style-type: none">• Charge arises from date works are completed• Priority charge• Reasonable interest can be claimed from date of service of demand
Building Act 1984	<ul style="list-style-type: none">• S. 59 – Drainage• S. 60 – Soil vent pipe• S. 76 – Defective premises• S. 77/78 – Dangerous buildings• S. 84 – yards	<ul style="list-style-type: none">• Charge arises from date works are completed.• Priority charge• Reasonable interest can be claimed from date of service of demand
Environmental Protection Act 1990	<ul style="list-style-type: none">• S. 80 – Statutory nuisance	<ul style="list-style-type: none">• Charge arises 21 days after service of demand• Reasonable interest can be claimed
Housing Act 2004	<ul style="list-style-type: none">• S. 11/12 – Improvement notice• S. 40 – Emergency Remedial Action• S. 49 – Enforcement Action• S. 50 – Recovery of Charges under s.49	<ul style="list-style-type: none">• Charge arises 21 days after service of demand• Reasonable interest can be claimed
Town & Country Planning Act 1990	<ul style="list-style-type: none">• S. 215 – Untidy state of land• S. 172 – Planning breach	<ul style="list-style-type: none">• Charge arises from date works are completed

4.3 Key considerations

In most cases the Council's charge will take priority over any earlier charges including a mortgagee's charge. However, this is not always the case and if the Council's charge does not take priority then pursuing an enforced sale may not be financially viable.

4.3.1 Human Rights Act 1998

Consideration must be given and clearly documented in relation to the Human Rights Act 1998 as selling a property belonging to a third party engages Article 8 of the Act as well as Article 1 of Protocol 1. A statement setting out the reasons why the action is proportionate in accordance with the Act should be sent out in any correspondence with the owner as well as recorded to the case.

4.3.2 Limitations

The power to utilise enforced sales is time limited by section 20 of the Limitation Act 1980. This states that no action can be brought to recover a sum of money secured by a charge on a property after a period of 12 years from the date on which the debt arose.

4.3.3 Equality Act 2010

Where the owner appears or is known to be vulnerable or disadvantaged, then officers will consider the appropriateness of involving other agencies who could assist and/or advocate for the owner. Officers will carefully consider the impact using the enforced sales may have, whether there are any steps that could be taken to mitigate the effect of using this option and will have due regard at all times to the Council's obligations under the Equality Act 2010.

4.4 Criteria for Enforced Sale

If the property remains empty and its associated problems continue, then Enforced Sale may be considered provided the following criteria are met:

- It is a residential property
- The property is untidy, in disrepair or detrimental to the local amenity and where the Council can demonstrate that it has made every reasonable effort to improve through other means
- The property has been empty for more than 2 years
- The property has outstanding financial local land charges of over £1000. However, where the debt is below £1000 but the owner cannot be traced or is refusing to co-operate, the use of enforced sale may still be considered.
- The debt has been owed to the Council for more than three months
- The owner is either:
 - Unknown to the Council (having made all reasonable effort to ascertain ownership details); or
 - Cannot be found; or
 - Is known but cannot be located; or
 - Is known and, having been located, been afforded every opportunity to improve the property or dispose of it but has shown no inclination to do either
- The location of the property and the prevailing tenure or economic conditions of the area indicate that sale and occupation would likely be readily achieved

- The action is in the interests of the community and local environment and is the best means of ensuring that the property is not allowed to deteriorate further/again.

4.5 Determining whether to pursue an Enforced Sale

The decision whether to pursue an Enforced Sale will be made on a case by case basis and in consultation with the Council's legal services. The decision will be made by either the Senior Officer or Head of Health & Wellbeing following a recommendation & report submitted to them by the case officer.

4.6 Marketing Property

At no time in the enforced sales process does the Council take possession of the property. The Council will have no more rights of access than it does for any other private house and as such is not able to provide access for viewings of the property to potential purchasers.

The Council has a duty to secure the best possible price on a sale. The Council will seek to sell any property under enforced sale through Auction but will ensure that marketing will be sufficiently wide to ensure competitive bidding takes place.

4.7 Procedure

The Council will in accordance with recognised good practice, write to the owner reminding them of the existence of the charge(s) and providing copies of the original notice(s) and previous demands for money and give a period of 21 days before commencing further with the enforced sale procedure.

The Council is required to serve a legal notice under section 103 of the Law of Property Act 1925 after which a period of no less than 3 months must be given for the payment of any outstanding debt. This notice will be prepared and served by the Council's legal services.

If the debt remains outstanding then an application is made to the Land Registry for the registration of the charge and, where applicable, claiming priority over all other charges. This application is made by the Council's legal services.

Once the charge has been registered and the Charge Certificate received the property can be marketed for sale at which time a further letter to the owner and any other interested party will be sent to warn the charge is to be enforced.

If, following the recovery of the Council's charges (including its legal and sale costs) and any other outstanding charges, there remains a balance then this will be paid to the owner. In cases where the Council has not been able to identify or locate the owner, the remaining balance will be retained by the Council and after a period of 12 years the owner will cease to have the right to claim this money.