



**Community and Housing**

**HOUSING ENFORCEMENT POLICY**  
**2019 – 2024**

**DRAFT (Ver May 2019)**

## 1. Introduction

This enforcement policy relates to the duties and powers delegated to the Council to deal with substandard private sector housing, substandard management of private housing, statutory nuisance, public health matters and the enforcement of other relevant legislation. The policy has been developed with regard to the Regulators' Code 2014.

The Environmental Health - Housing Team forms part of the Housing Needs Section under the Community and Housing Directorate. The team deals with environmental health functions in relation to residential properties. Within the team there are a variety of separate but interrelated functional areas. These include:

- Improvements of housing standards in the private rented sector
- Operating the Mandatory Licensing of Houses in Multiple Occupation
- Managing the Disabled Facilities Grant Funding
- Investigation and resolution of Public Health /Drainage related matters
- Statutory nuisance (excluding Pollution related complaints)
- Pest Control as determined by statutory duties

This document is the overall enforcement policy covering these disciplines. It outlines the approach to enforcement and lays down the principles that will be followed in deciding upon, and taking, action.

## 2. Aim of Policy

The enforcement policy helps to promote efficient and effective approaches to inspection and enforcement. The aim of the policy is to ensure that all enforcement undertaken is:

**Targeted on risk**- at properties and people that pose the greatest risk, including owners and landlords who evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

**Proportionate** - reflecting the nature, scale and seriousness of any breach or non-compliance.

**Fair and objective** - based on the individual circumstances of the case, taking all factors into account.

**Transparent** – Officer's actions will be explained in plain language, with clear reasons given for any enforcement action taken and compliance. A clear distinction will be made between legal requirements and advice or guidance.

**Consistent** - taking a similar approach in similar circumstances to achieve similar ends. All factors such as the level of risk, the history of compliance and the attitude and actions of those involved will be considered

**Accountable** - undertaken in a responsible manner that has a clear purpose. Where enforcement action is taken, the Officer will ensure that information about their rights of appeal are provided. Furthermore service complaint details can be provided on request.

### 3. Level of Service

Following the receipt of a non urgent service request or complaint about poor housing conditions an initial risk assessment will normally be carried out and the tenant will be sent within 7 working days a Tenant Declaration Form to complete and return to the section within 28 days.

Any follow up advice or action will depend on the outcome of the initial assessment, and the information provided by the Tenant. The council will take further action to deal with health and safety concerns or issues which cause a statutory nuisance. For less serious issues, such as delays to other repairs we will provide support to advise tenants of their rights and practical steps they may wish to follow.

For urgent service requests we will assess the request and urgency and where appropriate we aim to contact you within 24 hours for urgent matters such as a blocked drain; lack of hot water/heating; water penetration etc.

#### Service standards

With all e-mails and letters we:

- Aim to respond within 15 working days
- will update you on progress and advise you when we can respond if we are unable to respond in full
- will provide well-structured responses, using plain language responding to all the points raised.

If you call our telephone numbers we will aim to:

- Answer your call within five rings
- Divert our phone to a colleague or voicemail if we are unavailable
- Return your phone calls by the end of the next working day, unless otherwise agreed

Personal callers should make an appointment as case officers are out of the office for most of the day, and are unable to see callers without a prior appointment.

### 4. Authorisation of Officers

Officers who are competent by training, qualification and/or experience will be authorised to carry out enforcement action. Authorised officers will have sufficient training and understanding of Merton's standard procedures to ensure a consistent approach to service delivery.

Officers who undertake enforcement action, including criminal investigations, will be up to date with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA), the Data Protection Act 2018 and General Data Protection Regulation (GDPR), the Human Rights Act 1998,

the Equality Act 2010, the Regulation of Investigatory Powers Act 2000, the Freedom of Information Act 2000 and Anti-social Behaviour, Crime and Policing Act 2014.

As well as council officers, qualified contractors may also be authorised to take enforcement action on behalf of the Council.

## 5. Powers of Entry

Tenants of the private rented sector should inform their landlord, except in emergency situations, of the problem (preferably in writing) and allow them an opportunity to resolve it. We will normally direct tenants to contact their landlord first, but will investigate a complaint where private tenants are dissatisfied with the response or action undertaken by their landlord.

In certain situations tenants will not be expected to contact their landlord first, including but not limited to:

- where the tenant has received notice to leave the accommodation
- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened eviction/poor management practice;
- where the tenant appears to be vulnerable or where there are vulnerable members of the household;
- where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- where the property is a House in Multiple Occupation which appears to fall within the council's HMO Licensing Scheme.

Landlords should note that their tenant(s) have a right to invite Council officers into the property for the purpose of inspection or investigation without the need to inform the landlord or require their permission.

Powers of entry will be exercised by persons authorised by the Council and conducted, with or without notice, in accordance with the relevant statutory provisions, e.g section 239 of the Housing Act 2004. Anyone who obstructs an authorised officer from entering a premises in accordance with their powers is committing an offence and may be prosecuted in accordance with the provisions of this policy.

Tenants are responsible for keeping us informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the council is taking or considering taking.

In appropriate circumstances, a Notice of Intended Entry will be served or an application made to the Magistrates' Court for a warrant to enter in accordance with the relevant statutory provisions, e.g. section 240 of the Housing Act 2004.

## 6. Enforcement Options

### Housing Association and Other Registered Provider Tenants

The Council will not normally take on cases of disrepair reported by these tenants. This is because social landlords have programmes of planned maintenance and repair in place and, unlike private landlords, have complaints policies which their tenants can follow if they are dissatisfied. Tenants have a final right to complain to the Housing Ombudsman.

The exception would be if there are clear Category 1 Hazards, as defined by Part 1 of the Housing Act 2004 in the property which the social landlord has failed or refused to address.

The decision to take enforcement action will be made on a case-by-case basis in accordance with the provisions of this Enforcement Policy. For the avoidance of doubt, any form of enforcement action can be taken as appropriate in the circumstances of the case and there is no requirement to have first taken a lesser or different form of enforcement action, for example, the decision to prosecute can be taken without having first given a warning.

### Private Sector Tenants

#### i. Informal Action (Preliminary Notices)

Formal action under the Housing Act 2004 may be preceded by the service of preliminary notices by which the Council sets out a proposed schedule of works and time scales for completion of the work. These notices invite landlords to make representation if they disagree with the requirements of the notice or if they wish to suggest an alternative course of action.

The time-limits given on Preliminary Notices for starting and completing works will be assessed on a case-by-case basis and will generally be related to the estimated cost and nature of the required works, e.g.as follows:

Cost of works	Start	Complete	Total
Less Than £5,000	28 days	28 days	56 days
£5,000-£15,000	60 days	30 days	90 days
> £15,000	60 days	60 days	120days

The preliminary notice invites landlords to complete an undertaking stating that they agree to the required works and the proposed timescales. If an undertaking is received, no further action will be taken unless the agreement is not adhered

to. The preliminary notice advises the landlord that a statutory notice will be served in 21 days if an undertaking is not received or if they do not make a representation. The statutory notice will list the same works as outlined in the preliminary notice.

With statutory nuisance and public health issues there is no provision for preliminary notices. Where possible we will send a letter to advise residents that we are investigating a complaint and depending on the outcome we may serve a statutory notice.

In cases where action is required immediately we will serve a notice in the first instance (e.g. blocked drains and statutory nuisance). An explanation for such action will be given at the time and confirmed in writing in most cases within 7 working days.

### Representations Made in Response to Informal Notices

Persons receiving an 'informal' notice will be given a reasonable period of time (as specified on the notice) in which to make representations (Housing Act) or carry out the works (other legislation). Having considered any representations, a decision will then be made as to whether to proceed with statutory enforcement action, taking the following factors into account:

- landlord's previous history;
- proposed timetable for works;
- whether the landlord has made clear their intention to carry out the works and whether this is within the time-limit specified in the 'informal' notice.

Where the content of the representations received is satisfactory, the person on whom the notice was served will be informed in writing. This letter will also confirm the terms under which the representations have been accepted, for example, the agreed time-period for completion of works and any amendments to the schedule of works. Statutory enforcement action will be taken in the following situations:

- where no representations are made and no undertaking to do the work has been given;
- where the representations made are unacceptable;
- where unsatisfactory progress has been made following acceptance of representations.

Formal action may not be considered where the matter is of a very minor nature. In such situations the tenant will either be given advice or a one-off letter may be sent to the landlord and the case will then be closed. In cases where an owner-occupied property is having a harmful effect upon adjoining properties, or the amenity of the neighbourhood as a whole, an informal approach will be made to the owner in the first instance.

## ii. Statutory Action

The Housing Act 2004, the Housing Act 1985 (as amended) and the Environmental Protection Act 1990 are the principal Acts covering statutory action taken. Authorised officers will be allowed to draft and sign their own statutory notices once they have undergone a period of training and monitoring and manager(s) are satisfied of their competency,

### Situations Where an Informal Notice is not required

Where it is necessary to take immediate enforcement action the 'informal' notice will not be issued. This will be considered where there is an imminent risk to health or a significant statutory nuisance, where the landlord is absent or has a poor management record, or where the landlord or managing agent has a history of failing to respond to informal action.

## 7. Service of Statutory Notices

### Owner-occupied Property

Enforcement action will only be considered where the condition of an owner-occupied property is such that it is a danger to the occupier, it is having a detrimental effect on adjoining properties, or it is having a detrimental effect on the amenity of the neighbourhood as a whole and the problem cannot be solved by informal means.

### Privately Rented Property

Properties are inspected using the housing health and safety rating system which links defects in properties with hazards to the health or safety of the occupants or visitors. Where properties have been assessed as having a high hazard rating, or there has been a failure to comply with legislation covering houses in multiple occupations, an assessment of risk will be undertaken to determine the appropriate course of action and to inform the decision on whether immediate enforcement action is necessary.

The main statutory notices/orders used are as follows:

- Housing Act 2004, sections 11 and 12, Improvement Notices relating to properties with category 1 or category 2 hazards.
- Housing Act 2004, sections 20 and 21, Prohibition Orders relating to properties with category 1 or category 2 hazards.
- Housing Act 2004, sections 28 and 29, Hazard Awareness Notices relating to properties with category 1 or category 2 hazards.
- Housing Act 2004, section 40, Notice of Emergency Remedial Action.
- Housing Act 2004, section 43, Emergency Prohibition Order.
- Housing Act 2004, section 102, Interim Management Order.
- Housing Act 2004, section 103, Special Interim Management Order.
- Housing Act 2004, section 113, Final Management Order.

- Housing Act 2004, section 133, Interim Empty Dwelling Management Order.
- Housing Act 2004, section 136, Final Empty Dwelling Management Order.
- Housing Act 2004, section 139, Overcrowding Notice in respect of a HMO.
- Housing Act 1985 (as amended), section 17, Compulsory Purchase Order.
- Housing Act 1985 (as amended), section 265, Demolition Order.
- The Management of HMOs (England) Regulations 2006, notice requiring works to remedy deficient management issues within HMOs.
- Environmental Protection Act 1990, section 80, Abatement Notice in respect of statutory nuisance.
- Building Act 1984, section 59, Notice requiring execution of works of drainage, etc., in existing buildings.
- Public Health Act 1936, section 45, Notice requiring works to defective water closets capable of repair.
- Public Health Act 1961, section 17(1), Notice to remedy insufficiently maintained drains, etc.
- Public Health Act 1961, section 17(3), Notice to remedy stopped-up drains, etc.
- Public Health Act 1961, section 83
- Prevention of Damage by Pest Act 1949, section 4.

#### 8. Statutory Notice Time Periods

The time-limits given on statutory Housing Act 2004 notices for starting and completing works will be assessed on a case-by-case basis and will generally be related to the estimated cost and nature of the required works, e.g. as follows:-

Cost of works	Start	Complete	Total
Less Than £5,000	28 days	28 days	56 days
£5,000-£15,000	28 days	40 days	68 days
> £15,000	28 days	50 days	78 days

If the required works are only of a limited extent then the time limits will be reduced accordingly, with a minimum time limit of 29 days in total being allowed. Extensions of time for starting or completing work will only be granted where there are legitimate reasons for doing so. Examples include an agreed work programme for an owner with several properties requiring works, or works are in progress but not completed. The extension of time will be granted by the officer dealing with the case in consultation with the owner and occupier of the property.

Statutory notices under other legislation will usually contain shorter time periods, from 7 to 21 days, but in urgent drainage, public health or statutory nuisance cases the time limit may be 24 or 48 hours.

## 9. Charge for Enforcement Action

A charge is made for the cost of administrative and other expenses involved in taking the following statutory enforcement action:

- Serving of an improvement notice under section 11 and 12 of the Housing Act 2004.
- Making of a prohibition order under section 20 and 21 of the Housing Act 2004.
- Serving of a hazard awareness notice under section 28 and 29 of the Housing Act 2004.
- Taking emergency remedial action under section 40 of the Housing Act 2004.
- Making an emergency prohibition notice under section 43 of the Housing Act 2004.
- Making of a demolition order under section 265 of the Housing Act 1985 (as amended)
- Service of a notice under section 80 of the Environmental Protection Act 1990
- Service of a notice under section 59 of the Building Act 1984
- Service of a notice under section 45 of the Public Health Act 1936
- Service of a notice under section 17 of the Public Health Act 1961

The charge is £450 for each Housing Act 2004 notice/order served/made. Where more than one person is served with a notice/order the charge may be recovered from the main recipient (usually the person who is primarily responsible for the management of the property) or split equally between the recipients.

Charges for Housing Act 1985 and Housing Act 2004 notices and orders are made in accordance with section 49 of the Housing Act 2004. Charges for other notices are made in accordance with section 36 of the Local Government Act 1974. In each case an invoice will be issued and if the charge is not paid within 28 days recovery action is taken by the Council's Debt Recovery Team, including interest where appropriate.

Where there is an appeal against a notice or order, the charge is suspended, until the appeal is determined. However, there is no separate right of appeal against the charge. In cases of extreme hardship, the Head of Service/ Director of Department has discretion to reduce or waive charges for enforcement action.

The charge may also be waived if a notice has been served without the prior service of a 'informal' notice where this has been done to ensure that the works are carried out quickly in a specific case, eg if fire precaution works are recommended by the London Fire Brigade. However, if the statutory notice has been served without an informal notice having been served because of either the landlord's history of failing to respond, or the landlord is absent, the cost of enforcement action will be charged.

## 10. Pro-Active Enforcement

The Council has a duty to review local housing conditions to identify any action

that may be required.

We will seek to identify HMOs that require a mandatory licence and properties where Category 1 hazards exist.

We will target those landlords who deliberately or persistently break the law. Where poor conditions are identified in a privately rented property, we will seek to identify and inspect other properties owned or managed by the same individual or company.

#### 11. Appeals

Individuals and businesses have a right to question or appeal against enforcement action. There are statutory appeal mechanisms, details of which will be given when action is taken. In addition, a corporate complaints procedure is in place for dis-satisfied customers.

Every effort will be made to have appeals heard as soon as possible, but this is often outside our control. Costs will generally be sought if an appeal is found in favour of the Council or subsequently withdrawn by the appellant.

#### 12. Re-connection of Services

Statutory powers can be used to ensure the re-connection (or to prevent the disconnection) of the gas, electricity or water supply, to lettings within tenanted properties. These powers will only be used where the tenant is not responsible for payment of the bill. In these cases the details will be passed to the Tenancy Relations section as non-payment of a utility bill, which is likely to lead to tenants being without services through no fault of their own, is a form of harassment.

If section 19 of the Greater London Council (General Powers) Act 1972 is used to arrange the re-connection of the gas or electricity supply, the owner will be charged an additional 30% to cover the Council's costs, in addition to the costs of re-connection and payment of the bill plus interest.

If section 33 of the Local Government (Miscellaneous Provisions) Act 1976 is used the owner will be charged the cost of re-connection and/or payment of the bill plus interest.

#### 13. Works in Default

In some circumstances, failure to comply with a notice may result in the council arranging for the necessary works to comply with the notice to be carried out (work in default). Should the council need to carry out work on a dwelling in default of the responsible person, we will charge the full cost of the works plus an administration fee of 30%. This is to cover the officer time involved.

Where works in default have been carried out, the council may register this as a local land charge. The council will then seek to use the enforced sale procedure under the Law and Property Act 1925 to recover payment. This allows the council to force the sale of their property in order to recover its costs. A court order is not necessary.

This is a discretionary power and in all cases the council's ability to use it is dependent on sufficient financial resources being available. We will approach

each case on its merits, where the budget is limited it will be prioritised for cases which present a significant and imminent health and safety risk.

Debts owed for works carried out in default will be registered as a charge on Local Land Charges Register and the HM Land Registry until such time as the debt is recovered.

#### 14. When a Service to Tenants is not Provided

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

- where the only defect in the property results in a low scoring hazard of band G, H, I or J assessed in accordance with the Housing Health and Safety and Rating System;
- where the tenant(s) are, of their own free will, shortly to move out of the property;
- where the tenant(s) unreasonably refuse access to the landlord, managing agent or contractors to arrange or carry out works;
- where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property that they are complaining about, and there are no other items of disrepair;
- the housing enforcement team cannot assist with re-housing. If a tenant does not want their present accommodation to be brought up to standard in the hope of being re-housed, we will signpost to the correct services;
- where the tenant(s) have requested a service and then failed to keep an appointment and do not respond to a follow up letter or telephone call;
- where the tenants have been aggressive, threatening, or verbally or physically abusive towards officers.

#### 15. Leaseholders and Owner Occupiers

We will not normally become involved in disputes between leaseholders and freeholders or between neighbouring owner occupiers. Such disputes, and their outcome, rely on legal clauses within leases or deeds and we are not equipped to interpret these sufficiently to take legal enforcement action. We may give general advice and/or signpost the complainant to other organisations which may offer advice, including advice on the taking of civil action.

The exception to the above is where a statutory nuisance, drainage or pest control issue is emanating from a clearly identified property and is affecting or has the potential to affect neighbouring properties and people.

#### 16. Simple Cautions

The Ministry of Justice issued guidance (effective from 13 April 2015) on the use of simple cautions and this guidance will be used for all decisions relating to simple cautions. The simple caution scheme is designed to provide a means of dealing with low-level, mainly first time, offending without a prosecution. A simple caution must not be offered to a person who has not made a clear and reliable admission to committing the offence. Decisions to issue simple cautions must be made in accordance with the Full Code Test as set out in the Code for

Crown Prosecutors and charging guidance.

Before a Simple Caution can be given, it is important to establish:

- The views of the victim about the offence (normally the occupiers),
- The nature of any harm or loss caused by the offence and its significance to the victim,
- Whether the offender has made any form of reparation or paid compensation

The views of the victim are important but are not conclusive. The decision to offer a simple caution will take these into account alongside wider public interest factors

A Simple Caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record.

If the offender refuses to accept a Simple Caution, the option to pursue the offender by other means, i.e. to prosecute remains.

The fact that the offender has received a caution can be cited in court in future legal proceedings. This information may also be used to inform future enforcement decisions if incidents arise involving that same person or organisation.

## 17. Prosecution

Where there is a breach of a legal requirement and the Council considers that formal action is required we may seek to prosecute the offender. Although we will judge each case (and our response) on the merits of each individual case, prosecution will generally be reserved for the most serious cases. These include failures to provide documentation on information requested to determine interested parties and the occupancy of premises. Any decision to prosecute will be taken in accordance with the Regulators 'Code, this policy and the Code for Crown Prosecutors.

The following factors will be taken into account in any such decision:

- The seriousness of the offence, including the risk and harm (actual or potential) this breach entailed);
- The previous compliance history of the subject concerned;
- The willingness of that party to prevent a recurrence of the problem;
- Whether the issuing of a simple caution would be more appropriate or effective;
- Whether the offence was committed deliberately;
- Any evidence of the obstruction of the officers or threats made to them or others involved in the investigation; and
- The financial benefit obtained from the alleged offending.

In deciding whether or not to prosecute for an alleged infringement regard must be had to "The Code for Crown Prosecutors". In particular, a prosecution should not be commenced unless the criteria specified in the Full Code Test, namely the evidential stage and the public interest stage have been met.

## 18. Civil penalties and other fines

The Council may as an alternative to prosecution, serve notices imposing civil penalties of up to a maximum of £30,000. The Council's Civil Penalties and Rent Repayment Order policy can be viewed at [\[add a link to your new policy\]](#)

## 19. Rent Repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a HMO licence for a property that was required to be licensed as such. The Housing and Planning Act 2016 extended this power to now cover a much wider range of offences. The Council's Civil Penalties and Rent Repayment Order policy can be viewed at [\[add a link to your new policy\]](#)

## 20. Statutory Nuisances which are Prejudicial to Health

Where a statutory nuisance is found to be prejudicial to health, less than 21 days (the standard appeal period) may be given for completion of the works to abate the nuisance. Examples of situations which are regarded as being prejudicial to health, and for which a notice under section 80 of the Environmental Protection Act 1990 will be served, include:

- extensive water penetration;
- defective boilers leaving the property without any means of providing either hot water and/or heating (dependent on the time of year and whether or not there are vulnerable occupants).
- dampness or condensation resulting in mould growth where there are occupants with respiratory problems.

## 21. Licensing of Houses in Multiple Occupation (HMOs)

All decisions in respect of HMO licensing will be taken in accordance with the provisions of the Housing Act 2004 and regulations made under the Act.

If the Council intends to make to make an interim management order (IMO) under the provisions of the Housing Act 2004 the Head of Section and Director of the department must agree that this course of action is appropriate.

If the Council intends to make a Final Management Order to take control of an HMO which has an Interim Management Order in place, the Head of Section and the Director of the department must agree that this course of action is appropriate.

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