

Development and Regulatory Services Enforcement Policy

London Borough of Barnet

DEVELOPMENT AND REGULATORY SERVICES

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BARNET
LONDON BOROUGH
ENFORCEMENT POLICY
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PREFACE

Local authority regulatory services have a key role to play in supporting local economic prosperity and community wellbeing. They ensure that well-run, legally compliant businesses are supported and that consumers, workers and the environment are adequately protected.

The Council of the London Borough of Barnet therefore has a responsibility to protect the communities it serves using the legislative tools delegated by national government.

The London Borough of Barnet Development & Regulatory Services (DRS) administer and enforce a raft of legislation designed to protect health, the environment and the local economy. In doing this, we have flexibility to determine the most appropriate means to achieve compliance, taking account of both national guidance and the Council's Corporate Priorities, Policies and Strategies.

Consistent and fair application of our enforcement powers supports the delivery of the Council's strategic objectives:

- Create the right environment to promote responsible growth, development and success across the borough;
- Support families and individuals that need it – promoting independence, learning and well-being;
- Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.

The Services also support the following principles that underpin everything undertaken by the Council:

- a relentless drive for efficiency;
- a new relationship with citizens;
- a one public sector approach.

This document seeks to explain the Borough's approach to the use of its enforcement powers generally, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. The policy is underpinned by detailed procedures for staff.

1.0 INTRODUCTION

Experience shows that, in most cases, businesses and individuals aim to comply with the law. Failure to do so generally stems from ignorance or carelessness but sometimes from wilfulness or malice and therefore well targeted enforcement and regulation is necessary to achieve the aims and objectives of the services.

The London Borough of Barnet Development and Regulatory Services are responsible for the enforcement of a wide range of laws, including laws designed to protect public health, safety and welfare, mitigate nuisance and anti-social behaviour and maintain fair and safe trading practices.

These laws are applied in the following areas:

- food safety and standards;
- workplace health & safety;
- private sector housing;
- environmental protection;
- public health & nuisance;
- animal health & welfare;
- licensing;
- trading standards;
- building control;
- planning;
- highways.

Each area of work uses different legislation to secure its aims and each has its own extensive body of guidance, which has been developed from experience and case law. This document does not try to capture all of this detailed, complex and often changing background, but reiterates the basic principles of enforcement activity. Matters relating to enforcement generally are contained in Sections, 3, 4 and 5 of this policy. Specific matters and issues relating to the following areas are detailed in the appendices to this policy:

Appendix A: Private Sector Housing (as amended);
Appendix B: Public Health and Nuisance;
Appendix C: Food, Health & Safety;
Appendix D: Trading Standards & Licensing;
Appendix E: Planning;
Appendix F: Building Control;
Appendix G: Highways.

This document sets out the principles by which officers will seek to achieve compliance with the criminal and civil legislation enforced by the services. Such compliance will be ensured by:

- Helping and encouraging businesses and individuals to understand and comply with the law;

- Responding proportionately to breaches of the law;
- Performing enforcement in a fair, practical and consistent manner. Such enforcement performed with due regard to the provisions of the Human Rights Act 1998, equalities legislation, service specific legislation and all other relevant legislation applicable from time to time.

This policy, taken in the context of government and other guidance, seeks to ensure that the application of any enforcement is: -

- proportionate to the offence and risks;
- transparent; in that any person affected understands what is expected of them, what they should expect from the local authority and the reasons for the action;
- consistent in approach;
- appropriate;
- and that the benefits outweigh the costs.

There is also the recognition in this policy that enforcement resources are not limitless and need to be targeted at areas where risk is highest.

The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to vary substantially. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement from Development & Regulatory Services.

A local authority should have regard to its Enforcement Policy, as a guide for decision makers, promoting consistency and equity of treatment, but it need not be blindly driven by it. Decisions about prosecution are for the prosecutor to make, not for the enforcement policy to determine.

All case details are held in strict confidence in accordance with government legislation.

This policy document supersedes any previous policy documents on enforcement.

2.0 GENERAL STATEMENT OF INTENT

It is the policy of the Council of the London Borough of Barnet to maintain and enhance the amenity of the Borough and to protect the health, safety and wellbeing of its residents, as well as people working in, or visiting the Borough. The Council considers that its powers to initiate formal action and prosecutions under the law are a vital tool to secure essential improvements to the environment and economy of the Borough.

The Council recognises that a key element of its enforcement activity is to allow or even encourage economic progress and will only enforce against or prosecute when there is a clear case for protection. This policy therefore has been drafted to emphasise how the DRS will deliver enforcement functions in a way which enables economic growth for compliant businesses and other regulated entities, by:

- minimising the negative economic impacts of regulatory activities;
- minimising the costs of compliance for duty holders;
- improving confidence in compliance for duty holders; and
- encouraging and promoting compliance.

The use of enforcement will be proportional to any offence committed, consistent in application (including consistency with other local authorities or enforcement agencies), transparent in its use and appropriate to the circumstances of the particular case in question.

Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal proceedings) rather than wilfulness, officers will give advice and attempt to facilitate the training of those involved in addition to enforcement action.

Enforcement action will not, therefore, be a punitive response to minor technical contraventions of law but will be forceful in situations where, for example, the public's health is put at risk or there is a significant environmental impact due to negligence, incompetence or blatant disregard of the law. The cumulative effect of contraventions, which in themselves could be considered as minor, needs to be considered when assessing the most appropriate course of action.

The London Borough of Barnet is a signatory to the Cabinet Office's Enforcement Concordat which commits the Council to good enforcement policies and procedures. In carrying out enforcement, DRS will have due regard to the statutory Regulators' Code, the Data Protection Act 1998, the Human Rights Act 1998, equalities legislation and to conduct enforcement in accordance with better regulation principles.

Officers of the Council will have regard to this policy when making enforcement decisions and all operational procedures will be written to accord with it. Any departure from policy must be exceptional, capable of justification and be fully considered by senior managers before the decision is made unless it is believed that there is significant risk to the public in delaying the decision.

2.1 Risk Assessment

Risk assessment will be used to concentrate resources to maximise effectiveness in ensuring compliance with the law. Risk assessment will be based upon all available relevant and good quality data and explicitly consider:

- The potential impact of non-compliance
- The likelihood of non compliance

2.2 Economic progress

It is recognised that good regulation and enforcement can act as an enabler to economic activity. The impact of regulation and enforcement will be considered including costs, perceptions of fairness and effectiveness. Approaches will be adopted where the benefits justify the costs.

2.3 Advice and guidance

Prevention is better than cure and improved compliance can be achieved through a focus upon support and advice. In providing such advice and guidance the following will be considered:

- Legal requirements will be promptly communicated or otherwise made available upon request;
- General information, advice and guidance will be provided in clear, concise and accessible language using a range of formats and media ensuring efficient use of resources;
- In responding to non-compliance, the primary approach can be the offering of advice and guidance to help ensure compliance, without triggering further enforcement action;
- Advice will distinguish statutory requirements from guidance aimed at improvements above minimum statutory standards.

2.4 Inspections and other visits

Inspections will take place when there are justifiable reasons and where on the basis of risk assessment a visit is required. To ensure effectiveness of inspection programmes and visits the following provisions will be considered:

- Inspections will occur
 - In accordance with statutory inspection duties,
 - In accordance with risk assessments,
 - Where requested,
 - Where relevant intelligence is received.
- Random inspection will be undertaken where appropriate, unless expressly prohibited by legislation or national guidance. This will include the testing of the risk assessment approach or effectiveness of interventions;

- Inspections will be co-ordinated with other enforcement agencies and regulators where practicable;
- Where inspections have been carried out feedback will be given to duty holders to reinforce compliance and to encourage good practice.

The greatest inspection effort will be focussed upon where a breach or breaches pose a serious risk and/or where there is a high likelihood of non-compliance.

3.0 ENFORCEMENT OPTIONS

3.1 Choice of Enforcement Approach

In any situation which requires action to ensure compliance with the law officers will consider the following when deciding on the most appropriate enforcement method: -

- the degree of risk from the situation;
- the seriousness of the legal contravention;
- the benefits justify the costs of the approach;
- the different technical means of remedying the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- the general attitude of the offender to his or her responsibilities;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law;
- the likely effectiveness of the various enforcement options;
- any legal imperatives e.g. the obligation to serve an abatement notice if a statutory nuisance exists;
- any legal guidance, e.g. advice contained in Government circulars.

The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time.

3.2 Options Available

- refer the matter to another relevant service or agency;
- informal action - written or oral;
- a range of statutory notices generally requiring some remedy within a specified timescale (or possibly immediately);
- simple caution;
- prosecution;
- prohibition;
- injunctive restraint;
- seizure of equipment, food, articles or records (paper or computer)
- execution of work required by a statutory notice where the recipient has not complied;
- issue of a fixed penalty notice.

3.3 Referrals to Other Agencies

Services regularly consult and work with other agencies, including but not restricted to:

- The London Ambulance Service;
- The London Fire and Emergency Planning Authority (LFEPA);
- The Metropolitan Police;
- Government Agencies;

- Regional agencies;
- Professional bodies;
- Other council departments (e.g., Social Services).

Where there is wider regulatory interest DRS will refer relevant information received to other regulators, for example to the LFEPA where there are problems with means of escape in case of fire or to the Health and Safety Executive (HSE) where there are gas safety problems.

Information Requirements

Requests for information will only be made where it is necessary after considering the cost and benefit of obtaining the information. Where practicable and not bound by legal constraint, information will be shared with partners. This will prevent the need for the information being provided more than once.

3.4 Informal Action

This level of action will be appropriate where the consequence of non compliance will not pose a significant risk in the short term and the other enforcement options will likely be inappropriate and disproportionate. Examples of informal action include written and oral warnings together with giving advice, and guidance.

Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

3.5 Formal Action

When considering formal enforcement action we will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach. This does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purposes of the proposed enforcement action.

Officers will aim to conduct enforcement in a manner that complies with the requirements of relevant legislation and codes of practice. For example this includes but is not limited to the related documents:

- The Enforcement Concordat;
- The Regulators' Code;
- The Code for Crown Prosecutors;
- Police and Criminal Evidence Act 1984 and associated codes procedure;
- Criminal Procedure and Investigations Act 1996;
- Regulation of Investigatory Powers Act 2000;
- Regulatory Enforcement and Sanctions Act 2008;
- Protection of Freedoms Act 2012.

Officers must be satisfied that sufficient evidence is available to justify the enforcement action proposed and that all evidence is properly recorded to satisfy Police and Criminal Evidence Act requirements.

3.5.1 Statutory Notices

Subject to the many specific rules governing the use of different statutory notices, they will generally be used where there is:

- a clear breach of the law;
- the degree of risk or environmental impact or harm from the situation is significant; and
- a remedy needs to be specified and secured within a set period of time.

In some instances service of a notice will be compulsory - e.g. abatement notices under the Environmental Protection Act 1990 or, the grounds for service of a notice need to be laid out, e.g. the property must have a Category 1 hazard before a notice can be served under section 11 of the Housing Act 2004.

Any notice that is served must be clear and unambiguous and contain all the content requirements detailed in the legislation and in any case must state:-

- The legislation, including regulation, section, subsection or paragraph that has been contravened
- The matter which gives rise to the contravention (and if hazards exist what those are)
- The action to be taken by the recipient, which must be reasonable in relation to the hazard or legislation breach
- The timescale for compliance
- The mechanisms for appeal

The demands imposed by notices will be realistic. Whenever possible compliance time limits will be agreed with recipients to ensure they are both attainable and appropriate. Where possible, necessary works will be discussed and alternative solutions considered. Where legal provision permits and the Council have included in its published fees and charges, a charge will be made for notices served, for example, notices served under the Housing Act 2004.

Where appropriate, the officer will inform all interested bodies, including tenants; employees, managers; freeholders; leaseholders and mortgagees of the action taken and its expected outcomes. A copy of notices will be sent to all parties with legal interest in property.

Prosecution and/or works being carried out in default of the notice recipient or their agent will be expected where a statutory notice has not been complied with within the time scale required.

3.5.2 Simple Caution

A simple caution may be offered in certain cases as an alternative to a prosecution. Its purpose is to deal quickly and simply with less serious offences, divert offenders away from court and to reduce the likelihood that they will offend again.

There are four preconditions, which must be satisfied if a matter is to be dealt with by simple caution, as follows: -

1. there is sufficient evidence of an offender's guilt,
2. the offender is 18 years of age or over,
3. the offender admits they committed the crime, and
4. the offender agrees to be given a caution.

The reasons for issuing a simple caution instead of prosecution in the courts will commonly be that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this will usually entail remedial work to premises, taking proper steps to ensure that the offence cannot recur and sometimes compensation to any victims. If a simple caution is offered and refused by the offender then the case will most likely proceed to court.

Based on their experience of the courts and in the light of guidance from, amongst other sources, the Home Office and the Code for Crown Prosecutors, officers will judge whether the efforts of the offender will be likely to result in little or no additional penalty being imposed if the case were to proceed by way of prosecution. They will also judge the effects of pursuing a simple caution as opposed to a prosecution on other potential offenders and any relevant public interest issues.

The offender must be given a full explanation of the significance of the caution before being allowed to accept it, as a simple caution is an admission of guilt to a criminal offence and is recorded as such on the Central Register of Convictions held by the Office of Fair Trading. It is not a form of sentence, nor is it a criminal conviction but it will remain on record for three years and may influence a decision to prosecute should the individual or organisation re-offend.

The authorisation to issue simple cautions can only be delegated to officers at Service Manager level and above.

3.5.3 Prosecution

The Council has the power to prosecute offenders for a range of criminal offences and criminal prosecution is the most severe and if successful, punitive approach that can be taken.

Decision on whether to prosecute will be made in accordance with the *Code for Crown Prosecutors* which requires officers to be satisfied that (i) there is enough evidence to provide a realistic prospect of a conviction and (ii) it is in the public interest to do so.

To aid officers in this task, the *Code for Crown Prosecutors* sets out the Full Code Test which consists of two stages:

1. The Evidential Stage
2. The Public Interest Stage

There is a strict order in which the two stages of the Full Code Test are to be applied, as required by the Code for Crown Prosecutors. Officers must first consider the evidential stage. If the strength of evidence does not allow the case to pass this stage, the prosecution cannot go ahead, no matter how important the case or how strong the public interest is in favour of prosecution.

The Evidential Stage

The finding that there is enough evidence to provide a realistic prospect of conviction will be based on the officer's objective assessment of the evidence, including how reliable it is, what the defence case may be and how it is likely to affect the prospects of conviction. Officers will also consider whether the evidence can be used in court, i.e. whether it is admissible. The courts may not allow information to be heard, even though it appears to be relevant to the case, if it does not comply with the rules of evidence. If it is likely that the court will exclude some of the evidence, officers will need to consider whether there remains sufficient admissible evidence to satisfy the evidential stage of the test.

The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution, officers must go on to consider whether a prosecution is required in the public interest. In deciding whether it is in the public interest, officers will need to weigh those factors in favour of and against prosecution carefully and fairly. When deciding the public interest, officers will consider each of the questions set out in paragraphs 4.12 a) to g) of the Code. The questions are not exhaustive and not all may be relevant in every case. The weight to be attached to them and the factors identified will also vary according to the facts and merits of each case.

These questions include: how serious is the offence committed? What is the level of culpability of the suspect? What are the circumstances of and the harm caused to the victim and also whether prosecution is proportionate. Whilst the Enforcement Service does not act for victims or families of victims, but rather on behalf of the public, when considering the public interest, officers will always take into account the consequences for the victim of whether or not to prosecute and any views expressed by the victim or their family.

Factors for prosecuting include where cases are likely to result in significant sentences; the offence was committed against a vulnerable person; the offence was premeditated, carried out by a group or motivated by a form of discrimination; the defendant has committed similar offences and/or the offending is likely to recur.

Factors against prosecuting include where cases are likely to result in only a nominal penalty; the offence was committed as a result of a genuine mistake or misunderstanding; the loss and/or harm can be described as minor; a prosecution is likely to have a bad effect on the victim; the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health (unless the offence is serious or there is real possibility that it may be repeated); the defendant has rectified the loss/harm caused (although defendants must not avoid prosecution solely because they pay compensation); or details may be made public that could harm sources of information or national security.

Authorisation to proceed with a prosecution can only be given to officers at Service Manager level or above.

Once a summons has been issued it will not be withdrawn unless it is considered that a conviction will not be obtained or that the public interest requires it. The Code for Crown Prosecutors requires an ongoing review of the need to pursue proceedings and officers must advise the Head of Legal Services of any new evidence or information particularly where this may cast doubt on the propriety of the original decision to proceed.

The officer will ensure that decisions to prosecute and results of any legal proceedings are notified to all interested bodies, including tenants; managers; freeholders; leaseholders and mortgagees.

3.5.4 Prohibition

This power will be used where there are statutory grounds (i.e. that there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved.

3.5.5 Injunctions

An injunction may be sought from the courts in circumstances for example where there is a significant threat to public health or safety and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time having regard to the particular circumstances.

An example might be where, in spite of an Emergency Prohibition Notice or Order being served a Food Business continues to trade. Other examples might be a notice requiring someone to stop causing a noise nuisance, or a builder continuing to work at night and at weekends to complete a contract very quickly because the contractual financial penalties made it economically desirable for them to do so. Injunctive relief may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

A decision to seek an injunction will only be taken by an officer at Service Manager level or above, in consultation with the Head of Legal Services.

3.5.6 Work in Default

Some legislation allows the local authority to undertake the work required by a notice if the recipient of the notice does not do so within the times specified in it.

Where a notice has been served, and where without adequate excuse or reason, the work has not been done, then work in default will generally follow if there is an imminent risk to occupiers or a high risk to public health. This decision will be subject to the practical constraints of the case and the financial circumstances. Prior to carrying out works in default the Council will consider carefully the prospect of recovery of any costs incurred in accordance with current Council policy.

Except in urgent cases the owner/person responsible must be served with:

1. The relevant notice of intention; and
2. Information which clearly states the effect of the proposed action and its subsequent costs including administration charges and details of how such sums may be recovered or made a charge on the property.

The Council will make every effort to recover the full cost of doing the work in default.

Except in urgent cases, where it would be impractical, such as silencing of alarms out of hours, authorisation to proceed with works in default will only be given by an officer at Service Manager level or above.

3.5.7 Statutory Orders

A range of Statutory Orders are available under the legislation enforced by DRS, for example under the Housing Act 2004, an Empty Dwelling Management Order may be used in relation to bringing vacant properties back into residential use. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

3.5.8 Compulsory Purchase Orders

The Council may compulsorily purchase property under, for example Section 17 of the Housing Act 1985 (as amended) or The Town and Country Planning Act 1990. This procedure may sometimes follow the exercise of another statutory power or may be carried out without prior action. The consent of the Secretary of State is required and compensation provisions flow from the exercise of this power.

3.5.9 Fixed Penalty Notices

The aim of a Fixed Penalty Notice is to simplify the enforcement process and penalise a contravention of legislation without the need for costly and lengthy

court proceedings. This sanction is only available under certain legislation, for example the Clean Neighbourhoods and Environment Act 2005, the Noise Act 1996 and the Health Act 2006 (Smoke Free provisions).

In respect of such offences, the council will normally initially issue a Fixed Penalty Notice and prosecute if the notice is not paid within the time allowed. Where a second or further similar offence occurs within twelve months of an earlier Fixed Penalty Notice, the council will normally proceed to prosecute later offences without issuing a further notice.

In respect of children and young persons under 18 years of age, Fixed Penalty Notices will not normally be issued. Warning letters and notices and other educational approaches will be used instead.

The level of fixed penalty is determined in line with the default sum defined by the legislation. The Council will not negotiate to reduce the penalty and it is not possible for offenders to pay by instalments. Nevertheless, where the legislation allows a discounted penalty is available when payment is made within seven days of the notice being issued.

Anyone receiving a Fixed Penalty Notice can appeal to the Council against its issue. The facts of the case from both the enforcement officer involved and the person appealing will be taken into account. The appellant will be contacted in writing confirming whether their appeal has been allowed.

3.5.10 Other Sanctions

Under the Regulatory Enforcement and Sanctions Act 2008, a range of alternative sanctions may become available to the Council. These include:

- A discretionary requirement -
 - a requirement to pay a monetary penalty to the Council as regulator
 - a requirement to take such steps as the Council may specify
 - a requirement to take such steps as the Council may specify, to put right a breach
- A Stop Notice
- An Enforcement Undertaking

DRS will apply these sanctions as deemed appropriate to the particular circumstances of each individual case and in accordance with relevant guidance. These sanctions may only be used by the Council where the relevant national regulator (e.g. the Food Standards Agency) has satisfied the Minister that the sanctions should be designated to them.

3.6 Enforcement where LB Barnet is the statutory duty holder

Inspection and informal enforcement in these premises will be undertaken as normal.

Any serious or repeated breach of legislation will be immediately reported to the Service Manager, who will notify the Chief Executive without delay.

3.7 Appeals

Any applicable rights of appeal, against enforcement decisions, will be made known to affected persons, at the time and in writing, which will form part of any statutory notice.

If a valid appeal is lodged in accordance with the applicable legislation against any action taken or notice served, the Council will review the grounds for the action or notice and where these are considered to still be sound and appropriate will defend the action in the relevant Court or Tribunal.

Where a complaint is received about an enforcement action taken by the Council from the recipient of the action and there exists a formal right of appeal in the relevant Court or Tribunal, the Council will not consider the matter under its formal complaints procedure.

4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT

4.1 Openness

In carrying out all of its enforcement duties, DRS will help those it deals with to understand what is expected of them, and what they can expect from the DRS in terms of formal action, informal action and advice. Any service standards such as speed of response or content of inspections will be available on request and information will be provided in plain language wherever appropriate.

To those who are potentially subject to enforcement action DRS will: -

- make it clear what must be done, distinguishing between statutory requirements and what is desirable but not compulsory in written and verbal communication,
- write to confirm any verbal advice if requested,
- give an opportunity to discuss the circumstances, where possible, prior to formal action being taken, unless immediate action is required,
- where immediate action is necessary, give an explanation of why such action is needed and confirm this in writing,
- make it clear what sort of conduct they may expect when an officer visits and what rights of complaint are open to them.

4.2 Helpfulness

Visits are usually made unannounced but, if appropriate, appointments will be made. Where access cannot be obtained during the day, or in other appropriate circumstances, visits, will be made outside normal working hours. Some advice leaflets are available in different languages. DRS will actively work with businesses, especially small and medium sized businesses, to advise on and assist with compliance. Enforcement officers will identify themselves by name and provide a courteous and efficient service.

4.3 Proportionality

The type of enforcement action taken by officers will depend on the risk arising from the activity in question, but must seek to secure the most appropriate standard in the particular circumstances. Action taken will be proportionate to any risks to health, safety or other harm, including economic harm and to the seriousness of any breach.

In considering enforcement, account will be taken of relevant codes and guidance from legal authorities, public authorities and industry.

Where the law requires that risks should be controlled “as far as reasonably practicable”, officers, when considering enforcement, will take into account the cost as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

Officers of the Council will, in appropriate circumstances, facilitate training and education if this is also needed to address problems attracting enforcement action.

4.4 Consistency

Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers rely, changes over time and a decision made one day may differ from one made the next for that reason. Consequently there may be instances when enforcement may appear to be inconsistent.

Nevertheless DRS will try to ensure that enforcement action is consistent, both within the Borough and with other enforcing authorities. To achieve this, officers will: -

- follow current internal procedural and guidance notes;
- take due account of appropriate guidance from other authoritative bodies such as the Better Regulation Delivery Office (BRDO), Food Standards Agency, the Health and Safety Executive (HSE), the HSE Local Authorities Enforcement Liaison Committee (HELA), Department of Environment, Food and Rural Affairs (DEFRA), Home Office, Ministry of Justice, Office of Fair Trading (OFT), Department for Communities and Local Government (CLG), Trading Standards Institute and the Chartered Institute of Environmental Health;
- liaise with other enforcement agencies as necessary, for example the Health and Safety Executive, Police, DEFRA, CLG;
- operate an inter-agency approach where the local authorities powers are insufficient, complimentary or on grounds of health and safety at work. For example dealing with food suppliers whose business extends into neighbouring authorities;
- consult with the LFEPA before service of a Health and Safety or a Housing Act notice that affects the means of escape in case of fire;
- take account of any new legislation or guidance which impacts on their duties; and
- be represented by lead officers at Local Authority enforcement liaison groups, including for food, health and safety, pollution, and private sector housing.

The above measures will be supplemented by training for enforcement officers, the introduction where appropriate of quality assurance techniques and internal auditing of samples of individual cases.

4.5 Targeting

The Council accepts that its enforcement resources are limited and that they should be targeted to those persons, premises or companies whose activities give rise to the risks, that are the most serious or least well controlled.

Officers therefore carry out a programme of inspections on a risk-rating basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. Some very low risk premises may not form part of the inspection programme at all but will generally be given literature or guidance to help them run their business safely and with the least impact on their local environment. It follows therefore that most of the enforcement activity arising from pro-active programmes will be targeted on the cases most requiring it.

The second targeting mechanism is the investigation of complaints where evidence, experience and this policy are used to determine enforcement action.

The third targeting mechanism is planned, special surveys and enforcement initiatives carried out in response to national concerns as voiced by the government or its agencies, or local concerns as voiced by Members of the Council, or residents.

4.6 Complaints about the Service

The Council has a formal Complaints Policy. If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager by telephone, details of which are available on www.barnet.gov.uk or by writing to them at the London Borough of Barnet, North London Business Park, Oakleigh Road South, New Southgate, London, N11 1NP.

Where possible a complaint will be investigated within 10 working days, or if the investigation cannot be completed within this time period a reply will be made and the investigation completed as soon as possible.

If a complainant is dissatisfied with the result of their complaint to the Team Manager they may then complain to the Head of Service, who will respond within 10 working days.

If a complainant is still not satisfied, they can write to the Council's Chief Executive, who will also aim to respond in 10 working days.

If a complainant is still not satisfied following the final stage of the Council's complaints procedure, then they may wish to make a complaint to the Local Government Ombudsman (Telephone: 0300 061 0614).

The complaints procedure is not appropriate in cases of court proceedings or where there is a statutory right of appeal against an action.

5.0 PUBLICITY

DRS will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media may also be provided with factual information about hearings that have gone before the Courts and thus are in the public domain. The media may also be provided with details of other enforcement actions such as simple cautions, seizures of goods or equipment and results of sampling programmes.

A register of health and safety notices, which affect the public, is also available to view at the Council Offices.

The names of companies and individuals convicted of breaking health and safety law in the previous 12 months will be published annually by the HSE.

This policy document is freely available to the public on the internet or by request from Development & Regulatory Services, London Borough of Barnet, North London Business Park, Oakleigh Road South, New Southgate, London, N11 1NP

The policy will be subject to periodic review.

Private Sector Housing Enforcement

This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Private Sector Housing Team and to set out the Councils policy where the legislation permits discretion. All decisions on Private Sector Housing enforcement action will be made following consideration of this policy.

1. Introduction

The Private Sector Housing Team (PSH) deals with:

- Investigating service requests from residents about private sector housing conditions;
- Investigating higher risk and medium risk residential tower blocks
- Providing advice and taking enforcement action where appropriate to bring housing up to standard or bring empty properties back into residential use
- Investigating service requests about the condition of empty properties;
- Administration of licences for houses in multiple occupation (HMO);
- Administration of Caravan Site Licensing Scheme.

The service aims to:

- Protect and improve the health and wellbeing of residents and visitors to the borough, in particular by ensuring that they have a safe place to live;
- Increase the number of homes within the borough;
- Relieve the pressure on health and social care resources by helping people to stay safely in their own homes.

The Council has a legal responsibility to ensure that minimum standards are reached and maintained. PSH will aim to improve and maintain housing standards through:

- advice to tenants, landlords and owners;
- encouraging good management practices;
- advice on and enforcement of national and local housing standards.

The PSH team's priority is to bring properties up to a minimum standard rather than to seek the rehousing of the occupiers.

2. Scope

This appendix covers the following enforcement action:

The Housing Health and Safety Rating System (HHSRS);
Powers to charge for enforcement action;
Empty Property Enforcement;
Other Provisions.

3. Legislation

PSH is responsible for ensuring that the Council performs their statutory functions under the following legislation:

Housing Acts 1985, 1988, 1996 and 2004;
Housing and Planning Act 2016
Housing Grants, Construction and Regeneration Act 1996;
Energy Act 2011;
Environmental Protection Act 1990;
Public Health Acts 1936 and 1961;
Building Act 1984;
Caravan Sites and Control of Development Act 1960;
Caravan Sites Act 1968;
Mobile Homes Act 2013
Prevention of Damage by Pests Act 1949;
Local Government (Miscellaneous Provisions) Act 1976 and 1982;

and any regulations, orders or other statutory provisions made under or incorporated into the above

These legislative tools will always be considered and followed where appropriate.

4. Housing Health & Safety Rating System (HHSRS) [Housing Act 2004]

4.1 HHSRS Enforcement Regime

HHSRS enables the assessment of risks to the health and safety of occupiers posed by certain specified housing related hazards, and scoring of their severity to decide whether improvements are needed.

Assessed hazards are banded Category 1 or Category 2 depending on the seriousness of the risk. Where Category 1 hazards are found the Council has a duty to take the appropriate enforcement action which may include requiring the owner to remedy the defect. If less serious Category 2 hazards are found, the Council has discretionary power to require action.

Action undertaken by the council is based upon a three-stage consideration:

1. Determine if hazards are present and assess the hazard ratings under the HHSRS;
2. Determine whether the Council has a duty or power to take action; and

3. Determine the most appropriate course of action to deal with the hazard, having regard to Statutory Enforcement Guidance, the Council's Enforcement Policy and associated documents.

Where a specified hazard exists, the courses of action available to the Council are:

- Serve an Improvement Notice;
- Make a Prohibition Order;
- Suspend the Improvement Notice or Prohibition Order
- Take Emergency Action¹;
- Serve a Hazard Awareness Notice;
- Make a Demolition Order²;
- Declare a Clearance Area²;

¹ Not available for Category Two hazards

² Available for Category Two hazards only in prescribed circumstances

The Enforcement Guidance to the 2004 Act states that the action chosen must be *the most appropriate course of action in relation to the hazard in all the circumstances* and sets out the general factors relevant to the enforcement options listed above.

The Council can act in default and prosecute for lack of compliance to these notices. It can also charge for and recover charges for enforcement action [see 5.0 below].

4.2 HHSRS Policies

At a time when resources are scarce action will be directed to the most serious cases. For **Category 1** hazards the Council will carry out its statutory duty to resolve all such hazards identified and will always take appropriate enforcement action where properties are tenanted. Where properties are owner occupied the Council will take action but the nature of the enforcement action may vary on a case by case basis.

For **Category 2** hazards the Council will not generally take action except where a statutory notice is already being served regarding Category 1 hazards. In these circumstances category D hazards will also be dealt with. In extreme circumstances action will be taken where only Category 2 hazards are present for example where there are concerns about a vulnerable person. This will be with the agreement of the Service Manager or Environmental Health Manager.

All notices and orders will state why one type of enforcement action was taken instead of another. They will also clearly state what is required to be done to remedy the hazard, and when it has to be done by. Considerations will be given to the views of owners, landlords and tenants before formal action is taken except in very urgent cases.

Where there are concerns about a vulnerable person, the appropriate agencies will be consulted to help make a decision regarding the appropriate enforcement action.

Option Appraisal

Typical reasons why one enforcement option may be chosen over another are considered below. It is not possible to take more than one simultaneous action for the same hazard but if the option chosen has not proved satisfactory the Council may consider another course of action (or the same action again). The regeneration and renewal programmes and approved Housing Strategy for the area along with this Enforcement Policy will be used to inform the appropriate course of action.

A Hazard Awareness Notice draws the attention of the person responsible for the works of the desirability of remedial action although the person responsible is under no legal obligation to remove or reduce the hazard. It may be considered to be the most appropriate course of action in relation to the hazard where:

- The occupier is aware of the risks posed by the hazard(s) but expressed a desire to remain in the property and for the works not to be undertaken
- The property is occupied solely by the owner and his/her immediate family and there is no imminent risk associated with the hazards identified.
- In cases relating to overcrowding –
 - Where the family have no desire to move e.g. due to local care arrangements and the occupiers are not at serious risk or
 - where the overcrowding has been caused by a natural/invited increase in family size *and* the banding is less than an “A”

An **Improvement Notice** requires the relevant person to undertake prescribed works to the property prescribed by the Council. It could be considered to be the most appropriate course of action in relation to the hazard where:

- Once the improvements are completed it can be expected that the hazards within the property will be reduced to an acceptable level and they can take place whilst the tenants are in occupation; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

A Prohibition Order closes the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants). It could be considered to be the most appropriate course of action in relation to the hazard where:

- The cost of the improvement works is likely to be prohibitive, bearing in mind the value of the property; or

- The landlord is able to bear the cost of the refurbishment and the property is vacant; or
- The extent of the works is such that undertaking remedial action is likely to be a lengthy process and it would not be possible to complete them with the tenants in occupation.

Emergency Remedial Action involves undertaking works to the property prescribed by the Council in default of the owner without prior service of notice or upon service of notice. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; and
- Once the improvements are completed it can be expected that the hazard(s) within the property will be reduced to an acceptable level and they can take place whilst the tenants are in occupation; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has also expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

An Emergency Prohibition Order closes the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants). It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; or
- The cost of the improvement works is likely to be prohibitive, bearing in mind the reduction in risk and the value of the property; or
- The extent of the works is such that undertaking emergency remedial action is likely to be a lengthy process exposing the occupier to an unacceptable risk; or
- Due to the nature of the hazard the Council do not consider any works are appropriate and practical in relation to the hazard(s) found at the property.

Suspended Improvement Notice or Prohibition Order This would involve no actions until a trigger event occurs. A suspended notice is required to be reviewed at intervals of no greater than 12 months from the date of service. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The tenants are aware of the hazards within the dwelling and have expressed a desire to remain in residence at the property without the disturbance of the works; or
- The works required to remove or reduce the hazards to an acceptable level cannot be completed with the tenants in place and the occupier is currently unwilling to vacate the premises; or

- The tenant is not in imminent risk and does not want to leave until a suitable property in a suitable location has been located.

Post Grenfell higher risk and mid risk residential building considerations

Higher Risk Residential Buildings (HRRB) and mid-risk residential buildings (MRRB) external wall system fire hazards and other fire hazards arising from poor conversion of office blocks into residential or inadequate building management pose a unique and unprecedented challenge to PSH enforcement and consideration when taking the 'appropriate' Part 1 Housing Act 2004 action. Following the national External Wall Survey to identify external wall materials on high rise buildings, Building Safety Fund and communications from the LGA this area of work will be with PSH for the long term. The removal of fire hazards has taken on a much larger, complex and specialist field. Removing or reducing the external wall fire hazard is known as 'remediation' of the building. This also involves work on buildings/units outside of the private rented sector where most PSH work is concentrated. Any enforcement action in relation to such blocks involves a significant amount of time and resource.

If a HRRB/MRRB is a Category 1 hazard the authority must take Part 1 action.

Fire hazards in HRRB/MRRB will sometimes be Category 2 hazards which is a discretionary duty for Part 1 action being taken.

Care will be taken to ensure that where there is evidence of increased risk due to fire authority notification, tenant complaint, property use type, evidence of poor management of a portfolio etc these buildings are considered first.

The decision to carryout a full HHSRS may require a second officer input (Team Leader and/or Group Manager). 2018 MHCLG guidance note on LA enforcement powers stated: 'Where a local authority is aware of a high-rise residential building with potentially unsafe ACM cladding and there is no plan in place to remediate the building, it should undertake a HHSRS assessment to ascertain the risk of harm to an occupier that the cladding poses.' Direction made by the Secretary of State under section 3(3) of the Housing Act 2004 to all local housing authorities in England, 17 May 2018 stated: 'Local housing authorities have a duty under the Housing Act 2004 to keep housing conditions in their area under review with a view to identifying any action'.

LGA advised June 2021 that Councils who are not inspecting are at risk of failing the duty to review.

It is however likely that it will not be feasible or required that Part 1 action is taken for every HRRB/MRRB, as some owners are actively seeking to remediate and have interim measures in place. Part 1 consultation notices are recommended for all cases when considering Part 1 action. The Council is aware that remediation works can be complex, and factors such as funding and lack of skilled contractors can lead to delays in progressing works. The Council will consider allowing additional time for carrying out works only where:

- appropriate interim measures leading to a reduction in risk have been taken and are being appropriately maintained, and
- where a coherent plan for timely remediation can be demonstrated
- and there is agreement with the Council regarding the works to be completed and certification required

HRRB and MRRB enforcement options

Where a Category 1 fire hazard is identified it is likely that it will be appropriate to serve an Improvement Notice but the below considerations may still be relevant to the decision to serve a notice.

Where a Category 2 fire hazard is identified Improvement Notices may be the most appropriate action in some circumstances, for example:

- where there are wide-scale building defects,
- multiple buildings are affected at the same site,
- lack of information being obtained/provided by owners/managers,
- the owners/managers are not communicating with the local authority/London Fire Authority
- the owners/managers are not examining fire safety of external wall systems/structures,
- there is no coherent plan for remediation
- there is no agreement with the local authority about the works requiring completion

HRRB and MRRB considerations regarding informal action

Informal action may be considered appropriate when:

- the risk of harm from fire is low and
- the HHSRS scoring is low and/or
- LFB confirm satisfactory interim measures are in place and/or
- all agreed issues are being dealt with by the Fire Authority

The remediation of the building must still be tracked, and consideration given to an alternative course of enforcement action if:

- unreasonable delays occur and/or
- there is a variation on the agreed works and/or
- interim measures are stopped

HRRB and MRRB considerations regarding a Hazard Awareness Notice (HAN)

A Hazard Awareness Notice might be the most appropriate action (for Category 1 or 2 hazards) if:

- Interim measures are in place and agreed with the Fire Authority and Local Authority and
- the remediation is being progressed and
- a full diagnostic survey of the fire safety of the building has been obtained by the owner/manager and

- the Local Authority agree with the proposed work programme and timescale

The remediation of the building must be tracked, and consideration given to an alternative course of enforcement action if:

- unreasonable delays occur and/or
- there is a variation on the agreed works and/or
- interim measures are stopped

HRRB and MRRB considerations regarding a Prohibition Order, Emergency Prohibition Order or Emergency Remedial Action

Prohibiting a whole building from occupation or part of a building will have major emergency planning and homelessness considerations for the Council (with possible compensation payments for occupiers) and will require PSH Group Manager sign off, with Regulatory Services Director being made aware of the pending action being taken. This would only be used for the most serious of hazards/dangerous of buildings. Liaison with the LFB around possible appropriate interim measures to avoid such an intervention must be taken first. Emergency Prohibition Orders and Emergency Remedial Action are not available for category 2 hazards.

HRRB and MRRB considerations regarding work in default

Due to the scale and complexity of doing the works in the owner's default this is unlikely to be recommended. It is also legitimate that the financial risks be borne in mind with the Council reclaiming debts.

HRRB and MRRB considerations regarding properties owned or jointly owned by housing associations

The MHLCG has commented that these can be 'trusted' to remediate. As such blocks owned solely by housing associations will not be considered a priority. PSH will concentrate on remediation of private sector dwellings or dwellings with shared ownership between housing associations and the private sector. These are likely to have poorer management and convoluted ownership arrangements.

5. Powers to charge for enforcement action [Housing Act 2004]

The Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred in:

- serving an Improvement Notice;
- making a Prohibition Order;
- serving a Hazard Awareness Notice;
- taking Emergency Remedial Action;
- making an Emergency Prohibition Order;
- making a Demolition Order.

The expenses are in connection with inspection of the premises, subsequent consideration of action and the service of notices. Where notices are served

under the Housing Act 2004 a charge as published in the Council's schedule of fees and charges will be made.

As the fees are not of a punitive nature but to cover the Council's enforcement costs it will be normal practice to charge the appropriate fee for enforcement action. The fees are set annually at Cabinet Resources Committee and will only be waived due to financial hardship following agreement by the Service Manager or Environmental Health Manager.

6. Property Licensing

Under Part 2 of the Housing Act 2004 the Council has a mandatory duty to licence certain larger houses in multiple occupation (HMOs).

Following signing of the designation for an Additional HMO Licensing Scheme, HMOs as detailed in the designation will require a licence.

Following signing of the designation for a Selective Licensing Scheme, private rented properties as detailed in the designation will require a licence.

7. Enforcement Options for Empty Properties

A range of powers exist to help deal with the problems caused by empty properties and bring the property back into use. The main enforcement options are discussed below. Full details of the Council's approach to empty property work can be found in the Housing Strategy.

7.1 Enforced Sale

The Council is entitled to force the sale of a property in order to recover a debt secured against it as a Local Land Charge or caution with the Land Registry. This course of action will be considered by the Council once debts owed exceed £1000.

Not all debts may be secured as a Local Land Charge or caution with the Land Registry. For 'person' debts such as Council Tax debt, the Council can apply to the County Court for an Interim Charging Order. If successful the Council may then apply for a Final Charging Order and order the sale of the property. This power may be used for debt of any size but naturally smaller debts are more likely to be repaid.

7.2 Empty Dwelling Management Orders [Housing Act 2004]

Empty Dwelling Management Orders (EDMOs) enable the Council to take over the management of a residential property that has been empty for more than 6 months.

EDMOs will be considered where the property is having a detrimental effect on the local community; negotiations to bring a property back into residential use have failed and the likely rental income from the property will, in a reasonable timescale, offset the expenses likely to be incurred in bringing the property up to a habitable standard and managing the property

EDMOs can be Interim or Final. An Interim Order should be considered as the final opportunity for a voluntary solution to be found to bring the property back into use.

7.3 Compulsory Purchase [Housing Act 1985; Town & Country Planning Act 1990]

The Council can compulsorily acquire underused or ineffectively used property for residential purposes if there is a compelling case in the public interest for its acquisition to meet general housing need in the area.

Compulsory Purchase will be considered where the property is having a detrimental effect on the local community; negotiations to bring a property back into residential use have failed and an Interim EDMO is not appropriate (for example the property is in a very dilapidated condition).

Compulsory purchase will only be used as the enforcement route of last resort for returning empty homes to use. Where this is the case the Council may apply to the Secretary of State for a Compulsory Purchase Order (CPO) to be made. In making the application the Council must show (among other things) a clear intention for the use of the property/land, and be able to show that it has the necessary resources available to follow through with the CPO.

Owners of properties that are compulsory purchased may be entitled to compensation over and above the open market value of the property.

The final decision to proceed with a CPO will be made by the Council's Cabinet and Resources Committee.

7.4 Unsecure buildings [Local Government (Miscellaneous Provisions) Act 1982]

Where an empty property is found to be vulnerable to unauthorised access the Council can require the owner to board up a property to prevent such access and if necessary to carry out the work in default of the owner if they fail to comply.

8.0 Enforcement of Caravan Site/Mobile Homes Legislation.

A range of powers exist to help deal with the problems associated with caravan sites and complaints raised by park residents. The main enforcement considerations are ensuring the site is licensed and the site is managed by a fit and proper person. Action undertaken by the council is based upon a three-stage consideration: advice; informal action and formal action

9.0 Other provisions

All other housing legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

Amendments to the Development and Regulatory Services Enforcement Policy introduced through the Housing and Planning Act 2016- [Housing Committee 23rd October 2017](#)

The Housing and Planning Act 2016 came into force in April 2017. Through section 126 and Schedule 9 of this legislation the government has provided more powers for local authorities to take action against non-compliant landlords. This includes:

Civil Penalties

Schedule 9 of the Housing and Planning Act 2016 has introduced the power to issue civil penalties as an alternative to criminal prosecution for failure to comply with:

- an Improvement Notice (section 30 Housing Act 2004),
- failure to licence or be licensed in respect of HMOs (section 72 Housing Act 2004),
- failure to licence or be licensed in respect of a Selective Licensing Scheme,
- failure to comply with HMO licensing conditions (section 95 Housing Act 2004),
- failure to comply with an Overcrowding Notice (section 139 Housing Act 2004),
- failure to comply with Management Regulations in respect of HMOs (section 234 Housing Act 2004), and
- breaching a Banning Order (section 23 of the Housing and Planning Act).

Any decision to impose a civil penalty must be in accordance with schedule 13A of the Housing Act 2004 (introduced by Schedule 9 of the Housing and Planning Act 2016) and any other relevant guidance.

The local authority cannot issue a civil penalty and prosecute for the same offence.

In deciding whether to prosecute or issue a civil penalty, consideration should be given to any public interest in referring the case for prosecution over and above that required to issue a civil penalty. The greater the impact of the

offending on the community, the more likely it is that a prosecution will be appropriate.

The statutory guidance states that a prosecution may be the most appropriate option where an offence is particularly serious or the offender has committed similar offences in the past (in our or other local authority areas). The enforcement decision will be made following a documented formal interval review.

The, government has issued statutory guidance in relation to civil penalties and the local authority must have due regard to this

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf.

It is clear that each penalty should reflect the severity of the offence and the landlords previous record of offending. Consideration should also be given to:

- The severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit that the offender may have obtained from committing the offence

The level of civil penalty imposed must be in line with the Council's Adopted policy.

This appendix details the Council's process for deciding that a civil penalty is an appropriate alternative to prosecution and the level of fine to be administered.

The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. Only one penalty can be imposed in respect of the same offence.

A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the local housing authority cannot impose a civil penalty in respect of the same offence.

A civil penalty can be issued as an alternative to prosecution for each separate breach of the relevant legislation e.g. each Regulation of the Management Regulations breached (section 243 (3) of the Housing Act 2004) or a failure to comply with an Improvement Notice under s.30.

Where both the letting agent and landlord could be prosecuted for failing to obtain a licence for a licensable property, then a civil penalty can also be imposed on both the landlord and agent as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.

A civil penalty cannot be issued unless the evidence has met the criminal standard of proof, the same level as is used for prosecution cases. As such the Authority needs to be confident that any case served with a civil penalty would have a realistic chance of conviction in the Magistrates Court and be able to demonstrate beyond reasonable doubt that an offence had been committed. It would also need to be in the public interest to have taken the prosecution (Crown Prosecution Service *Code for Crown Prosecutors*).

Persons served with a civil penalty can appeal to the First Tier Property Tribunal in respect of the decision to issue and the amount imposed. Fines must be set consistently and transparently on a case-by-case basis taking into consideration such matters as the severity of the offence.

Consideration will be made of the offender's financial position in relation to the offence where this is known. It is most likely to be considered as part of the offender's representations after service of the intention.

Service of a penalty notice may lead to an entry on the London Mayor's register, and two or more penalties will lead to an entry on the Secretary of State's database of rogue landlords.

The government has issued statutory guidance under schedule 9 of the Housing and Planning Act 2016 to which the local authority must have regard. Paragraph 3.5 states that

"the amount levied in any particular case should reflect the severity of the offence, as well as taking into account the landlords previous record of offending". The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations. The actions of the offender will be assessed to consider if they have been negligent, reckless or deliberate, or a combination for example was the landlord so grossly negligent as to be reckless.

c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Where Penalty Notices are served on more than one responsible party for the same offences, it is important that the penalty imposed on each them reflects his or her degree of responsibility, their actions and the circumstances and these should be assessed separately. An independent assessment will be undertaken of each party per offence and a totality assessment completed separately

Civil Penalty Matrix

Officers setting civil penalties will have regard to the Barnet's Civil Penalty Matrix. This has been developed having consideration to a system proposed by the DCLG. This will be used as a guide assessing the appropriate civil penalty to be levied. Fines must be set on a case by case basis but officers must be clear of the factors informing each civil penalty.

Harm	Culpability	Starting assessment baseline
Moderate	Moderate	£750

Moderate	Substantial	£5,000
Moderate	Extreme	£10,000
Substantial	Moderate	£10,000
Substantial	Substantial	£15,000
Substantial	Extreme	£20,000
Extreme	Moderate	£15,000
Extreme	Substantial	£20,000
Extreme	Extreme	£25,000

A four step process will be used for setting civil penalty levels.

Step 1: Severity of the offence

Objective: to determine the level of harm that was or could have been caused by the offence

The offence to be assessed against the degree of potential or actual harm caused, both to individual tenant and more widely, for example (but not exclusively):

- Nature/extent of hazards present.
- Vulnerability of tenants e.g. age, illness, disability, someone with language issues etc
- Evidence of discrimination/action against the tenants
- Effect on neighbouring premises
- Number of persons and/or households affected e.g. single family or HMO
- Level of impact /potential impact/consequences on/for the occupiers
- Level of risk to occupiers or third parties

Step 2: Culpability

Objective: to determine the offender’s culpability in relation to the offence.

Renting out or managing residential property is a business and it is the responsibility of a landlord or letting agent to ensure that they are fully aware of their legal responsibilities. Ignorance of the law is not an excuse and generally, therefore, the presumption should be that any offence was deliberately committed, unless the landlord or letting agent can demonstrate otherwise.

The assessment is by reference to the offender’s role in the offence; their level of intention, planning etc may be relevant.

Considerations will include for example (but not exclusively):

- Has committed similar offences before in the last 5 years, resulting in formal or informal action.
- Offence was planned

- Experienced landlord who should know responsibilities
- Owns a number of properties so should be aware of the legislation (i.e. not a single property landlord)
- Period of time over which offence(s) committed
- High level of profit from the offence/sought profit in committing
- Offender is a letting, managing or estate agent
- Attempt to cover up evidence of offence

Any mitigating factors will also be considered and whether they are relevant to the landlord's culpability to give a fair and balanced assessment of the offender's culpability e.g. ill health of landlord, landlord has generally a well managed portfolio, obstructive behaviour of third parties etc

The extent to which intention, recklessness, knowledge or negligence are involved in a particular offence will vary and will inform the level of culpability. These will be considered as a hierarchy with a deliberate act being the worst category.

- Deliberate: offender intended to cause harm and the offence was planned.
- Reckless: offender was reckless as to whether harm was caused, that is, where the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
- Knowledge: has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results.
- Negligent: failure to ensure compliance and awareness of legal responsibilities.

Step 3: Initial assessment of civil penalty

Objective: to reach an *initial assessment* of the civil penalty based on severity of the offence and culpability.

To review offence and culpability against the assessment baseline.

Decision to be made in relation to the level of offence in the matrix banding and how this affects the penalty.

Step 4: Check

Check that the provisional civil penalty assessment meets the aims of the sentencing principles:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent for other potential offenders

- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community

Check that the provisional assessment is proportionate and will have an appropriate impact. It will only be possible to consider this where relevant information is made available to the Council.

- This step should take account of the offender's income and assets, and make adjustments within band or change band accordingly. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, e.g. their rental portfolio, to be taken into account when determining an appropriate penalty.

Discounts

The following discounts will apply to any civil penalty imposed in the following circumstances:

- If the offender undertakes the necessary work of compliance within the representation period of the "Notice of Intent" stage the Council will reduce the penalty by 20%
- If the offender books onto an accreditation course with the London Landlord Accreditation scheme within the representation period of the "Notice of Intent" stage, and subsequently completes the course on the relevant date, the Council will reduce the penalty by 10%.

If an offender undertakes the necessary work of compliance within the representation period of the "Notice of Intent" stage and becomes accredited a total discount of 30% will apply.

Totality considerations

Objective: Where more than one penalty notice is issued in relation to the same incident or circumstances it is important to expressly review the sum of all the penalties to ensure that it properly reflects all the offending behaviour and is just and proportionate.

The review should identify if there is any double counting of a particular harm. Where it is repeated in more than one penalty notice then it may justify the penalty being moderated in one or more of the notices (or due to particular circumstances of the penalties that retaining the existing penalty unaltered is justified) with a clear explanation of the approach taken.

The offenders mean's (as far as they are known or appear) may be relevant, they may have sufficient means to address a or several of the penalties but this may not be the case considering the aggregate total of all the penalties in the notices.

Where the total aggregate of all the penalties is considered not to be proportionate and just then some or all the penalty notices will have to be moderated. The circumstances of the penalty notices will need to be considered but in any event the maximum reduction will be 20%, unless there are exceptional circumstances. The presumption will be that the reduction will be applied equally across all penalties unless particular circumstances merit an alternative approach.

The final penalty should not be less than the cost of compliance in the first place.

Where there is only one penalty notice this stage is unnecessary as the justification for that penalty will be specifically dealt with in the civil penalty assessment form.

Assessment Table for Civil Penalties issued under the Housing and Planning Act 2016

This assessment table demonstrates and confirms how the civil penalty assessment was calculated in accordance with this enforcement policy. This may be revised and updated in line with the guidance contained in the committee report.

Details of offence	
Legal Contravention	
Description and condition of premises including evidence of multiple occupancy where relevant	
Number of tenants	
Number of households	
Any particular vulnerability of the tenants	
Had the landlord received any previous communication regarding the offence	

(add dates and detail of communication and any responses)		
Were any other properties affected by the offence?		
Is there evidence that the landlord has tried to avoid his legal responsibilities e.g. threatened the tenants or acted in a discriminatory way in relation to the tenants		
Step 1 in policy- assessment of severity of offence		
Severity considerations to include where appropriate:		
<ul style="list-style-type: none"> • Nature/extent of hazards present. • Vulnerability of tenants e.g. age, illness, disability, someone with language issues etc • Evidence of discrimination/action against the tenants • Effect on neighbouring premises • Number of persons and/or households affected e.g. single family or HMO • Level of impact /potential impact/consequences on/for the occupiers • Level of risk to occupiers or third parties 		
Considerations		
Banding based on severity of offence considerations		
Extreme	Substantial	Moderate
Step 2 in policy- assessment of culpability		
Culpability considerations to include where appropriate:		
<ul style="list-style-type: none"> ▪ Has committed similar offences before, resulting in formal or informal action ▪ Offence was planned ▪ Experienced landlord who should know responsibilities ▪ Owns a number of properties so should be aware of the legislation (i.e. not a single property landlord) ▪ Period of time over which offence(s) committed ▪ High level of profit from the offence/sought profit in committing 		

- Offender is a letting, managing or estate agent
- Attempt to cover up evidence of offence
- Any mitigating factors

The offender to be assessed against three areas of culpability:

- Deliberate: offender intended to cause harm and the offence was planned.
- Reckless: offender was reckless as to whether harm was caused, that is, where the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
- Knowledge: has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results.
- Negligent: failure to ensure compliance and awareness of legal responsibilities.

Considerations	
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Banding based on culpability considerations

Extreme		Substantial		Moderate	
---------	--	-------------	--	----------	--

Step 3: Initial assessment of civil penalty

Severity of offence	Moderate	
	Substantial	
	Extreme	
Culpability	Moderate	
	Substantial	
	Extreme	

Initial civil penalty assessment	£
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Step 4: Check

Check that the provisional civil penalty assessment meets the aims of the sentencing principles:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community

Check that the provisional assessment is proportionate and will have an appropriate impact.

- This step should take account of the offender's income and assets where made available and make final adjustments to the penalty calculation even where this results in a penalty point within another band. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, e.g. their rental portfolio, to be taken into account when determining an appropriate penalty

Considerations		
Civil penalty assessment before discounts		
Discounts:	Details	Total Amount of Discount (£)
(a) Works of compliance within the representation period? (discount of 20% to be applied)		
(b) Accreditation course with the London Landlord Accreditation scheme booked within the representation period? (discount of 10% to be applied)		
(c) Total discounts (maximum 30%)		
Outcome of totality consideration (see appendix A)	£	
Revised civil penalty assessment where appropriate to ensure the		

penalty is proportionate and reasonable	
Final assessment of civil penalty	£

Appendix A – Totality Assessment for Civil Penalties under the Housing Act 2004 (as amended)		
	Contravention	Penalty
1		
2		
3		
4		
5		
	Total penalty	
	Is penalty proportionate and reasonable taking into consideration severity of offences and culpability	Yes/no
	Explain the answer above	
	Final assessment	

Imposing a civil penalty

Schedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty.

Notice of Intent

Before imposing a civil penalty on a landlord or agent, the Council must serve a 'notice of intent' on the landlord or agent in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty;
- The reasons for proposing to impose a civil penalty, and;
- Information about the Landlord's right to make representations to the Council.

In addition a copy of the Assessment Form will be issued at this stage for each penalty plus any documented totality considerations.

Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days beginning the day after the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. information on financial means, hardship, commentary to counter the content of the notice or intention, accreditation, tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect, in their view. Where no such supporting evidence is provided, the representation against the amount generally will not be accepted.

Written responses will be provided to all representations made by the recipients of a Notice of Intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case-by-case basis and responded to where the Council considers it necessary.

Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the Notice of Intent but it cannot be a greater amount.

The imposing of a civil penalty involves serving a Final Notice and this notice must contain the following information:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal, and;
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

Withdrawing or Amending Notices

At any time, the Council may withdraw a Notice of Intent or a Final Notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case-by-case basis and will be subject to the six month statutory limitation for criminal offences.

Appeals to the Tribunal

If a civil penalty is imposed on a landlord/agent, that Landlord can appeal to the First-tier Tribunal (“the Tribunal”) against the decision to impose a penalty or the amount of the penalty. Appeals must be made within 28 days of the date the final notice was issued. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

Payment of a civil penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given (“the 28 day payment period”), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

Other consequences of having a civil penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person’s involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12 month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

“Banning order offence” means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

Recovering an unpaid civil penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control ;
- A Third Party Debt Order;
- A Charging Order, and;
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

Income from civil penalties

Any income from Civil Penalties is retained by the Local Housing Council which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017).

Banning Orders

Section 15(1) of the Housing and Planning Act provides local authorities with the power to apply for a 'Banning Orders' against a person who has been convicted of a relevant offence. Details of the relevant offences has not yet been provided by the Secretary of State. A Banning Order prevents a person from:

- Letting any house
- Engaging in letting agency work
- Engagement in property management work or
- Doing two or more of these activities

An Order is limited to England, must specify the duration of the Order and must last at least 12 months. Penalty for breaching an Order, upon summary conviction is either a fine, imprisonment or both.

Rent Repayment Orders (RRO)

The Housing Act 2004 section 73 first introduced Rent Repayment Orders (RROs) where the tenant or the Local Housing Authority could apply to the First Tier Tribunal for the repayment of Housing Benefit/Universal Credit that was paid to convicted landlords where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, Under the 2016 Act RROs are being extended to cover the following situations:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;

- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

An RRO can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed in above. Where an application for an RRO is made and the landlord has not been convicted of the offence for which the RRO application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. The maximum rent recoverable is capped at 12 months. A local housing authority can impose a civil penalty or prosecute and apply for an RRO for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));
- Offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

Local Housing Authorities or tenants can use these powers, but under section 48 of the Housing and Planning Act 2016 local authorities now have a duty to consider applying for a Rent Repayment Order if a person has been convicted of a relevant offence.

Where the rent was paid from housing benefit or universal credit the sum awarded under the RRO is returned to the Council to be used by the Authority to further its statutory functions in relation to private housing enforcement work.

Decision to prosecute and/or apply for a Rent Repayment Order (RRO)

Local Housing Authorities are expected to develop and document their own policy on when to prosecute and when to apply for a Rent Repayment Order and when to do both. Each case should be decided independently.

In deciding whether to prosecute and/or apply for an RRO consideration should be given to any public interest in referring the case for prosecution over and above that required to apply for an RRO. The greater the impact of the offending on the community, the more likely it is that a prosecution will be appropriate.

The statutory guidance states that a prosecution may be the most appropriate option where an offence is particularly serious or the offender has committed similar offences in the past.

In deciding whether to apply for a Rent Repayment Order the Council will consider if there are tenants willing to be involved in the making of such an application.

Amendments to the Development and Regulatory Services Enforcement Policy – Statement of Principles for The Smoke and Carbon Monoxide (England) Regulations 2015- Introduced at Housing Committee 23rd October 2017

Introduction

The Smoke and Carbon Monoxide (England) Regulations 2015 require that landlords for all let properties (some exemptions exist) ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contain a solid fuel burning appliance.

and for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his/her behalf, that the alarm(s) are in proper working order on the day the tenancy starts.

Properties subject to Part 2 or Part 3 licensing are exempt from the 2015 Regulations although compliance is achieved through licensing conditions.

Regulation 8 of the Smoke and Carbon Monoxide Alarm (England) Regulations provides that where a Local Housing Authority is satisfied, on the balance of probabilities, that a Landlord on whom it has served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), the Authority may require the Landlord to pay a penalty charge. The amount of the charge to be determined by the Authority, is up to a statutory maximum of £5,000.

Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires a Local Housing Authority to prepare and publish a Statement of Principles to be followed in determining the amount of penalty charge to be made for failure to comply with the requirements of a Remedial Notice under Regulation 5 of the regulations.

In particular the council will have regard to:-

- The nature of the breach of the Regulations
- Continued, or repeat, breaches of the Regulations.

The primary aims of any financial penalty will be to:

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health, safety and wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire.
- Promote compliance of landlords in the private rented sector.
- Eliminate any financial gain or benefit from non-compliance with regulation.
- Educate Landlords on the associated risks of non-compliance.
- Be proportionate to the nature of the breach of legislation and the risk posed.
- Aim to prevent future non-compliance.

The Council may revise its Statement of Principles at any time, but where it does so, it must publish the revised statement. The current statement of principles which is in force at the time of the commission of the offence is to be used when deciding on the amount for the penalty charge.

Remedial Works to comply with Regulations

To comply with these Regulations the type of smoke alarm deemed acceptable is either a mains powered alarm or one operated with a sealed battery with a 10 year life with one fitted on each floor.

It is important to remind landlords that a full fire risk assessment should be undertaken to ensure that this level of detection meets the risk within the premises. The Council can assess risk using the Housing Act 2004 and this may require additional detection. Such circumstances include mode of occupation, nature of tenants, property layout or height of building. Freeholders may also be required to risk assess the common ways under the Regulatory Reform (Fire Safety) Order 2005.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

Enforcement

Where the Council has "reasonable grounds" to believe that a landlord is in breach of one or more of the above duties, the Council **must** serve a Remedial Notice on the landlord under Regulation 5. This will list the remedial works required to be taken by the Landlord. 'Reasonable grounds' would include being informed by a tenant, letting agent or housing officer that the required alarms are not installed.

Regulation 5(e) makes provision for the landlord to be able to request a written review of the Remedial Notice within 28 days.

If the Landlord fails to take remedial action, within the specified timescale, a penalty charge notice may be issued. The 2015 Regulations (Regulation 7) requires the Council to carry out the works in default where the necessary consent is given by the occupier and can then reclaim all reasonable costs incurred by the builder and themselves in organising the works.

Where a penalty charge is to be imposed for non-compliance, the landlord subject to the charge shall be notified in writing by a Penalty Charge Notice. This notice shall include;

- the reason for imposing the penalty;
- the premises to which it relates;
- the number and type of alarms the Council has installed at the premises;
- the amount of the penalty (including eligibility for first offence early payment discount);
- details to make payment; and,
- details of the right to request a review and how to request it.

The purpose of the penalty charge is to:

- Protect the interests of the public
- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms in line with the Regulations and after being required to so, under notice
- Eliminate financial gain or benefit from non-compliance with the Regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Criteria for the imposition of a penalty charge

In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the regulation breach under consideration. Factors which the Council will take into consideration include, but are not limited to:-

- The extent to which the circumstances giving rise to the contravention were within the control of the landlord.
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach.
- The steps that the landlord has taken since being served with the Remedial Notice,

- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred.
- The condition of the premises e.g. any Category 1 hazards, if there is overcrowding, vulnerability of the occupiers, any high fire risk, any electrical/gas risks etc
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).
- Any past breaches.

The expectation is that a landlord is proactive with complying with his duties to ensure that the number and type of alarms at least meets the expectations of the 2015 Regulations.

The Penalty Charge Notice will be issued where the Council is satisfied, on the balance of probabilities, the landlord has failed to comply with his duties.

To determine relevant facts the Council will try to collect evidence, including; information from a property inspection or provided by the tenant, landlord or agent on property management and whether any remedial action has been satisfactorily completed.

Landlords can demonstrate compliance with their duty to install by supplying dated photographs of alarms, together with installation records or signed confirmation by the tenant that a system is in proper working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should then test the alarm to ensure it is in proper working order.

Criteria for determining the amount of Penalty Charge

The Regulations set a maximum penalty charge of £5,000. A penalty charge will be set at a level which the council considers is proportional to the breach and will take into account all the other circumstances of the case, which will include (the list is not exclusive):-

- Costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision.
- Whether or not the breach under consideration is a first-time breach.
- Where justified representations have been made to the Council to formally review the penalty charge imposed, under Regulation 10.

Barnet Council has set the penalty charge as follows:-

Offence	Fine
First-time breach depending on the facts of the case	Up to £5,000 .

An early payment of the penalty charge, within 28 days from Penalty Charge Notice service	Discount of 50% (to £2,500)
Offender books onto an accreditation course with the London Landlord Accreditation scheme within 28 days of service of the Penalty Charge Notice and subsequently completes the course on the relevant date	Penalty reduced by 10%.
If the offender undertakes the necessary work of compliance within 28 days of service of the Penalty Charge Notice	Penalty reduced by 20%.
As such, for a first time breach, if the landlord completes the works, pays within 28 days and becomes accredited the fine will be £1,500.	
Subsequent breaches by the same landlord	£5,000 . No discounts will be available in this case.

Review of Penalty Charge Notice and Appeals

On receipt of a Penalty Charge Notice a landlord can, within 28 days from Notice service, make a written request to the Council to review their decision. Information on how to request a review will be on the reverse of the notice.

The Council must consider any representation and decide whether to confirm, vary or withdraw the Penalty Charge Notice. The Council in making a decision will consider the following:

1. Whether the facts of the matter supported the service of the Penalty Charge Notice
2. Whether the decision was correct having regard to the relevant laws.
3. The amount of the charge was reasonable having regard to any mitigating, aggravating or other circumstances submitted with the request for review.

Adjustments to the penalty charge will be in steps of £250.

The Council will review the facts of the case and can confirm or vary their decision, and will serve notice giving the result of their review.

A landlord can then appeal against the review decision to the First Tier Tribunal. The Tribunal can then quash, confirm, or vary the Penalty Charge Notice (but

cannot increase the penalty charge). Appeals should be made within 28 days from the date of the Decision Notice served by the Council.

The operation of the Penalty Charge Notice is suspended until the Tribunal has determined the appeal.

Recovery of Penalty Charges.

If the charge is not paid, then recovery will be pursued as laid out in the 2015 Regulations, including the obtaining of a Court Order where necessary. Where landlords make an appeal to the First-tier Tribunal, recovery will commence after the appeal period has elapsed or from when the appeal is finally determined or withdrawn.

Public Health, and Nuisance, Environmental Protection & Antisocial Behaviour Enforcement

This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Public Health and Nuisance Scientific Services, and Priority Intervention Teams, and to set out the Council's policy where the legislation permits discretion. All decisions on enforcement action will be made following consideration of this policy.

1. Introduction

Public Health and Nuisance Scientific Services, Priority Intervention Teams investigate resident's service requests concerning:

- Smoke Control Areas.
- Air pollution complaints, e.g. emissions of smoke, dust, effluvia and odours, from industry, shops, houses and vehicles.
- Contamination of land.
- Noise and vibration complaints from houses, shops, entertainment facilities, building and demolition works, industry and streets (but not general traffic noise).
- Asbestos.
- Pest Control
- Filthy and Verminous premises
- Faulty private drainage from single premises and misconnections
- Accumulations on private land
- Local Authority Air Pollution control
- Antisocial behaviour
- Hate crime
- Lighting and other areas of nuisance
- Street trading

The overriding aim of any enforcement action is to ensure that no person living in, working in, or visiting the area suffers significant adverse health effects or nuisance from exposure to air, noise or land pollution, pests, private drainage or antisocial behaviour.

2. Scope

This Appendix covers the following enforcement action:

Environmental Protection
Public Health
Statutory Nuisance
Antisocial behaviour
Street trading

3. Legislation

Public Health and Nuisance, Scientific Services, Priority Intervention Teams are responsible for ensuring that the Council performs its statutory functions under the following legislation:

Environmental Protection Act 1990
Environment Act 1995
Clean Air Act 1993
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Control of Pollution Act 1974
Pollution Prevention and Control Act 1999
Clean Neighbourhoods and Environment Act 2005
Public Health Acts 1936 and 1961
Environmental Protection Act 1990 Part II, III and IV
Building Act 1984
Caravan Sites and Control of Development Act 1960
Prevention of Damage by Pests Act 1949
Refuse Disposal (Amenity) Act 1978
Anti-Social Behaviour Act 2003
Town and Country Planning Act 1990, Section 215
Public Health (Control of Disease) Act 1984
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
National Assistance Act 1948, Section 47
Criminal Justice and Public Order Act 1994 Sections 77-79
Control of Pollution Act 1974
Highways Act 1980
Licensing Act 2003
Town and Country Planning Act 1990, Section 215

and any regulations, orders or other statutory provisions made under or incorporated into the above

These legislative tools will always be considered and followed where appropriate.

4.0 Enforcement options to be read in conjunction with Enforcement policy. (see 3.0 ENFORCEMENT OPTIONS)

Most of the powers listed below are from the statutory legislation above. In most cases these powers are set out in the legislation in the form of statutory duties requiring that statutory nuisances, if proven, must be addressed and not left to the discretion of the enforcement officer. However, the enforcement options to abate these statutory problems may be discretionary.

Typical reasons why one enforcement option may be chosen over another are considered below. It is not possible to take more than one simultaneous action for the same hazard but if the option chosen has not proved satisfactory the Council may consider another course of action (or the same action again).

- No action
- Informal action verbal or written
- Informal warnings in writing
- Notification of nuisance
- Notification of offence
- Issue of a fixed penalty notice*
- Service of statutory enforcement or prohibition notices
- Revocation of authorisation
- Carrying out works in default of a notice
- Seizure of equipment**
- Formal caution
- Prosecution

*FPN available under certain legislation only

** Noise nuisance only

Not all of these options are available in every circumstance emphasising the need to consider powers available under each piece of legislation individually.

Decisions on whether to prosecute will always take into consideration appropriate statutory defences, such as best practicable means, and, where applicable, best available techniques not entailing excessive cost (BATNEEC).

All statutory notices will be served by officers in accordance with the scheme of delegation and the requirements of the appropriate legislation.

All statutory notices served on companies will be served at the registered office and be directed to the company secretary. Wherever possible, a copy of the notice will be delivered to the site and handed to the person responsible for the process/incident, or a suitable representative.

4.1 Prohibition Notice – some legislation gives the Council the power to serve a prohibition notice to stop an activity or process where there is an imminent risk to health, safety or pollution.

4.2 Prosecution - A prosecution may result from:-

- non-compliance with a statutory notice
- failure to pay a fixed penalty notice
- a serious breach of the law

In the latter case the considerations must include:-

- Seriousness of alleged offence
- Previous history/co-operation of duty holder, if applicable
- Possible defences
- Availability of witnesses
- Public benefit of a prosecution

4.3 Simple Cautions – The enforcement officer may issue a Simple Caution in accordance with Home Office Circulars in the following circumstances -

- i) There is evidence sufficient for realistic prospect of conviction
- ii) The defendant admits the offence
- iii) The defendant understands the significance of a Simple Caution and is willing to accept the Caution
- iv) A Simple Caution is in the public interest

If the duty holder does not accept the offer of a Simple Caution, then a prosecution will be instituted.

[Note - The offender will be given a full explanation of the significance of the caution before being allowed to accept it, as a simple caution is an admission of guilt to a criminal offence and is recorded as such on the Central Register of Convictions held by the Office of Fair Trading. It is not a form of sentence, nor is it a criminal conviction but it will remain on record for three years and may influence a decision to prosecute should the individual or organisation re-offend.

5.0 Other provisions

All other legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

Food, Health and Safety Enforcement

This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Food, Health and Safety Team and to set out the Councils policy where the legislation permits discretion. All decisions on Food, Health and Safety enforcement action will be made following consideration of the overarching policy and relevant sections of this Appendix.

1. Introduction

The Food, Health and Safety Team (FHS) deals with:

- Investigating service requests from residents and consumers about food, food premises, health and safety in commercial workplaces, animal welfare, and smoking in public buildings;
- Delivery of a programme of planned and prioritised interventions to monitor compliance with statutory standards in food businesses, workplaces and licensed premises;
- Providing advice and taking enforcement action where appropriate to bring food businesses and work premises up to standard;
- Administration of licences for special treatment establishments and animal welfare;
- Control of infectious diseases;
- Promoting health through targeted projects and schemes, particularly in the area of diet.

The service aims to:

- Protect and improve the health and wellbeing of residents, consumers and visitors to the borough, primarily by ensuring that they have safe places to eat, visit and work;
- Support and advise regulated businesses in complying with their duties;
- Ensure that consumers are not misled and that traders don't gain unfair competitive advantage through illegal practice.

2. Scope

This appendix covers the following enforcement action:

Use of powers to enforce food safety and standards;
Use of powers to enforce health, safety and welfare in workplaces;
Use of licensing powers for special treatment establishments and animal welfare
Use of powers to control the spread of infectious disease;
Use of powers to control smoking in smoke free premises.

3. Legislation

FHS is responsible for ensuring that the Council performs their statutory functions under the following primary legislation:

Health and Safety at Work etc Act 1974;
Pet Animals Act 1951;
Breeding of Dogs Acts 1973 and 1991;
Breeding of Dogs Licensing Act 1998;
Animal Boarding Establishments Act 1963;
Riding Establishments Acts 1964 and 1970;
Zoo Licensing Act 1981;
Dangerous Wild Animals Act 1976;
Performing Animals (Regulations) Acts 1925 and 1998;
Animal Welfare Act 2006;
Animal Health Act 1981;
The Food Safety Act 1990; and

any Orders, or Regulations or other instruments made there under, or having effect by virtue of the European Communities Act 1972 and relating to food safety or animal feedstuffs including;

Regulation (EC) No.178/2002– principles of food law
Regulation (EC) No.852/2004– general hygiene requirements
Regulation (EC) No.853/2004– hygiene requirements for approved premises
Regulation (EC) No.2073/2005 – microbiological criteria of foodstuffs;
Public Health (Control of Disease) Act 1984 (as amended)
Health Act 2006
London Local Authorities Act 1991

and any regulations, orders or other statutory provisions made under or incorporated into the above

4. Food Law Enforcement Regime

4.1 Food Law Code of Practice

Enforcement of food law is governed by the Food Law Code of Practice (England) issued under Section 40 of the Food Safety Act 1990. This code, which the Council is statutorily bound to observe, gives guidance on the approach to and application of enforcement powers will be followed. Any significant divergence from the Code will be agreed with the Food Standards Agency, which oversees food law enforcement by local authorities.

There are discretionary matters which the Code indicates should be subject to local policies, as follows.

4.2 Food Complaints and Service Requests – Policy

The decision to take action in response to a complaint or service request will be based on the Service's reactive work policy below:

General Complaints about Food and Food Premises

Complaints are broadly categorised as high, medium or low risk to public health. Complaints in the first two categories will be investigated in full. High risk complaints e.g. cockroach/rat infestations, food poisonings, will receive same day or one day responses. Medium risk e.g. foreign bodies, service requests, will receive 3 or 5 day responses.

Where the complaint relates to food sold by responsible traders, such as most major supermarket and catering chains and national manufacturers, the complaint will initially be categorised as low risk unless it falls within the same day or one day response categories. The complainant in these low risk cases will be recommended to return the goods to the retailer. This permits resources to be focussed where greatest local improvement can be, and needs to be, effected. The list of companies recognised as falling into the “responsible trader” bracket will be reviewed annually and when circumstances indicate a decline in food safety management standards at a company. The assessment of suitability for investigation will normally be straightforward but account must be taken of:

1. any particular risk or significant hazard indicated by the complaint, e.g. dangerous foreign bodies/contaminants, allergy risk from inadequate labelling, activities which give rise to significant hygiene risks, etc.;
2. any history of similar types of complaint;
3. any history of poor response to complaints by the business.

4.3 Food Sampling Policy

Sampling is intended to compliment the Council’s programme of inspections of food businesses and is carried out in order to protect health, prevent food fraud and to prevent unfair commercial competition.

Sample Priorities

Food sampling is broadly prioritised as follows:

- a) investigate food poisoning outbreaks and food contamination incidents;
- b) investigate complaints - where sampling or analysis is necessary;
- c) check food suspected of being contaminated when undertaking inspections;
- d) ensure that imported foods comply with compositional requirements and are not contaminated;
- e) check on foods manufactured or processed within the Borough particularly at premises approved under product specific legislation;
- f) check on foods marketed by major companies based in the borough for whom we are Home Authority;
- g) participate in co-ordinated sampling at European and National levels (EU / PHE / DEFRA / FSA);
- h) participate in co-ordinated programme sampling with other London Boroughs to deal with cross border issues;

- i) as part of food hygiene inspection;
- j) specific Barnet projects to confirm satisfactory conditions and identify problem areas.

A sampling plan is drawn up every year in consultation with the Food Examiner, the Council's appointed Public Analyst, and the London Food Co-ordinating Group. Sampling which is undertaken under priorities (a) to (c) above will not be included in the sampling plan but will be a reactive element of an inspection and/or investigation when required.

The agreed sampling plan will not be published as it is generally our policy to sample and inspect without prior notice.

Action on Results

Businesses will be informed of the results of all samples taken. In respect of an individual business we will take enforcement action on results that indicate unsatisfactory or hazardous samples, by applying the following criteria.

Potentially hazardous samples

Where the laboratory indicates that a sample is potentially hazardous or unfit, without delay we will:

- Detain the batch of food, if sampled informally and resample formally;
- Seize the batch of food for destruction, if sampled formally;
- In certain circumstances consider voluntary surrender of the food by the business;
- Investigate the extent of the contamination in the food chain, the practices that may have led to the hazardous food product and their application throughout the company and food industry, with a view to tracing other contaminated products and preventing further contamination. The Food Standards Agency will be notified immediately using the prescribed incident report form where the risk may either affect numbers of people in other boroughs or there is serious risk to consumers, in accordance with the Food Safety Act Code of Practice;
- Immediately notify the manufacturer/importer/proprietor of the results if this not done in carrying out the above;
- Immediately notify the relevant Primary, Home and/or Originating Authority for the manufacturer or importer of the food;
- Consider whether it would be appropriate to initiate a prosecution or formal caution against the proprietor having regard to the Service's Enforcement Policy.

Significant legal contravention (non-hazardous)

A significant contravention might be one where the product was sub-standard for reasons of financial gain (e.g. counterfeit or an intentionally misleading

description) or was not of the nature, substance or quality demanded. We will warn the trader in writing, explaining the results, the standard expected, the possible reasons for the failure and suggestions for improvement. The Primary, Home and/or Originating Authority will be consulted to determine which authority is best positioned to pursue the matter to a satisfactory conclusion, the default position being that Barnet will if the other authorities are unwilling. Formal enforcement will be considered on a case by case basis in accordance with the main Enforcement Policy.

Unsatisfactory/Sub-standard samples

Where the food is shown to be unsatisfactory or sub-standard but the risk to public health is not significant, or the commercial gain from non-compliance is minimal, we will adopt an advisory/warning approach to the trader explaining the results, the standard expected, the possible reasons for the failure, suggestions for improvement and inviting them to advise us of their intended action.

Where a response is not received or a response is unsatisfactory, consideration will be given to whether formal action is appropriate in line with the Enforcement Policy. For goods that are not manufactured in or imported into Barnet we will generally advise the manufacturer/importer of the food and advise the Primary, Home and/or Originating Authority in writing. Further follow up is unlikely.

5. Health and Safety Enforcement Regime

The FHS Team will follow the statutory National Local Authority (LA) Enforcement Code and supplementary guidance issued by the Health and Safety Executive (HSE), which sets out the risk-based approach to targeting health and safety interventions to be followed by Local Authority regulators. The list of activities/sectors suitable for targeting for proactive inspection by local authorities, published each year by HSE, will also be followed in setting our annual service and inspection plans. Current HSE guidance on the selection of complaints and reported injuries for investigation will also be followed with the following local provisions.

It is not possible to investigate every complaint about businesses without undue impact on our other activities. Even though a complaint may be fully justified, it may not relate to significant risks to health and safety. Service requests will be evaluated, and investigated if one or more of the relevant criteria below are satisfied.

The initial evaluation will normally be carried out by a Team Leader or the Service Manager. If a complaint that has been selected for investigation is later found to fall outside these criteria, the investigation may be abandoned, with the reasons recorded.

If a complaint is not to be investigated, or the investigation is abandoned, the complainant will be informed promptly. In most cases it should be possible to offer simple advice about what they can do to resolve the problem (for example they can contact the duty holder themselves).

Complaints will normally be investigated, and enforcement action taken as appropriate, if:

- There has been a major injury as defined in RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013);
- There is a high potential for such harm occurring if action is not taken;
- The matter complained of is significant and the relevant duty holder has a known poor compliance record;
- The matter complained of is relevant to our other enforcement priorities;
- There is likely to be serious public concern about the issue.

Complaints will not normally be investigated if it appears that:

- The practicality of achieving lasting improvement is low;
- The track record of the relevant duty holder is good;
- Other options are reasonably available to the complainant;
- The matter could appropriately be dealt with by another agency;
- They relate to comparatively minor or remote risks, suspicions or allegations inadequately supported by evidence, employee welfare provisions, customer facilities or nuisance issues.

6. Policy on Enforcement of Smoke Free Provisions

Smoke Free legislation (Health Act 2006) came into effect on 01 July 2007. No one is now permitted to smoke in any enclosed place the public has access to e.g. pubs, nightclubs, offices, shops, works vehicles and leisure centres. The Department of Health (DoH) has indicated that a graduated enforcement approach, assisting compliance rather than immediate enforcement is desirable. However, in situations where individuals flagrantly flout the law, it is the Department's view that enforcement action by the local authority remains entirely warranted. Barnet's Smoke Free enforcement policy will be as follows:

- As with all council enforcement measures, all action taken shall be fair, proportional, consistent and decided upon with reference to the Enforcement Concordat, the Regulators' Code, and the over-arching DRS Enforcement Policy;
- Enforcement will be in line with Department of Health Guidance;
- A graduated approach to enforcement will be taken. This will comprise starting with advice to assist compliance, an initial warning letter to first offenders, a second and final warning to repeat offenders and finally the issue of a fixed penalty notice or proceedings for intransigent repeat offenders;
- The regulatory officers will primarily be Environmental Health Officers, assisted by Food Safety Officers and Health and Safety Officers in the Environmental Health Department, who will be trained and provided with the necessary authority to enforce.

Regulatory officers have the following enforcement options available to them:

- Verbal warning (includes advice on compliance);
- Written warning, 1st and 2nd Stage. (1st Stage includes advice on compliance);
- Fixed Penalty Notice (FPN) or legal proceedings against an owner, occupier, manager or any other person in charge of no smoking premises for failing to display no-smoking signage (section 6(5) offence);
- FPN or legal proceedings against an individual smoking in no-smoking premises (section 7(2) offence);
- Legal proceedings against an owner, occupier, manager or any other person in charge of no-smoking premises for failing to prevent smoking in a smoke free place (section 8 (4) offence) – fixed penalty is not available for this offence.

There are no formal appeal provisions against the service of a FPN. However, Part 4 of the FPN, as set out in the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, relates to the making of a request for a court hearing.

If someone is found smoking in a smoke free area where other persons are present, the enforcement officer will notify the person in charge of the premises who will be expected to:

- Draw the attention of the person smoking to the no-smoking signs in the area and inform them that they are committing an offence by smoking;
- Politely ask them to stop smoking or direct them to the place that they are permitted to smoke;
- If the person continues smoking ask them to leave the premises and if possible send warning letter(s).

If a repeat offender is witnessed smoking by the enforcement officer and refuses to stop, the officer will implement procedures for issuing a Fixed Penalty Notice.

Signage

The same enforcement approach will apply as above albeit with only the following options, namely:

- Verbal warning (includes advice on compliance);
- Written warning, 1st and 2nd Stage (1st Stage includes advice on compliance);
- Fixed Penalty Notice (FPN) or legal proceedings against an owner, occupier, manager or any other person in charge of no smoking premises for failing to display no-smoking signage (section 6(5) offence).

Smoking 'shelters':

Smoking shelters are increasingly being installed at some premises as a means to provide smokers somewhere to smoke where they are protected from inclement weather. Such shelters must meet defined specifications in order to be exempt, i.e. avoid being considered enclosed premises in their own right and thus needing to be smoke free.

To ensure consistency of enforcement across London, the policy adopted by the Association of London Environmental Health Managers will be applied in determining if smoking shelters are located or constructed in such a way as to meet the exemption requirements.

Trading Standards and Licensing Enforcement

This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Trading Standards and Licensing Teams and to set out the Councils policy where the legislation permits discretion. All decisions on Trading Standards and Licensing enforcement action will be made following consideration of this policy.

1. Introduction

The Trading Standards Team (TS) undertakes:

- Pricing inspections and complaints;
- Product safety inspections and complaints;
- Fair trading inspections and complaints;
- Consumer credit inspections and complaints;
- Counterfeiting inspections and complaints;
- Provision of Primary/home authority and business support;
- Licensing and registration relating to fireworks, scrap metal dealers, poisons and motor salvage operators;
- Maintenance of metrology standards.

The Licensing Team (LT) is responsible for the administration and enforcement of approximately 1000 premises which are licensed for alcohol and public entertainment; 75 premises licensed for gambling and 70 premises licensed for street trading. The work undertaken by the team includes:

- Processing premises and personal licence applications
- Processing temporary event notices
- Processing representations and requests for review of premises licences
- Processing gambling premises licences and permits
- Checking and enforcing compliance with licence conditions
- Investigating complaints about licensed premises and activities
- Dealing with businesses operating without a required licence
- Taking the lead in drafting licensing policy

The service aims to:

- Ensure a fair and safe trading environment for all and to protect consumers within the London Borough of Barnet.
- Ensure an environment which encourages highly compliant and well controlled licensed premises.

The Council has a legal responsibility to ensure that minimum standards are reached and maintained. TS and LT will aim to improve and maintain the trading environment through:

- Working together with residents and businesses
- Encouraging good management and due diligence for business
- Undertaking risk based and targeted advice visits to traders
- Focusing resources on the most serious issues
- Undertaking targeted enforcement projects

2. Scope

This appendix covers the following enforcement action:

Enforcement based complaints and service requests in relation to all trading standards legislation

3. Legislation

TS are responsible for ensuring that the Council performs their statutory functions under the following legislation (this list is not exhaustive):

- Animal Health Act 1981
- Protection of Children (Tobacco) Act 1986
- The Children and Young Persons (Protection from tobacco) Act 1991
- Clean Air Act 1993
- Consumer Credit Act 1974
- Consumer Protections Act 1974
- Control of Pollutions Act 1974
- Copyright Designs and patents Act 1988
- Copyright etc and trade marks Act 2002
- Criminal Justice and police Act 2001
- Development of tourism Act 1969
- Educations reform act 1988
- Energy Act 1976
- Estate agents Act 1979
- European communities act 1972
- Hallmarking act 1973
- Health and safety at work etc act 1974
- Medicines Act 1968
- Poisons Act 1972
- Prices Act 1974/1975
- Property Misdemeanors Act 1991
- Timeshare Act 1992
- Trade Mark Act 1994
- Video Recordings Act 1984 and 1993
- Weights and Measures Act 1985

and any regulations, orders or other statutory provisions made under or incorporated into the above

LT are responsible for ensuring that the Council performs their statutory functions under the following legislation (this list is not exhaustive):

- Licensing Act 2003
- Gambling Act 2005
- London Local Authorities Act 1991 (street trading)
- Live Music Act 2011

These legislative tools will always be considered and followed where appropriate.

4. Enforcement complaints and service requests

It is not possible to investigate every complaint about businesses without undue impact on our other activities. Even though a complaint may be fully justified, it may not relate to significant risks to health and safety, or significant fraudulent practice. Service requests will be evaluated by TS based upon the information provided and the following in particular will be considered:

- The likely reoccurrence of the complaint
- The history of the trader
- The consequence of the risk
- The likely outcome of an investigation

To ensure that TS resources remain focused on the most serious issues, the case will be investigated if one or more of these criteria are satisfied.

If a complaint that has been selected for investigation is later found to fall outside these criteria, the investigation may be abandoned, with the reasons recorded.

If a complaint is not to be investigated, or the investigation is abandoned, the complainant will be informed promptly. In most cases it should be possible to offer simple advice about what they can do to resolve the problem (for example they can contact the trader themselves). These requests will be recorded on the TS database. This information will be assessed as a whole to prioritise the activities and actions in relation to the fair trading environment in London Borough of Barnet.

5. Other provisions

All other trading standards and licensing legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

Planning Enforcement

This appendix must be read in conjunction with the main enforcement policy. Its purpose is to set out the Council's policy where the legislation permits discretion. All decisions on planning enforcement action will be made following consideration of this policy. This document has been drafted mindful of the advice contained in paragraph 207 of the National Planning Policy Framework (March 2012) and in the planning practice guidance note 'Ensuring Effective Enforcement' (Updated 22 February 2018)

1.0 THE PLANNING ENFORCEMENT TEAM AND ITS OBJECTIVES

1.1 The planning enforcement team

The planning enforcement function of the council is carried out by a dedicated team that sits within the Development Management & Building Control Service.

1.2 Framework

The planning enforcement function operates within the legislative framework set out in the Town and Country Planning Act 1990 (as amended) ("the Act") and all of its subordinate and associated legislation.

In addition to matters pertaining to the Town and Country Planning Act planning enforcement officers may from time to time be called to investigate, or to assist in the investigation of, matters that are the subject of other enforcement regimes, for instance those sanctioned by the Environmental Acts.

1.3 Objective

The primary objective of the planning enforcement team is to investigate alleged breaches of planning control and to take action where it is appropriate and expedient to do so.

In determining the expediency of taking enforcement action, the local planning authority will have regard to the policies of the council's 'Development Plan' and all other material considerations.

1.4 What does the enforcement team investigate?

The enforcement team is responsible for investigations into alleged breaches of planning control. Examples of the type of activities that might be investigated by the planning enforcement team include:

- The carrying out of building works and engineering operations;
- Changing the use of the buildings or land;

- Breaching the conditions on which a planning permission was granted;
- Unauthorised works to a Listed Building that affect its character as a building of special architectural or historic interest;
- Unauthorised total or substantial demolition in a Conservation Area;
- Unauthorised display of advertisements;
- Unauthorised works to protected trees; and
- Allowing the condition of land to deteriorate to such an extent that it is adversely affecting the amenity of an area.

1.5 Criminal liability

The carrying out of development without consent does not generally constitute a criminal offence. However, it is an offence not to comply with the terms of a formal notice issued by the local planning authority or to carry out the following operations without the prior consent of the council: unauthorised works to listed buildings, total or substantial demolition in a conservation area, the unauthorised display of advertisements, and unauthorised works to protected trees.

Not all development requires planning permission. Certain building works and some changes of use may be undertaken without planning permission.

The following are examples of activities which are not breaches of planning control and therefore enforcement action may not be taken under planning legislation.

- Parking of commercial vans on the highway in residential areas;
- Operating a business from a home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Parking a caravan within the residential boundary of a property (providing that it is ancillary to the house);
- Clearing land of undergrowth, bushes and trees (providing that some form of statutory protection is not in place);
- Undertaking works that are permitted development - specific works that are exempted by legislation from the need to obtain planning permission.

In addition to the above some common concerns are beyond the remit of the enforcement team to investigate. Typical examples of such matters include:

- Private disputes between neighbours;
- Concerns over trespasses and of building on land belonging to another
- Land ownership and boundary disputes;
- Anonymous referrals.

2.0 CONTACTING THE ENFORCEMENT TEAM

Before a planning enforcement investigation can commence it is important that certain basic information be provided. As well as identifying the land to which the referral relates the customer must be prepared to provide the council with their name and full contact details including their street address. The local planning authority requests that email addresses and/or telephone numbers be provided but do not consider them to be a pre-requisite to commencing an enforcement investigation or an adequate substitute for a street address. Where no contact details are supplied an investigation will not take place.

2.1 Submitting an enquiry in writing

A service request can be submitted by email to planning.enforcement@barnet.gov.uk or to 'Planning Enforcement, 10th Floor, Barnet House, 1255 High Road, London, N11 1NP'

2.2 Submitting an enquiry by telephone or in person

Requests that a case be opened may be taken over the telephone by Customer Support Group agents on 020 8359 3000 but if you would prefer to discuss the matter with a planning officer prior to formally reporting the matter a duty planner is available by telephone from Monday-Friday 9am-5pm or in person at the 'Barnet House' office between 9am to 1pm on Mondays, Wednesdays and Fridays (except bank public holidays and between Christmas and New Year). Please note that the duty planner is located at Barnet House, 1255 High Road, London, N11 1NP

Customer's details are held in strict confidence in accordance with government legislation.

2.3 Proactive Enforcement

Although the routine monitoring of the implementation of all planning approvals will not be undertaken, the local planning authority may choose to manage some enforcement work on a pro-active basis where it is appropriate to do so and where the resources directed to a pro-active investigation are most likely to be commensurate to the issues that may arise. Decisions on the appropriateness of a pro-active approach to enforcement will be taken on a case-by-case basis.

3.0 WHAT WILL HAPPEN TO THE CASE?

Should at least a minimum level of information be provided with a request for service the council will record the information on its database within 5 working days of receipt. An acknowledgement letter or email will be sent to the interested party at this time. This letter will contain the name and contact details of the officer assigned to investigate the matter and a reference number for ease of communication in the future.

3.1 Cases which take priority

The London Borough of Barnet investigates in excess of 1600 enquiries regarding alleged breaches a year. In order to effectively manage this workload the following priorities have been introduced:

1. Alleged damage to a listed building or a tree protected by a Tree Preservation Order (where once the damage occurs it can often be irreversible).
2. Alleged unauthorised works that are taking place at the time of complaint and that are likely to involve significant public harm.
- 3-5. Other alleged breaches, allocated an appropriate priority according to the nature and impact of the works.

4.0 THE INVESTIGATION

4.1 The planning enforcement process

The investigation into alleged breach of planning control will be undertaken in a manner compatible with government guidance. Every enforcement case is different and there is therefore no set procedural rules. However, the general approach will remain broadly consistent across all investigations.

4.2 Initial site inspection

Once the case has been logged and assigned a priority, the planning enforcement officer assigned to the case may need to visit the premises in order to help establish the exact nature of the alleged breach. Where a visit is necessary, the planning enforcement officer will try to visit the site as soon as is practicable, having regard to the priority of the case.

4.3 Powers of Entry

In many circumstances it will not be prudent or possible to arrange the initial visit ahead of time. As a result the case officer will not normally give advance warning of a site visit. Regrettably it is often the case that access to the land will not be possible at the first attempt, leading to delays in the conduct of the investigation.

Officers conducting planning enforcement investigations enjoy powers of entry onto land connected with the investigation. It is an offence for a person to wilfully obstruct a person acting in exercise of such a right. Although the co-operation of the owner or occupier of the land is always preferred the local planning authority may approach the courts for a warrant to enter the land and/or prosecute for wilful obstruction if such co-operation is not forthcoming.

4.4 Reprioritisation

At all stages of the investigation, the planning enforcement officer will be able to reprioritise the case if circumstances dictate that it appropriate to do so.

5.0 ESTABLISHING A BREACH OF CONTROL

Although it is often possible to establish the extent of a breach of planning control immediately on entry to the land on other occasions identification of a breach may take longer.

5.1 Immunity periods

In most circumstances action may only be taken against a breach of planning control within four or ten years of that breach first occurring (the relevant time period depending on the nature of the breach) Therefore, it may be necessary for the officer to conduct a detailed investigation into the history of the site if the age of development is not immediately apparent.

5.2 Materiality and permitted developments

Certain changes of use and types of operational development may constitute 'permitted development', that is to say developments for which a grant of planning permission from the local planning authority is not required. Establishing whether or not a breach of planning control has actually occurred may therefore demand that detailed measurements be taken or that other detailed information be gathered.

Likewise planning permission is often not required for certain changes of use or for running a business from home where the business does not have a 'material' impact on the area.

5.3 Obtaining further information

In order to assist in the obtaining of the sort of information required to properly investigate allegation information the local planning authority may consider it expedient to consider:

- Inviting the owner/ occupier of the land to submit an application for a Certificate of Lawfulness for an Existing Use or Development (LDC). An LDC constitutes an official confirmation from the local planning authority that a development is lawful for the purposes of the planning acts. A LDC will only be granted if the applicant is able to provide sufficient evidence to show that the use or development is lawful;
- Issuing a Planning Contravention Notice (PCN). Those served with a PCN are required to provide certain information relating to the use or development of their land. This information may be used by the local planning authority to establish whether or not a breach of planning control has occurred and the most appropriate form of action in the event that it has.

6.0 ENFORCEMENT ACTION

If a breach of planning control is established the local planning authority must consider what action, if any, is necessary

6.1 Informal resolution

In all instances where it is appropriate to do so the Local Planning Authority will first attempt to resolve breaches of planning control informally through negotiation with owners and/or occupiers of the land. Only in exceptional circumstances will formal enforcement action be taken without reference first being made to those who appear to have an interest in the land. Furthermore, where the ownership of the land is not immediately apparent the council cannot guarantee that prior warning of enforcement action will be given even if circumstances would otherwise dictate such contact to be desirable.

6.2 Expediency

The planning enforcement team must always act in a manner that is proportionate to the breach of planning control identified and must act in the public interest. Before taking any action the local planning authority must be satisfied that the harm to public interests outweighs any public benefit derived from the development complained of. It would be unreasonable for the council to issue an enforcement notice solely to remedy the absence of a valid planning permission. If formal action were taken for this reason the council would be at risk of being instructed to pay the costs appellant's costs in pursuing an appeal.

6.3 Public and private interests

The planning system does not exist to protect the private interests of one person against the activities of another, although private interests will often coincide with the public interest. The distinction between private and public interests is often difficult to determine. For example, the loss in value of a house besides a new development is likely to be a matter of purely private interest but the loss of amenity to neighbouring occupiers resulting from the same development is likely to be of public interest.

6.4 Retrospective applications

Where it appears that there is a reasonable prospect that planning permission would be granted for the development, the developer will be encouraged to submit a retrospective planning application. The determination of a retrospective planning application differs from a prospective application only in that the impacts of the development will likely already be known. All planning considerations will be taken into account but the process will not be influenced by the failure to apply in advance or the fact that the development already exists or the use already in operation.

6.5 Formal enforcement action

Where a breach of control is identified and where informal negotiations fail; a retrospective planning application is refused; or where the situation demands urgent attention the local planning authority will consider the expediency of taking formal action. The consideration of enforcement action mirrors closely that undertaken in respect of a planning application.

There are several powers available to the local planning authority and the type of enforcement action taken will depend upon the nature of the breach of planning control. In most circumstances formal action will consist of the service of a formal notice demanding some form of remedial action in a set time period on the owners and occupiers of the land. In determining the most appropriate form of action the council will be mindful of all relevant considerations including matters pertaining to equal opportunities and human rights legislation

6.6 Enforcement Register

All Enforcement Notices, Breach of Conditions Notices, Listed Building Enforcement Notices, Conservation Area Enforcement Notices and Stop Notices are recorded on the Local Land Charges Register and on the London Borough of Barnet Enforcement Register (<https://publicaccess.barnet.gov.uk/online-applications/search.do?action=simple&searchType=Enforcement>). Intended actions or notices awaiting service will not, however, appear.

6.7 Appeals

In the majority of cases those served with a notice are extended the opportunity to appeal against any or all of the terms of the notice. A commonly pursued ground of appeal is that planning permission should be granted for the development in question. Any appeals will be made to the 'Planning Inspectorate' an executive agency of the 'Ministry of Housing, Communities & Local Government' and independent of local authorities. Should an appeal be made the notice will be held in abeyance pending the outcome. The appeals process is a lengthy one and may take a significant amount of time to resolve.

6.8 Prosecutions

Where the requirements of an Enforcement Notice, Breach of Condition Notice, or Stop Notice or not met in the requisite time period, an offence will have been committed. In such circumstances the local planning authority may consider it appropriate to pursue the matters through the courts. It may also be deemed appropriate to prosecute for offences relating to advertisement, protected tree, conservation area or listed building controls, and for non-compliance with Planning Contravention Notices

Decision on whether to prosecute will be made in accordance with the *Code for Crown Prosecutors* which requires officers to be satisfied that (i) there is enough evidence to provide a realistic prospect of a conviction and, (ii) it is in the public

interest to do so. Fuller details of application of the code are to be found at paragraphs 3.5.3 of the main body of this policy document.

6.9 Injunctions

In certain rare circumstances the local planning authority may deem it appropriate to approach the courts with a request that an injunction be issued. Fuller details of the general approach that will be taken by the local planning authority in regards to injunctions is to be found at paragraph 3.5.5 of the main body of this policy document.

6.10 Direct Action

As an alternative or complement to the aforementioned powers where any steps required by an enforcement notice to be taken are not taken within the period for compliance the local planning authority may appoint contractors to enter the land to take the required steps and to recover from the owner of the land any expenses incurred in so doing.

Although the local planning authority is entitled to recover any costs incurred in pursuing direct action prompt recovery may prove difficult or impossible. Direct action is therefore unlikely to be taken if equally expeditious action can be taken with less threat to the public pursue.

7.0 CLOSING A CASE

Before a planning enforcement file is closed the recommendation of the investigating officer that no further action is necessary will be reviewed by a principal officer or the planning enforcement manager. Should the reviewing officer not be satisfied with the recommendation or if insufficient information is recorded to support the recommendation the original officer or a suitable substitute will be asked to re-examine the matter.

7.1 Notifying complainants

On conclusion of an investigation the local planning authority will in normal circumstances inform the customer of their intention to close the case and provide reasons for so doing. This information will usually be communicated in writing by email or by letter when no email address is given. Where it is not possible to communicate in writing verbal confirmation will be given and a written record of any resulting conversations kept. The customer will be advised that further discussions as to the reasons for concluding the case may be held. Should the customer not be satisfied with the outcome of the investigation a request that the case be re-opened may be made to the investigating officer or the principal enforcement officer or planning enforcement manager. The case will be re-opened if it is deemed by any of these officers that it is appropriate to do so. However, no automatic right to a further review should be assumed.

7.2 Notifying land owners/occupiers

The owners and occupiers of land to which a planning enforcement investigation related or those otherwise apparently responsible for any alleged breach of planning control will not routinely be advised as to the outcome of an investigation. Where some form of written confirmation as to the lawfulness of a situation is requested the requesting party will usually be advised to apply for planning permission or a certificate of lawfulness as the situation dictates.

Building Control Enforcement Policy

This is to be read in conjunction with the 'Building Control Services Enforcement Policy' published by the LABC. Its purpose is to outline the areas of legislation used by the Building Control Team and to set out the Councils policy where the legislation permits discretion.

1. Introduction

The Building Control Team (BC) deals with:

- Investigating complaints from residents about contraventions of the Building Regulations and London Building Acts [Amendment] Act, 1939;
- Providing advice and taking enforcement action where appropriate to bring buildings up to the minimum Building Regulation standards from plan examination /site inspection procedures with new works;
- Investigating requests about the emergency condition of a building/structure from the Public/Police/Fire service.

The Service aims to:

- Protect the safety of residents and visitors in the borough in relation to buildings/structures;
- Ensure new building work meets the minimum standards of the Building Regulations and associated legislation;
- Take the necessary action in respect of any contravention of this legislation.

2. Scope

This appendix covers the following enforcement action:

Enforcement against contraventions of the Building Regulations;
Enforcement of dangerous structures;
Power to charge for enforcement action;
Enforcement of demolitions;
Other Provisions.

3. Legislation

BC is responsible for ensuring that the Council performs their statutory functions under the following legislation:

Building Act 1984;
Building Regulations 2010;
London Building Acts [Amendment] Act, 1939
Associated legislation.

4.1 BC Enforcement Regime

Site visits are conducted in accordance with the Building Regulation policy to determine compliance with Building Regulations and allied legislation.

Contravening work is drawn to the attention of the builder/owner as soon as is practicable and remedial works agreed and recorded on the officer's site inspection records. Re-inspection of works will be carried out as necessary. Any continuing contravention will be processed in accordance with the current enforcement policy/procedure.

The Council have the following options (not necessarily exhaustive) when dealing with building regulation contraventions:

- Inform builder verbally and finally a letter with advice;
- Inform owner /agent with advice letter;
- Serve relevant warning letters;
- Serve relevant legal notice and/or record on Local Land charges register;
- Formal caution;
- Prosecution;
- Injunction.

The Enforcement Guidance states that the action chosen must be *the most appropriate course of action in relation to the hazard in all the circumstances* and sets out the general factors relevant to the enforcement options listed above.

The Council can act in default and prosecute for lack of compliance to these notices. It can also charge for and recover charges for enforcement action.

The Council has **powers to charge for enforcement action**; a] for Dangerous Structures under section 66 of the London Building Acts [Amendment] Act, 1939 and b] for the alteration or removal of offending work under section 36 [3] Building Act 1984. The Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred.

All other BC legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

Highways Enforcement

This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Highways Network Management team and to set out the Councils policy where the legislation permits discretion. All decisions on Highways enforcement action will be made on the basis of available resources and following consideration of this policy.

1.0 Introduction

The Highway Network Management Team deals with:

- Managing and maintaining the highway network with the use of relevant legislation
- Administration of and consideration of Licence and Permit requests and determining via issuance or refusal of such, including attaching conditions as deemed appropriate;
- Providing advice and taking enforcement and potentially legal action where appropriate to ensure compliance with conditions and legislation;
- Investigating service requests about the condition of the public highway;
- Carrying out routine and adhoc inspections of the highway network;
- Responding to requests from any source identifying any issues related to the highway network.

The service aims to:

- Protect and improve the public highway network to the benefit of residents and visitors to the borough, in particular by ensuring that they have a safe place to live;
- Effectively manage and co-ordinate all activity taking place on the public highway;
- Ensure compliance with relevant legislation and Barnet specific requirements and conditions.

The Council has a legal responsibility 'Duty of Care' to ensure that the highway network is managed and maintained in an appropriate manner

2.0 Scope

This appendix covers the following enforcement action:

Street Works Fixed Penalty Notices (FPN);
Powers to recover costs;
Powers to charge for enforcement action;
Powers to apply appropriate fines;

Powers to ensure compliance with notices/warnings issued in accordance with legislation;
Other Provisions.

3.0 Legislation

The Highways Team is responsible for ensuring that the Council performs their statutory functions under the following legislation:

Highways Act 1980;
The Road Traffic Regulation Act 1984;
The Traffic Management Act 2004;
New Roads and Street Works Act 1991;
Road Traffic Act 1991;
The Road Traffic (Special Parking Areas) (England) Order 2003;
Data Protection Act 1998;
The Equality Act 2006;
Town & Country Planning Act 1990;
Greater London Authority Act 1999;
The Road Traffic Act 1988;
Road Traffic Regulation Act 1984;
The Traffic Signs Regulations and General Directions 2002;
Disability Discrimination Act 2005;
London Local Authority Acts (various);
Health and Safety at Work Act 1974;
Construction Design and Management Act;
Rights of Way Act 1990;
Freedom of Information Act 2000;
Flood and Water Management Act 2010 and Flood Risk Regulations;

and any regulations, orders or other statutory provisions made under or incorporated into the above

These legislative tools will always be considered and followed where appropriate.

4.0 Enforcement Regime

4.1 Fixed Penalty Notice Scheme

The Permit scheme also includes a Fixed Penalty Notice regime where offending utility companies who work without a valid Permit or in breach of attached permit conditions have the opportunity to discharge any liability and avoid prosecution in a magistrate's court by paying a one off fine.

Since 1st July 2012 Barnet has run a Fixed Penalty Scheme. Under this scheme if any works are identified as not having a permit or working in breach of a permit condition the Street Works Inspector may issue a Fixed Penalty Notice (FPN) to the offending statutory undertaker.

FPN's will be issued to ensure site safety and the timeliness / accuracy of permit data in line with Barnet's Enforcement Policy. FPN's are seen as a vital tool to ensure that the council is doing all it can to exercise its Network Management Duty.

The Permit / NRSWA Team will manage all the day-to-day administration of the FPN process ensuring that correct fines are paid within the required time, evidence is accurate, letters are sent out, and court papers are prepared. The Permit/NRSWA Compliance Officer is the highway authority's first point of contact for any utility queries.

These fines encourage utility companies to provide accurate information, work safely and minimise disruption.

4.2 New Roads and Street Works Act 1991 & Traffic Management Act 2004 Enforcement Policy

4.2.1 Introduction

Under the New Roads and Street Works Act 1991 local highway authorities have a duty to coordinate the works of statutory utility companies.

Under section 16 of the Traffic Management Act 2004 (the Network Management Duty) an authority must manage their road network with a view to achieving two objectives so far as may be reasonably practicable having regard for their other obligations, policies and objectives. These two objectives are:

To secure the expeditious movement of traffic on that network, and

To facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.

In order to comply with these obligations it is essential that the London Borough of Barnet, as the highway authority, is fully aware of operations being undertaken on the road network and that information provided is timely and accurate and that those operations are undertaken having due regard to the safety and convenience of all road users.

This document sets out the London Borough of Barnet's policy for enforcing sanctions on the statutory utility companies where infringement of a utility's legal requirements compromises the local authority's ability to coordinate and manage works or works are undertaken in an unsafe or unduly disruptive manner.

4.2.2 Barnet Council's New Roads and Street Works Act 1991 & Traffic Management Act 2004 Enforcement Policy

Barnet wishes to foster a spirit of partnership with all statutory utility companies and recognises that significant time and resources are required to instigate and progress court proceedings, both to utility companies and the Council. However, where utility companies operating within the Borough fail to perform their duties in accordance with the required standards the London Borough of Barnet will issue Fixed Penalty Notices (FPN) or commence prosecutions in order to ensure that all street works operations on the network are managed effectively and undertaken safely. This includes failure to observe the correct notification procedures or providing inaccurate notifications, insufficient or incorrect signing and guarding while the works are in progress and failure to comply with approved codes of practice.

This enforcement policy governs all statutory offences under the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004. It covers those offences which the Council will seek to issue proceedings in the Magistrates' court and those offences for which Fixed Penalty Notices can be issued. Barnet Council will use the Fixed Penalty Notice Scheme for those to which the scheme applies. However, in all cases where the penalty remains unpaid at the end of the period for payment, prosecution through the Magistrates Court may be progressed.

Prosecution is generally viewed as the final option when all other efforts to compel the statutory undertaker to comply with the legislation have failed. However prosecution may be considered necessary as the preferred option due to particular circumstances.

Payment of FPNs outside the period for payment will only be allowed with the prior written consent of the London Borough of Barnet. Confirmation that payment of an FPN has been accepted will be provided to the statutory undertakers in writing. Any unauthorised payments will be refunded. A period of delay may be encountered whilst the receipt of the unauthorised payment is confirmed and then approved for refund.

It is intended that a consistent approach is taken to enforcement. However, the circumstances of each offence must be taken into account and a uniform approach will not always be appropriate. Therefore an element of judgement will be used to ensure that those offences that have a detrimental impact on any of the Council's statutory duties under either the New Roads and Street Works Act 1991 or the Traffic Management Act 2004 are dealt with appropriately.

4.3 Statutory Provisions

Statutory provisions for which the London Borough of Barnet as Highway Authority may issue Fixed Penalty Notices or prosecute are contained within the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004 together with supporting regulations and orders.

4.4 Enforcement Processes

4.4.1 Noticing Offences

Notices which are not submitted to the Council or are not submitted in the correct format can cause the Council to use unnecessary resources to address the problem; this drain on resources could in turn lead to ineffective coordination work and poor network management. In these circumstances the issuing of a Fixed Penalty Notice will be considered.

Fixed Penalty Notices will be issued in accordance with The Street Works (Fixed Penalty) (England) Regulations 2007. The fixed penalty notice will be issued via EToN direct to the utility company in the first instance. If this is not possible for any reason, e-mail, fax or post will be used.

In all cases evidence will be tested. In cases where FPN's are issued and the penalty remains unpaid at the end of the period for payment, prosecution through the magistrate's court may be progressed.

A statutory utility company may make representations against the issuing of a FPN within the prescribed payment period. This appeal will be heard by a nominated officer of Highway Services, London Borough of Barnet who has had no involvement in the issue of the original notice.

4.4.2 Permit Offences

Where works commence without a permit or permit conditions are broken a Fixed Penalty Notice will be considered.

Fixed Penalty Notices will be issued in accordance with The Traffic Management Permit Scheme (England) Regulations 2007. The fixed penalty notice will be issued via EToN direct to the utility company in the first instance. If this is not possible for any reason, e-mail, fax or post will be used.

In all cases where the penalty remains unpaid at the end of the decriminalised period, prosecution through the magistrate's court may be progressed.

A statutory utility company may make representations against the issuing of a FPN within the prescribed payment period. This appeal will be heard by a nominated officer of Highway Services, London Borough of Barnet who has had no involvement in the issue of the original notice.

4.4.3 Poor Performance of Statutory Utility Companies' Works on Street

Barnet Council Street Works Inspectors will monitor utility works on street.

If statutory utility companies carry out work which is not to the required standard, a Defect Notice will be issued. In conjunction with liaising with the utility company directly, this action will frequently have the desired effect of improving their performance to acceptable standards. However, where there is clear failure to perform their duties in accordance with the Specification for the

Reinstatement of Openings in Highways, provide the required standards of signing and guarding whilst the works are in progress or fail to co-operate with the Council, the London Borough of Barnet may invoke a prosecution in order to ensure that all street works operations on the network are managed effectively and undertaken safely.

4.5 Prosecution Processes

The Street Works Inspectors of Network Management have responsibility for gathering the required evidence, which will be reviewed and checked by the Permit/NRSWA Manager.

The decision to issue proceedings will be taken by the Council in accordance with the Enforcement Policy.

5.0 General Powers to charge for enforcement action and to instigate fines [Related to Various Acts]

Within many of the above legislation the Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred in taking enforcement action and also to impose fines:

The expenses are in connection with various investigatory activities, inspection of sites, making necessary enquires and subsequent consideration of action and in relevant cases the service of notices. Where charges are made it will be in accordance with the charges set out in the legislation, as amended from time to time.

6.0 Other provisions

All other highways legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.