

London Borough of Barnet Enforcement and Prosecution Policy

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1. Introduction

This overarching policy sets out the general principles that the London Borough of Barnet Council (the 'Council') will follow in relation to the investigation, enforcement and prosecution of its regulatory functions. It sets out what individuals, businesses and the community can expect from the Council's regulatory services and its officers.

The overarching policy will be augmented, where appropriate, by service area specific strategies or procedures (listed in Appendices). In the absence of any service area specific policy or procedure, the general principles set out in this overarching policy will be followed by any service area carrying out a regulatory function.

This policy provides guidance, consistency, accountability, efficiency and clarity. It ensures compliance with the law and how the Council operates in relation to matters of investigation and enforcement.

The primary function of the Council's regulatory and enforcement work is to protect the public, public funds, the environment, and groups such as individual consumers / residents and tenants, workers / businesses, and the community. At the same time, carrying out such activity in an equitable, practical, and consistent manner helps to maintain a level playing field for local businesses, individuals, and our other service users. Good regulation and enforcement will help to promote better living standards, enable a thriving local economy and protect the environment for the benefit of all.

Copies of this policy are available on request from any of the Council's regulatory teams or it can be obtained from our website. Our regulatory teams will adhere to this policy in accordance with the Regulators' Code which can also be obtained upon request or are available on our website.

1.1 Purpose of this policy

This document satisfies the Council's requirements under paragraph 6 of the Regulator's Code¹ which requires us to ensure transparency in our approach to regulatory activities. It sets out our approach to dealing with businesses or individuals who do not comply with legislation and is addressed to:

- a. those affected by its activities; and
- b. officers of the local authority

This policy sets out the principles and procedures all Council staff who are qualified and/or trained, and authorised to carry out regulatory functions are to follow when considering and taking enforcement decisions/actions, to ensure that these are made consistently, fairly, proportionately, and necessarily.

This Policy covers all enforcement activities without exception, undertaken by the Council in the following service areas:

- Barnet Homes
- Community Safety
- Corporate Anti-Fraud
- Environmental Protection
- Food Safety & Standards, and Workplace Safety
- Highways
- Trading standards
- Licensing

¹ [Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- Planning & Building Control
- Private Sector Housing
- Scientific Services

This policy notes the existence of Civil Parking and Traffic Enforcement which operates under a separate regime.

1.2 Good Enforcement Practices

This policy has been developed with due regard to the 'Principles of Good Enforcement' set out in the following guidance documents:

- Regulators' Code 2014² issued under section 23 of the Legislative and Regulatory Reform Act 2006 , and
- the Code for Crown Prosecutors³ issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985. This Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

In certain circumstances the Council may conclude that a provision contained in one or more of the above-mentioned documents is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from policy guidelines is properly reasoned, documented and based on material evidence.

All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the Council's statutory obligations. Council enforcement/ investigating officers will act within the scope of their delegated authority (as approved by the relevant committee/ Council). The [Council's constitution](#) is regularly updated to reflect any changes. Due regard will be given to the provisions of the:

- Police and Criminal Evidence Act 1984
- Criminal Procedures and Investigation Act 1996 (and the codes of practice)
- Human Rights Act 1998
- Data Protection Act 2018
- Regulation of Investigatory Powers Act 2000
- Legislative and Regulatory Reform Act 2006
- Regulatory Enforcement and Sanctions Act 2008,
- and any other legislation relevant to specific service areas and legislation designed to tackle discrimination and promote equality.

All officers will have regard to the principles contained in this policy when making enforcement decisions. Regard will also be had to any approved statutory, governmental, or other national guidance, and to any internal procedures. Where there is any conflict between a specific legislative requirement and this policy, legislation shall always take priority.

Officers who undertake enforcement activities covered by this policy are appropriately trained and/or qualified, and authorised to discharge enforcement powers on behalf of the Council and will act in accordance with this policy and the relevant linked procedures at all times.

All officers will always wear/or be able to produce a picture identification card upon request, or where statute demands. For special operations, officers will wear appropriate uniform as well as the relevant personal protective equipment.

1.3 Definitions

² [Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

³ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

For the purposes of this policy the following definitions are given to the terms ‘regulatory’, ‘enforcement’ and ‘officer’:

‘**Regulatory**’ encompasses the Council’s numerous powers and duties enabling the behaviour of individuals, business and/or the community to be controlled in the public interest. Examples of these can be found listed in this policy.

‘**Enforcement action**’ includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the service of statutory notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.

‘**Officer**’ means any qualified and/or trained, and authorised person within the employ of the Council and partner organizations carrying out investigative or enforcement roles within any service with a regulatory function and includes any officer within the legal department who advises on and/or has conduct of enforcement matters on behalf of the Council.

2. Mission Statement and Vision

Mission Statement

A fair, consistent, transparent and proportionate approach to enforcement that meets the needs of the community, contributes to achieving the Council’s priorities and policy aims, and is appropriately targeted.

Vision

Refer to the priorities in the Corporate Plan.

3. General Principles and Approach

The Council believes in firm but fair regulation. Underlying this are the principles of: **proportionality** in the application of the law and in securing compliance; **consistency** of approach; **transparency** in how the Council operates and what those who are regulated can expect from the Council; **accountability** for the actions the Council takes and **targeting** of enforcement action.

1. **Proportionality**: to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome, risk and costs of proceedings.
2. **Consistency**: to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.
3. **Transparency**: to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory. Where possible the Council shall be sharing information about compliance and risk.
4. **Accountability**: to ensure that the Council is answerable for its enforcement practices and can be held to account for the actions it takes.
5. **Targeting**: to ensure that regulatory effort is directed primarily towards those whose

activities are likely to give rise to the most serious breaches of legislation and to promote the corporate priorities detailed in the Corporate Plan.

Where any rights contained within the Human Rights Act 1998 may be affected, officers should consider whether the action is both necessary and proportionate and ensure that the provisions of the Act are taken into consideration where applicable.

The Council will adhere to the principles set out above and apply an approach that aims to be:

Risk-based - adapted to the risk posed by the non-compliant activities to provide robust, speedy and effective enforcement against those that commit the most serious regulatory offences and serial offenders who deliberately and willfully flout the law, including those who seek to take commercial advantage from such offences.

Intelligence-led - we will adopt an investigative intelligence-led approach to our compliance interventions and enforcement actions, using systems, procedures and techniques that provide us with such intelligence. We will keep apprised of matters that are relevant to the sectors we regulate at a national, regional and local level and will closely work with our other internal regulatory services, other local authorities and enforcement agencies to share information and intelligence on important regulatory issues and enforcement matters.

Joined-up – we will build on our existing approach to joined-up enforcement working with colleagues in other departments, other local authorities and enforcement agencies across the county, region and where appropriate nationally. Sharing resources including staff for larger investigations and enforcement actions as part of our approach to sharing intelligence and undertaking joint training with other agencies where appropriate.

Consideration will be given to appropriate information sharing with external agencies or colleagues in other departments. Where activity impacts across different Council departments, officers should adopt a corporate approach, working together to seek the best results overall. All instances of data sharing must comply with relevant Data Protection Legislation⁴.

Our enforcement will be fair and objective with everybody being treated equally and fairly, regardless of their age, disability, gender identity and expression, marital status, nationality, race, religion or belief, sex, sexual orientation or health and income status. The Council has an Equalities⁵ policy promoting equality, diversity and cohesion in everything we do.

4. When Enforcement Action is necessary

The Council regards prevention better than cure. Our general approach is to engage with individuals, business or the community to educate and enable compliance. We offer information and advice to those the Council regulates and seek to avoid bureaucracy or excessive cost. The Council encourages individuals, business and the community to adhere to the legal requirements of any regulated activity. Although this principle will not be a bar to the Council resorting to formal enforcement action where immediate action is required in the interests of health and safety, environmental protection, other cases deemed by the Council to require urgent action or cases where it is necessary to prevent evidence from being destroyed. The Council will secure regulatory compliance by using any or all the enforcement powers available.

If enforcement action is necessary, then the Council utilises the sanctions and penalties

⁴ Means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, or any successor legislation.

⁵ <https://www.barnet.gov.uk/your-council/policies-plans-and-performance/equality-and-diversity>

available at its disposal to:

- a) change the behaviour of the offender;
- b) promote attitudes which recognise the harm caused by specific breaches, and particularly the cumulative impact of widespread breaches;
- c) eliminate any financial gain or benefit from non-compliance and recover any losses incurred by the authority;
- d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- e) be proportionate to the nature of the offence and the harm caused;
- f) address the harm caused by regulatory non-compliance, where appropriate; and
- g) deter future non-compliance.

When determining the appropriate course of action to ensure compliance, the Council will follow the procedures set out in the rest of this document.

5. Phases of Enforcement Action

Prior to taking enforcement action, Council officers must ensure that they are authorised to do so under the Council's Constitution and their delegations⁶. Officers will generally consider the following enforcement options when taking action:

PHASE 1 – Compliance Advice, Guidance and Support: to actively work with all those subject to regulation, including individuals, existing and prospective businesses and other organizations, to guide and assist with compliance. Advice, guidance and support given will be properly recorded to be used as evidence if enforcement action is needed. This also includes voluntary undertakings, where the offender agrees to rectify and/or prevent recurrences. In some cases such as planning enforcement this can involve seeking retrospective consents. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result. There will be an opportunity for dialogue and/or appeal in appropriate circumstances between the offender and the Council in relation to this, except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

PHASE 2 – Formal Warnings: these will be used to reinforce advice and guidance (given in Phase 1) where minor breaches of the law occur, and it is not appropriate to take formal action. Warnings are more likely to be appropriate for minor contraventions where it can be reasonably expected that formal warnings will achieve compliance. Warnings issued in respect of more significant breaches of the law should include timescales within which the breaches should be remedied. Monitoring will be undertaken as appropriate where there are ongoing breaches. Warnings will be properly recorded to be used as evidence if enforcement action is then needed.

PHASE 3 – Enforcement Action / Legal Proceedings: this includes the use of statutory (legal) notices and is generally taken if informal advice or warnings are

⁶ <https://barnet.moderngov.co.uk/ecCatDisplay.aspx?bcr=1&sch=doc&cat=13721&path=0>

not considered to be the most appropriate route. Formal cases will include, amongst other things, the issue of fixed penalty notices, simple cautions, injunction proceedings, review and revocation of licences and execution of works in default or any other available sanction including civil proceedings and formal criminal prosecutions.

Enforcement will normally move from phase 1 through to 3, although depending on the facts of a given matter, it may be appropriate to adopt a fluid approach to how a matter proceeds through the above phases. For example, in certain circumstances a matter may begin at Phase 1 but then, if required, go straight to Phase 3. Likewise, it may be suitable to commence proceedings at Phase 3 if the criteria for enforcement action or prosecution are met, for example parking enforcement.

Different service areas may have their own service specific sanctions available to them. Where these specific sanctions are available to a given service area, these will be set out in the relevant document in the Appendices.

6. Formal Enforcement Options

We have a range of sanctions available to us in respect of breaches of criminal and civil laws. For example, those contained within the Housing Act, Health & Safety at Work Act and Food Safety Act, Fraud Act and Consumer Protection Act. These may include providing advice, seeking undertakings, serving notices, imposing financial penalties, applying for injunctions, issuing cautions, instituting prosecutions, confiscating financial assets or imposing license restrictions. The enforcement actions available to the Council, include:

- A. Statutory (Legal) Notices
- B. Works in Default
- C. Financial Penalties
- D. Injunctive Actions / Enforcement Orders
- E. Simple Cautions
- F. Prosecution
- G. Seizure
- H. Confiscation Proceedings and/or Other Financial Investigation
- I. Refusal/Suspension/Revocation of Licences

In choosing which enforcement option(s) to take, the Council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance. The enforcement option(s) chosen will be proportionate to the nature of the non-compliance/alleged offence and the harm caused by it, and appropriate to the individual or business which the action is taken against. An appropriate timescale for compliance will be given having regard to the actions required to be undertaken. Enforcement action will be followed up as appropriate and will result in further enforcement options being pursued if the initial action has not achieved the appropriate result.

In some circumstances matters may be referred to another agency for enforcement action, or officers may liaise and take joint action with other Council departments and/or external organizations to achieve enforcement aims.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with any enforcement notice).

A. Statutory (Legal) Notices

The Council has powers to issue statutory notices which are legally binding. These include, but are not limited to:

- Notice of Intent
- Final Notices
- Stop Notices
- Closure Notice / Order
- Suspension Notices
- Prohibition Notices/Orders
- Emergency Prohibition Notices/Orders,
- Remedial action notices
- Improvement Notices
- Abatement notices
- Compulsory Purchase Orders
- Notice to Quit
- Enforcement Notices

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges depending on individual legal requirements.

Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default and recovering costs.

B. Works in Default

In general, it is Council policy to either caution or prosecute individuals, organizations or businesses that do not comply with a statutory notice. In addition, failure to carry out specified work may result in the Council carrying out the works in default and recovering all costs. In such cases the expenses associated with default works will usually be recovered by issuing an invoice to the relevant party. Where appropriate, these costs may be recovered by way of a charge against land/ property, and such a charge may be further enforced through sale of the land/ property.

In calculating the recovery of costs incurred when undertaking works in default the Council may have regard to the following:

- a) Contractor's costs or expenses;
- b) Costs associated with officer time (including overhead costs); and
- c) Legal costs or expenses where applicable.

C. Financial Penalties

For certain offences, e.g. fly-tipping, household waste duty of care offences, breaches of community protection notices (CPN's), depositing of litter, abandoned vehicles, there is provision for Fixed Penalty Notices (FPN) to be issued. Where there is evidence that an offence has been committed, authorised officers from the Council can issue the appropriate penalty notice. In some circumstances, where breaches are serious or recurrent, the council will consider formal prosecution action.

A FPN is a notice is a notice giving an individual the opportunity to be made immune from prosecution for an alleged criminal offence in exchange for a fee. It does not appear on an individual's criminal record. If a fixed penalty is not paid, we can commence criminal proceedings via the courts and/or take other enforcement action.

If a fixed penalty is paid in respect of a breach, we will not take any further enforcement action in respect of that breach.

Details of the Council's FPN scheme, including which offences are included, the level of fine and early payment discounts amongst other things, can be viewed on the council's website.

D. Injunctive Actions / Enforcement Orders

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

E. Simple Cautions

A simple caution is a non-statutory, non-conviction disposal for adult offenders aged 18 or over.

Under certain circumstances, a simple caution may be used as an alternative to prosecution for some less serious offences, where a person admits to an offence and consents to the simple caution. Where an individual chooses not to accept a simple caution, the Council will normally consider prosecution. Simple cautions will usually be considered before making a decision to prosecute.

Simple cautions are intended to:

- deal quickly and simply with certain offences;
- avoid unnecessary appearance in criminal courts;
- reduce the chance of offenders re-offending.

A simple caution is a serious matter as it could appear on the offender's criminal record. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business reoffend, and it may be referred to in any subsequent court proceedings. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment, and these can be taken account of by immigration agencies and border controls for some countries.

Regard will be given to government guidance by the Ministry of Justice – Simple Caution for Adult Offenders⁷.

F. Prosecution

The Council may prosecute against serious or recurrent breaches, or where other enforcement

⁷ 4 <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors> or any subsequent guidance or any subsequent guidance

actions, such as advice, voluntary undertakings or statutory notices have failed to secure compliance. The decision to prosecute will have regard to the provisions of The Code for Crown Prosecutors⁸ as issued by the Director of Public Prosecutions.

Prosecution will only be considered where we are satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s), taking account of any defense that may be available. In certain circumstances, including cases of dishonesty or fraud, or other serious health and safety cases, prosecution may be taken without prior warning.

In making a decision on a prosecution the authorised Officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution. The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will then consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

Evidential Test

There must be sufficient admissible evidence to provide a realistic prospect of conviction against each defendant on each charge.

The defence case, including any available statutory defence, must be considered including how it is likely to affect the prosecution case. A case which does not pass the evidential test, must not proceed however serious or sensitive the case may be.

A realistic prospect of conviction is an objective test based solely upon the assessment of the evidence and any other information the defence might put forward. It means that an objective, impartial and reasonable jury or bench of Magistrates, having heard the case and been properly directed, would be more likely than not, to convict the defendant of the charge[s] alleged.

If, and only if the case passes this test, must the prosecutor apply the 'public interest test'.

Public Interest Test

If the evidential test is satisfied, Managers and/or Prosecutors, must go onto consider whether the public interest test is satisfied to offer the offender a simple caution or to prosecute.

Each case must be considered on its own facts and merits and usually the test would be applied after an investigation is complete or there is sufficient evidence to prove a prima facie offence. However, there will be some cases where a decision can be made at an early stage that an offender will not be cautioned or prosecuted in cases where the benefit amounts to a small amount or the mischief has taken place over a short period of time and any sentence awarded would be minimal.

There may be occasions where the public interest test points are against prosecution, such as low value or minor offending. The Council will still consider in particular circumstances, whether a prosecution should go ahead and if applicable, let a court consider those factors when any sentence is passed.

In order for the public interest test to be met, elements of the following criterion needs to apply:

A. The seriousness of the contravention or breach. This takes account of:

- The detriment caused to others including the environment. For example, the level of nuisance, distress, injury caused or financial loss incurred
- Impact resulting from the breach upon the LBBs resources
- The risk of injury to the health of others.

⁸ [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk)

For example, where conditions are so unsafe an accident is likely to happen at any time

- The number of people that were or could have been affected by the breach
- The degree of culpability, such as negligence or willful intent that appears to be involved in committing the breach
- The accumulation or repetition of less serious offences
- Failure to comply with a statutory notice within the timescale given
- Financial loss to others as a result of the breach

B. The likelihood of achieving compliance if prosecution is not pursued.

This will take into account the following factors which are not exhaustive and will depend on the facts of each case:

- The level of compliance received from the person in the past
- The person's ability to comply. For example. Their level of understanding may not be sufficient to enable them to comply
- The lack of willingness of the person to comply with any action proposed by the council

C. Other factors which takes account of:

- Persistently disregarding warnings that involve a potentially serious breach
- Failure to comply with a statutory notice
- Seriously endangering the health, safety or well-being of others e.g. where it caused or could have caused a serious injury or illness
- Where applicable, the views of the victim regarding the impact the offence has had and the level of the victim's vulnerability
- A deliberate or willful failure to comply with a legal duty
- Deliberate or grossly careless breaches that caused or were likely to cause prejudice to health, economic advantage or environmental damage
- Purposeful obstruction of a Council officer from carrying out their duties
- Failure to satisfy the relevant statutory defence/s
- The vulnerability of the offender

G. Seizure

The Council may carry out arrest operations with the Police and with their assistance search premises and seize evidence relating to criminal offences in accordance with the Police and Criminal Evidence Act 1984. Accredited Financial Investigators have powers to search and seize evidence relating to proceeds of crime and money laundering cases in accordance with the Proceeds of Crime Act 2002 without arrest to secure the best evidence and assets.

The Council have powers to seize items. In most circumstances, authorised Trading Standards Enforcement Officers have the power to seize and detain goods if they reasonably suspect that:

- The goods may disclose a breach of consumer law
- The goods could be forfeited
- The goods may be required as evidence in proceedings

Documents can also be seized and detained if there is a reasonable suspicion that they might be required as evidence. Goods (except those being reasonably suspected of being liable to forfeiture) can be detained.

Persons from who goods and documents have been seized have the right to:

- Have supervised access to the items (reasonable costs for supplying this facility can be recovered by the Council)
- Be informed of the results of tests that the goods have undergone
- Apply to a court to get their goods or documents released if certain conditions are met.

Officers working on noise enforcement may also seize equipment, subject to a warrant if entry refused. This is granted by a Magistrate. This may be as a temporary measure to ensure that the noise nuisance is abated, or as part of criminal proceedings where the perpetrator of a noise nuisance has breached the terms of an abatement notice. The seized equipment may be seized and retained in accordance with S.81 of The Environmental Protection Act 1990 and S.10 of the Noise Act 1996. The court can as part of a prosecution order the forfeiture of any seized equipment.

H. Confiscation Proceedings and/or Other Financial Investigation

The Council may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

I. Refusal/Suspension/Revocation of Licences

The Council is responsible for licensing a wide range of activities from taxis and the sale of alcohol to scrap metal dealers and dog breeders. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

As the process of suspending or revoking a license is statute driven (is covered in many different Acts in Parliament), the Council will be bound to follow the processes set out in the relevant legislation from time to time, however the Council's licensing team will normally be able to advise parties of what action it intends to take.

If revocation action is taken, the relevant parties will be made aware of any rights of appeal open to them at that time.

Where revocation is not being immediately considered, however the Council is able to issue other types of enforcement sanctions for breach of condition and will follow relevant service specific policies and statutory guidance when reaching a decision on what action is appropriate.

When considering future licence applications, we may take previous breaches and enforcement action into account.

7. RIPA/PACE

All work of the Council including investigations will be subject to prioritisation. Once started, investigations will be conducted in a timely manner, in accordance with the requirements of relevant legislation, including the Police and Criminal Evidence Act 1984 (PACE), Regulation of Investigatory Powers Act 2000 (RIPA), Criminal Procedure and Investigation Act 1996, Human Rights Act 1998 and Protection of Freedoms Act 2012. Regard will also be had to the requirements of associated Codes of Practice and Guidance. Investigations will be brought to a timely conclusion where possible.

It may be necessary to undertake surveillance to assist with an investigation. Any surveillance covered by the definitions contained in RIPA will be conducted in accordance with that Act as amended by the Protection of Freedoms Act 2012 and the Investigatory Powers Act 2016, appropriate guidance, corporate policy, and Codes of Practice. Covert Surveillance will only be undertaken:

- if it is in the interests of preventing and detecting crime;
- if the use of covert surveillance is necessary and proportionate to the potential offence being investigated;
- if it has been authorised by a Council authorising officer and the authorisation has been brought into effect by a magistrate.

It is sometimes necessary to conduct an interview with a person (or duly authorised representative of a corporate body) suspected of committing an offence. These interviews will be conducted in accordance with the PACE Codes of Practice. Wherever possible, recorded interviews with persons will generally take place at the Council offices.

As part of any investigation, it may be necessary to take digital photographs, official measurements, samples, documents and computer records to assist with the case, procedures are in place to ensure the evidential continuity.

8. No Action

In certain circumstances, contraventions may not warrant any action. This can be where the cost of compliance significantly outweighs the detrimental impact of the contravention, or where the cost of the required enforcement action to the Council significantly outweighs the detrimental impact of the contravention on the community.

A decision of no action may also be taken where action is inappropriate in the circumstances, such as where an organization has ceased to trade, or the offender has mental capacity considerations or is elderly and frail and formal action would seriously damage their wellbeing. All enforcement decisions, except a decision relating to the provision of advice, will be documented along with the justification for making the decision.

9. Cost Recovery

Where permitted by law, the Council will seek to recover its costs of investigation and enforcement proceedings. Where the Council has incurred costs, for example by conducting remedial work or direct action, we will seek to recover the full costs incurred from the exercise of those powers. The Council will pursue the recovery of costs in the civil courts by mechanism permitted by law if deemed appropriate and / or necessary.

10. Publicity of Enforcement Action

To deter others, the Council will aim to publish any prosecution or other enforcement action that it considers will achieve that aim. Consideration will be given to each case individually although this would normally be in the following circumstances:

- The offence is widespread in the area and coverage will assist in securing compliance by others
- To draw attention to serious hazards
- Coverage is otherwise in the public interest
- A press release will generally be issued following a conviction where it is considered that publicity will bring others into compliance or will help to maintain compliance with

those statutory requirements

11. Service Specific Strategies

Specific service strategies and procedures sit under and supplement this overarching policy and will be regularly reviewed and updated by the appropriate teams. Where are service specific legislation conflicts with this policy, legislation takes priority.

12. Policy Review

This policy will be reviewed every three years, or sooner if necessary, to reflect statutory changes or national guidance.

13. Comments and Complaints

If persons wish to complain about a regulatory decision or feel that there has been a failure to act in accordance with the Regulators Code, in the first instance they are asked to discuss this with the member of staff involved with the action, or if applicable, their line manager. If they remain dissatisfied, then they can make a Corporate Complaint by following the Council's formal complaints procedure, details of which can be found on our [website](#).

If an alleged offender is being prosecuted or subject to formal legal action, then the judicial process has its own channels for legally challenging the action or the outcome through a court appeal.

If you wish to complain about this policy, you can do so via the link above.

If you prefer not to use the online form, you can write to us at Complaints Service Barnet Council, 2 Bristol Avenue, Colindale, London NW9 4EW www.barnet.gov.uk/complaints

14. Appendices

Appendix A: Barnet Homes

1. Introduction

Barnet Homes exercises a wide range of regulatory powers, most of which relate to the protection of residents, staff members and visitors to our properties.

Barnet Homes manages c.15,000 properties on behalf of Barnet Council and carries out enforcement action on tenancies to ensure the safety of staff, residents, and visitors. Barnet Homes works in line with its standalone anti-social behaviour policy, with the Enforcement and Prosecution policy being the overarching umbrella policy from which we take a steer.

This policy is not intended to be an operational policy but to provide a basis for framing operational policies and procedures regarding enforcement activities. Any operational case needs to be dealt with on its merits and due to the range of activities covered by Barnet Homes policies and this policy cannot be considered to be exhaustive.

2. Scope

The term 'antisocial behaviour' covers a wide range of unacceptable activities that have a negative effect on the quality of community life and the private lives of people within those communities.

We use the following definition of ASB, as stated in the Antisocial Behaviour, Crime and Policing Act 2014:

- a) Conduct that has caused, or is likely to cause, harassment, alarm or distress to any person;
- b) Conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or
- c) Conduct capable of causing housing-related nuisance or annoyance to any person.

People to whom the conduct may cause nuisance or annoyance includes:

- Anyone who has a right to live in property that Barnet Homes owns or manages;
- Those living in any other property in the neighbourhood; and
- Anyone else lawfully in such a property or in the locality e.g. working nearby, visiting the property or neighbourhood etc.

Barnet Homes is committed to tackling ASB in a responsive and robust manner. We recognise that if allowed to persist, ASB can significantly affect quality of life for our residents and service users and that dissatisfaction with the living environment may have a negative impact on the way we are able to manage our homes.

We recognise that ASB can include a range of activities and is a problem which has many causes. It requires a wide range of responses to tackle it effectively. We will balance enforcement action and intervention with programmes which aim to prevent ASB.

All residents will be expected to show consideration to their neighbours by complying with the terms of their occupancy agreement and not to commit, or allow their household members, visitors or pets to commit acts of ASB. This includes harassment, annoyance or disturbance to other residents, their visitors or other people in the area, such as our staff and contractors whether unintentional, deliberate or personally motivated.

We aim to deal with ASB in a proportionate and appropriate manner. Our approach will include engaging with complainants and alleged perpetrators, providing support and/or taking enforcement action.

We will take a customer focused approach to tackling ASB, working with the complainant and the alleged perpetrator, aiming to reach agreed actions, timescales and ultimately closure. Except in very serious cases, our initial intervention will aim to stop the problem behaviour. We recognise that early intervention is important to resolve cases and/or stop escalation.

We will consider legal action where there is sufficient evidence. Eviction will only be considered where other interventions have failed and will be used as a last resort. Eviction will also be used in very serious cases where it is needed to provide protection.

We will work with partner agencies to tackle the causes and effects of ASB, using a consistent and clear approach. Where necessary, we will use a multi- agency approach in dealing with ASB by sharing knowledge and expertise, including feedback to assess the effectiveness of the interventions used.

We will work with our colleagues and other agencies to ensure we focus on increasing community cohesion and building trust amongst local communities, thereby reducing the risk of people getting involved in ASB.

We will not tolerate abuse against staff or contractors, whether physical or verbal. We will take appropriate action against customers and members of the public who are abusive, as set out in this policy and associated policy guidance documents and procedures.

We are committed to ensuring the safety of our staff. We will provide support which may include appropriate training to help staff to be confident and knowledgeable to identify and investigate ASB reports and to cope with difficult and challenging situations and to keep staff up to date with current best practice and legislation, including awareness of child protection and protection of adults from abuse.

3. Investigation

Barnet Homes believes everyone has the right to live the way they want as long as it does not unlawfully spoil the quality of life of others. This means being tolerant, accepting and respecting the needs and choices of other people.

We will promote the use of the Community Trigger to customers where there is ongoing ASB but believe their reports are not being appropriately addressed or no effective action is being taken.

We will apply a reasonable approach to all reports of suspected ASB and will intervene only where it is in the best interests of Barnet Homes' residents to do so. Consideration will be given to the harm or likely harm caused to individuals.

Not all reports relating to behaviour that impacts on an individual can be deemed ASB. It is important to show tolerance and be respectful of differing lifestyles and circumstances.

The following are some examples of reports that are not included in this policy definition of ASB:

- Noise from children when they are playing
- Family disputes
- Babies crying
- Smells from cooking
- Sounds of normal day to day living that we can hear such as opening and closing of doors,

going up and down stairs

- One-off parties such as BBQs, birthday or Christmas parties providing they don't cause an unacceptable disturbance
- Clashes of lifestyle, including cultural differences
- Minor personal differences such as dirty looks or fall outs between children
- Putting rubbish out on the wrong day
- Parking in the wrong bay

We will work to manage resident expectations regarding behaviour that is not defined as ASB by offering advice and guidance and where appropriate will expect residents to resolve the issues themselves.

Appendix B: Community Safety

1. Scope

'Community Safety' is a term that is used to define keeping communities a safe place free from the fear of crime (perceived or actual) encompassing education, awareness (crime prevention) and reassurance as well as enforcement (anti-social behaviour and crime reduction). It is a multi-faceted concept used to encompass a diverse and broad range of topics that relate to anti-social behaviour, crime and disorder issues.

The Council undertakes a range of duties in connection with community safety. It has a statutory duty to work with other Responsible Authorities; including the police, fire and rescue service, county council, NHS and the probation service to address wider community safety and crime and disorder issues.

The Council deals with community safety matters in two principle ways: firstly, by means of the provision of advice, diversionary activities, community reassurance events, and the encouragement of responsible behaviour; secondly, it may make use of its enforcement powers, in a proportionate and appropriate way, to manage antisocial behaviour, crime and disorder.

Aside from the strategic planning and coordination of services to tackle local crime and disorder, the Council also undertakes a range of duties in connection with antisocial behaviour. This includes, but is not limited to the following;

- Accumulation of waste
- Aggressive Begging
- Waste Duty of Care (domestic and commercial)
- Dog fouling
- Drug paraphernalia (e.g. discarded needles)
- Fly-tipping
- Littering
- Graffiti
- High hedges
- Misuse of street litter bin offences
- Neighbour Disputes
- Noise Nuisance
- Nuisance Vehicles
- Repairing of vehicles on the public highway
- Waste Carriers Licence
- Unauthorised Encampments
- Littering
- Stray dogs

These duties and responsibilities are dealt with by a number of different council departments including those listed above as well as other areas included within this Enforcement Policy (e.g. environmental health, licensing and planning services).

In addition to the Council undertaking its statutory duties in this regard, the law provides for a wide range of powers that can be considered in relation to different types of anti-social behaviour. The Council will also work with, and support, a wide range of organisations to deal with anti-social behaviour including the police, fire service and housing providers.

The Council's Community Safety team is responsible for the operational management of the community crime and environmental crime function. These terms are used to classify anti-social actions and behaviour that degrade local amenities and the environment and impact on the enjoyment and safety of the wider community.

2. The Legal Framework and Use of Enforcement Tools

In considering community crime and environmental crime enforcement action the Council will take into account all legislation and statutory guidance including:-

- Anti-social Behaviour Act, 2003
- Anti-social Behaviour, Crime and Policing Act, 2014 Clean Neighbourhoods and Environment Act 2005
- Control of Pollution (Amendment) Act 1989/Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 Counter Terrorism and Security Act 2015
- Crime and Disorder Act 1998
- Criminal Justice and Public Order Act 1994 Domestic Violence, Crime and Victim Act 2004 Drugs Act 2005
- Environment Act, 1995 Environmental Protection Act 1990
- Highway Act 1980 (subject to agreement with the Highways Authority) Modern Slavery Act 2015
- Police and Criminal Evidence Act 1984 Police and Justice Act 2006
- Police Reform Act 2002
- Police Reform and Social Responsibility Act 2011 Policing and Crime Act 2009
- Refuse Disposal Act 1978
- Scrap Metal Dealers Act 2013

In relation to community and environmental crime the Council has a number of enforcement 'tools' and powers available, in addition to informal enforcement action (Phase 1), examples include:

- Civil Injunction
- Closure Order
- Community Protection Notice
- Criminal Behaviour Order
- Fixed Penalty Notice
- Notice to require the provision of information
- Powers to take remedial action/works in default
- Powers of forfeiture and seizure
- Prosecution
- Public Space Protection Order
- Simple Caution

The general principles relating to enforcement decision making are explained within the main body of this Policy. However, it is important to note that whilst community and enviro-crime rarely constitutes a significant threat to public safety or health it can, nevertheless, cause a significant blight to local communities and can lead to neighbourhood decline. In recognition of the above, this Council takes these issues very seriously and will use its formal enforcement powers to deal with offenders. Certain community and enviro-crime offences, such as fly tipping, will be dealt with more rigorously as they are a) unlikely to be inadvertent breaches of the law, and b) are often associated with the pursuit of unfair competitive trading advantage by for example, the illegal and inappropriate disposal of waste.

Where there is sufficient evidence, the Authority will commence proceedings at level 2 and 3 if the criteria for formal action (such as issuing of fixed penalty notices or a simple caution) or prosecution are met. For certain enviro-crime offences, e.g. dog fouling, depositing of litter and fly tipping offences, there is provision for fixed penalty notices to be issued. These notices can, in appropriate cases, provide a quick, visible and effective way of dealing with these types of

environmental problems and offer a more cost-effective alternative to a prosecution. FPN's will generally be served for first time offenders of lower-level offences. For more serious offences and/or repeat offenders the Council will normally seek to prosecute. The Council, however, reserves the right to consider alternative enforcement mechanisms on a case-by-case basis.

FPNs will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid within the stated period then the Council is likely to mount such a prosecution.

The income to the Council arising from the payment of FPNs will be used to fund environmental related expenditure in accordance with the relevant provisions of the primary legislation and any relevant regulations.

3. Level of Delegation

All decisions relating to formal enforcement matters are delegated by the Council to the appropriate Executive Director, who sub-delegates as appropriate.

Any decision to take formal enforcement action is taken by the following officers dependent on the level of enforcement to be used, in accordance with the Scheme of Delegation:

Executive director of Assurance

Assistant Director- Counter Fraud, Community Safety and Protection

Head of Community Safety and CCTV

Community safety Managers

Investigation and Enforcement team leaders

Investigation and Enforcement Officers.

Appendix C: Corporate Anti-Fraud

1. Introduction

The Council takes its responsibility to protect public funds seriously and expects its business to be conducted to the highest ethical and legal standards. The Council has a zero tolerance to fraud, theft and corruption. Where there is evidence of fraud, theft or corruption against the Council, those responsible, whether internal or external to the Council, will be held accountable for their actions using the full range of sanctions available. The use of sanctions is governed by this policy that sets out appropriate action to take.

The Counter-Fraud Framework forms part of the Council's overarching Enforcement and Prosecution Policy (it includes matters of fraud, bribery, corruption, misconduct) and its objectives are:

- 1) To ensure sanctions are applied fairly and consistently;
- 2) To ensure sanctions are applied in an efficient and cost-effective way;
- 3) To set out the range of sanctions available;
- 4) To ensure the sanction decision making process is robust, transparent and fair
- 5) To make it clear that the Council will not tolerate fraud.

The Council will investigate all allegations of fraud, theft, corruption or irregularity in line with the Council's anti-fraud plan. Following an investigation, a range of factors will require consideration before deciding on appropriate sanction, including the individual circumstances of each case, the impact on the individual and the wider community, and the seriousness of the offence.

2. Options

Where there is evidence of fraud, theft or corruption, the following options will be considered:

- 1) No further action available;
- 2) Referral to professional bodies;
- 3) Disciplinary action;
- 4) Civil proceedings;
- 5) Criminal prosecution;
- 6) Sanctions as alternatives to prosecution.

The Council will consider any of the above options and parallel sanctions as noted below may be pursued.

1) No further action available

The Council may consider, following an investigation, closing a case without taking any further action. This may occur where there is insufficient or no evidence of fraud or misconduct, or where it is not in the public interest to take action against an individual, business or organisation.

2) Referral to professional bodies

Where there is adequate evidence that a person or entity has breached professional duties or responsibilities, the Council will refer the matter to the relevant professional body.

3) Disciplinary Action

In the event that an allegation is made against a Council employee, The Corporate Anti-Fraud Team (CAFT) will consult with the Council's Human Resources Service and appropriate action will be taken following the Disciplinary Policy.

The investigating officer may be a member of CAFT or may be appointed through the HR Disciplinary process. Sanctions may include warnings or dismissal and alongside this, additional

sanction options will be considered including referral to professional bodies, civil proceedings and criminal prosecutions.

If during an investigation or disciplinary action, the employee suspected of fraud, theft or corruption chooses to resign, the Council will continue to pursue referral to professional bodies, civil proceedings or criminal prosecution where appropriate.

In the event of an allegation against a Councillor in relation to fraud, theft or corruption against the Council, this will be reported to the Monitoring Officer, who will agree the action to be taken with the Executive Director of Assurance and the Chief Executive. Depending on the circumstances of the case, criminal proceedings may also be considered.

4) Civil Proceedings

The Council may take civil proceedings where appropriate. Regardless of whether or not any sanction action is taken, the Council will seek, where appropriate, to recover any overpaid, misused or unfairly gained monies.

The following measures may be considered in the pursuit of financial recovery:

- Consultation with the Council's Human Resources Teams to redress financial loss caused by employees. The Council will attempt to recover the loss from the capital value of the individual's accrued benefits in the Pension Scheme if they are a member, which are then reduced as advised by the actuary;
- Recovery of money through appropriate legal proceedings;
- Legal action such as freezing orders / restraint orders to preserve evidence and assets.

There will be overpayments which are not due to fraud, and the Council will determine appropriate recovery in these cases.

5) Criminal Prosecution

Where the Council considers it 'expedient for the promotion or protection of the interests of the inhabitants of their area', Section 222 of the Local Government Act 1972 empowers the Council to prosecute or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name.

Furthermore, Section 223 of the Local Government Act 1972 allows a 'Local Authority to authorise an appropriate member of staff to prosecute or defend designated matters in magistrates' court'.

In the most serious of cases, the Council will consider the prosecution of those offenders suspected to have committed fraud or theft. Where the Council considers there is sufficient evidence (based on the Code for Crown Prosecutors) to indicate a criminal act has taken place, a decision will be made whether to undertake a criminal prosecution utilising the Council's Legal Services, the police or another law enforcement partner (such as DWP or HMRC). This decision will be made by the Assistant Director of Counter Fraud, Community Safety and Protection and Legal Service (and in their absence, the Executive Director of Assurance).

Before a decision is taken whether or not to prosecute, the Council will be guided by the Code for Crown Prosecutors and will only initiate legal action if, following legal advice, it has satisfied the following two tests:

- 1) Evidential Test** – the evidence must be:
 - Clear, reliable and admissible in court; and

- Strong enough for a realistic chance of prosecution. i.e. to prove a case ‘beyond reasonable doubt’.

2) Public Interest Test – the prosecution is in the public interest, taking into account:

- Seriousness and / or monetary value of the offence;
- Cost and proportionality of the prosecution;
- Age and health of the suspect;
- Culpability of the suspect;
- Circumstances of and harm caused to the victim; and
- Impact on the community.

Where a case has been referred to the Police to investigate, the final decision as to whether or not to pursue the case will be taken by the Police and the Crown Prosecution Service.

The Council will conduct the investigations in accordance with the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984 (PACE). Criminal proceedings may be brought for a suspected offence under the following legislation:

- The Theft Act 1968 (as amended);
- The Fraud Act 2006;
- Local Government Finance Act 1992;
- Housing Act 1996;
- Prevention of Social Housing Fraud Act 2013;
- Forgery and Counterfeiting Act 1981;
- Computer Misuse Act 1990;
- Identity Documents Act 2010;
- The Bribery Act 2010;
- Road Traffic Regulation Act 1984;
- Any other relevant provision in law.

Any criminal proceedings can include an attempt to recover money under the Proceeds of Crime Act 2002 (POCA) or Prevention of Social Housing Fraud Act 2103.

6) Sanction as Alternatives to Prosecution

The Local Government Finance Act 1992 allows the Council to consider financial penalties as alternatives to prosecution and these should always be considered. However, in serious cases of fraud or where repeat offending occurs, the option to prosecute offenders will be kept under review.

Civil Penalties

Regulation 13. Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 and Schedule 3 Local Government Finance Act 1992 permit ‘billing authorities’ to impose financial penalties where a person fails to report a material fact affecting their council tax liability or where a person fails, without good reason, to correct an error.

Administrative Penalties

Regulation 11(4) Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, provide for Administrative Penalties to be offered to persons as alternatives to prosecution. The legislation allows for Administrative Penalties amounting to 50% of the gross reduction can be offered. In all such cases of fraud the Council will seek to recover the excess award as well any penalty.

The CAFT Manager will make the decision about the offer of any Administrative Penalties and will arrange for the administrative penalty to be offered to the person liable for it and any cooling off period required by legislation.

Parallel Sanctions

It is preferable for the appropriate sanctions to proceed simultaneously, but it is not necessary for anyone to await the result of another before concluding. However, due consideration must be given to all proceedings to ensure that one does not impact improperly upon another. The decision to run parallel sanctions will be determined on a case by case basis.

3. Partnerships

Where appropriate, the Council will work in partnership with other organisations such as the Police, other Local Authorities, Social Housing Providers, Department for Work and Pensions, Her Majesty's Revenue and Customs, UK Borders Agency and the Home Office, to bring joint proceedings or assist the other organisation to bring its own proceedings.

4. Recording Decisions

For an effective regime of sanctions to be successful accurate records of all convictions, penalties and cautions must be maintained. This will enable the correct decisions to be made taking full account of the defendant's background.

All sanctions will be recorded by CAFT, and copies of all documents used to consider and issue the sanction should be retained, in accordance with the relevant retention policies.

In the case of prosecution, all cases that result in successful convictions will be reported to the police for recording on the Police National Computer (PNC) central databases. This is usually dealt with via court administration following a hearing.

5. Publicity

It is the Council's intention to positively promote this Policy, as well as the outcome of any prosecutions, to deter others from fraudulent activity and reassure the public that the Council acts against those committing fraudulent and or corrupt acts.

Consideration will be given to whether the outcome of any case should be reported to the community via various media channels. Publicity, where appropriate, will ensure the profile of counter fraud activity remains at a level which will contribute to ensuring the key objective of preventing fraud is met.

6. Review

This Policy will be kept under regular review by the Executive Director of Assurance and s151 Officer to ensure compliance with current legislation and best practice.

Appendix D: Environmental Protection

1. Introduction

- 1.1. The Environmental Health Service exercises a wide range of regulatory powers, most of which relate to the protection of public health or the prevention of nuisance. The main activities delivered by the service are:
- Food Safety & Standards and Workplace Safety (Appendix E)
 - Pollution control
 - Private sector housing (Appendix J)
 - Public health and nuisance
 - Stray dogs
- 1.2. This Enforcement Policy is part of the Council's overarching Enforcement and Prosecution Policy. It follows the principles laid down in the core policy and does not seek to duplicate these except where necessary to aid clarity or context.
- 1.3. In framing this policy, regard has been had to the Regulators' Code, corporate policies and national guidance relating to the functional areas covered by the environmental health remit.
- 1.4. This policy is not intended to be an operational policy but to provide a basis for framing operational policies and procedures regarding enforcement activities. Any operational case needs to be dealt with on its merits and due to the range of activities covered by the Environmental Health Service, this policy cannot be considered to be exhaustive.

2. Enforcement and Regulatory Activities

- 1.5. The enforcement and regulatory activities undertaken by the environmental health service normally are related to either statutory inspection programmes or service requests. Where possible and relevant, risk assessment is undertaken to guide the deployment of resources, in particular with regard to programmed inspection activities. The following table sets out the risk based systems normally used with regard to the Service's inspection programmes.

Area	Activity	Risk methodology
Food safety	Food premises Inspection programme	Food Standards Agency Food Law Code of Practice
Health and safety	Health and safety intervention programme	Health and Safety Executive Guidance
Pollution	Environmental Permitting	Defra risk assessment methodology

- 1.6. Risk principles are used where appropriate in deciding how to respond to service requests including accident reports and ID notifications, complaints, and notifications from other agencies.

3. ENFORCEMENT OPTIONS

- 1.7. The core part of the Council's Enforcement and Prosecution Policy sets out the general enforcement options, ranging from no action up to prosecution or a similar level sanction.

The Environmental Health Service follows this approach, taking a number of factors into consideration when deciding what enforcement response is appropriate in each case.

1.8. The Service also has a number of unique options in service specific areas such as seizing noise making equipment, issuing a hygiene emergency prohibition notice for a serious food safety issue, or making a rent repayment order against a landlord. These are set out in detail in the relevant functional area below.

1.9. A principle that the Service follows is that enforcement action should follow a phased approach, starting with a lower sanction for less serious, one-off offences, ranging upwards to higher sanctions for serious and/or repeat offences. However, each case needs to be considered on its merits having regard to all relevant factors. For more serious situations prosecution or another higher-level sanction may be the first course of action if the circumstances justify such an approach. In every case, the appropriate enforcement option is carefully considered and approved in line with the Council's scheme of delegation.

4. Pollution Control

1.1. Scope

1.1.1 The Environmental Health Service undertakes regulatory duties relating to the following pollution control areas:

- Noise pollution arising from both domestic and commercial premises (including noise/vibration from construction sites) and, in certain circumstances, equipment or vehicles in the street.
- Out of hours service for statutory noise nuisances.
- Air pollution control, including smoke, odour and dust statutory nuisances.
- Other statutory nuisances e.g. excess artificial light, insects.
- Permitting of industrial processes having the potential to release harmful pollutants to the air.
- Enforcement of controls over contaminated land, to ensure that contaminants do not interfere with human health, animal/plant health or the built environment. Also to assess whether contaminants are likely to affect rivers, aquifers or other controlled water courses.
- Local Air Quality Management (LAQM) duties as regards the Environment Act 1995

1.1.2 This section of the Environmental Health Enforcement Policy provides specific guidance on regulatory activities associated with pollution control. However, the Council has separate policies relating to contaminated land enforcement: (a) financial support for householders affected by contamination, and (b) the scope and extent of formal enquiries.

1.2. Other relevant considerations Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.

1.1.2. Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

1.1.3. Officers will have regard to any issues that may arise as a result of a Primary Authority interest.

1.3. The use of formal enforcement tools

1.1.4. The general principals relating to enforcement decision making in relation to pollution control activities are as outlined in the core section of the Council's enforcement policy and in the introduction to the Environmental Health Enforcement Policy.

ENFORCEMENT ACTIVITY RELATING TO STATUTORY NUISANCES

- 1.1.5. Abatement notices can be an effective and quick method of securing compliance with the requirements of the Environmental Protection Act 1990 in that they require problems to be rectified without the potential delays and uncertainty of going to Court. The Council has a separate Statutory Nuisance Policy that sets out its approach to fulfilling its duties and responsibilities under Part III Environmental Protection Act 1990.
- 1.1.6. On the rare occasions when abatement notices are breached the above legislation provides for a number of enforcement sanctions. Paragraphs 4.3.4 – 4.3.6 indicate the likely response of the Council when a notice is breached in a residential situation. However, the Council reserves the right to consider the use of all enforcement mechanisms in accordance with the principles outlined in this Policy.

SEIZURE OF NOISE MAKING EQUIPMENT FROM DOMESTIC PREMISES

- 1.1.7. Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary to abate the nuisance. This can include the seizure of noise making equipment.
- 1.1.8. In domestic settings the Council is likely to favour the seizure of noise-making equipment for the first evidenced breach of an abatement notice as this is likely to offer rapid relief to those adversely affected by the noise in question. Furthermore, this intervention is likely to be a more cost effective approach than formal prosecution.
- 1.1.9. If appropriate, the Council will seek a warrant from a Magistrate authorizing entry to premises, if necessary by force, to facilitate seizure of noise making equipment. The Council will seek to recover the full costs associated with the seizure of noise making equipment.

FORFEITURE OF NOISE MAKING EQUIPMENT

- 1.1.10. If, after noise making equipment has been returned to the recipient of the abatement notice or a successful prosecution has taken place, further breaches are witnessed the Council is likely to repeat the seizure of equipment and seek permission from a Magistrates' Court for its permanent forfeiture.

ENFORCEMENT ACTIVITY RELATING TO CONSTRUCTION SITE NOISE

- 1.1.11. A certain amount of noise is inherent in most types of construction and building operations, which can rarely be completely prevented. However, noise from construction and demolition sites can be very disturbing.
- 1.1.12. The Council can control excessive noise from construction and demolition sites by using powers available to it under the Control of Pollution Act 1974 (COPA) and the Environmental Protection Act 1990 (EPA). Contractors can apply for a 'prior consent' under COPA which sets out allowable working hours and noise limits – the Council encourages the use of prior consents since they represent a proactive method of pollution control.
- 1.1.13. The Council can serve a notice imposing requirements as to how construction works should be carried out to minimise noise and disturbance. The notice can cover controls such as working hours and noise limits; failure to comply with a notice may result in a prosecution being taken.
- 1.1.14. Whilst each construction site is different (and will be assessed as such) the generally acceptable hours for noisy work within populated areas of the Borough are:

Monday to Friday	08:00-18:00
Saturdays	08:00-13:00
Sundays and Bank Holidays	No Noisy work permitted

1.1.15. For particularly noisy work, e.g. piling and de-watering, it may be necessary for authorised officers of the Council to further restrict these times.

1.1.16. However, the Council recognises that some operations, for safety or practical reasons, cannot always be undertaken within the above time restrictions. Operations outside of the above hours may, however, be agreed by the Council if it can be demonstrated that the works cannot be carried out at any other time and that items of plant and equipment are operated and maintained so that their use causes the minimum amount of noise.

1.1.17. Sometimes, emergency works have to be undertaken, for example a burst water main. In such circumstances the normal daytime hours of operation would not apply. The work would be undertaken as soon as possible, which if undertaken at night, may cause some disturbance.

1.1.18. Also, works on main roads would normally be undertaken outside peak times in order to minimise traffic congestion. Therefore, evening and nighttime working may be permitted. Noise would however be kept to as low a level as reasonably practicable.

ENFORCEMENT ACTIVITY RELATING TO PERMITTED PROCESSES

1.1.19. Regulation 23 of the Pollution Prevention and Control (PPC) Regulations 2000 places a duty on local authorities to take the necessary action to ensure that permit conditions are complied with. The Council recognises that appropriate regulation of organisations covered by the PPC pollution control regime is necessary in order to protect local communities and the wider environment; the following type of offences will be considered for enforcement action:

- Operating without a permit
- Failure to comply with a condition
- Failure to notify a relevant change in operation
- Failure to supply without reasonable excuse information requested under the regulations
- Making false or misleading statements
- Making false entries in any record
- Forgery and deception in relation to documents
- Failure to comply with a court order
- Obstruction of Council officers in carrying out their duties

1.1.20. If, in the opinion of authorised officers of the Council, the operation of the installation (or part of an installation) poses an imminent risk of serious pollution, the Authority will serve a suspension notice unless it intends to carry out the works in default under regulation 26 (this will involve the recovery of costs).

PROSECUTION

1.1.21. The Authority recognises that the following are circumstances which are likely to warrant prosecution. The following are examples of such circumstances but this is not an exhaustive list.

- i) The alleged offence involves an obvious breach of the law such that the public health has been put at risk, there has been a serious adverse environment impact or serious nuisance caused
- ii) ii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- iii) There is a history of similar offences

1.1.22. The Officer must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.

1.1.23. Legal proceedings may be taken in conjunction with other sanctions such as works in default accompanied by enforcement action for the recovery of costs.

5. Drinking Water Quality

1.4. Scope

1.1.24. Local authorities have a general duty under the Water Industry Act 1991 to keep themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises. Local authorities have specific remedial powers in relation to private water supplies. The Environmental Health Service is responsible for fulfilling the Council's duties and powers in respect of drinking water quality matters.

1.5. Other relevant considerations

1.1.25. Regard will be had to guidance from the Drinking Water Inspectorate and Public Health England in fulfilling the Council's roles.

1.1.26. Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

1.6. The use of formal enforcement tools

1.1.27. The general principles relating to enforcement decision making in relation to water quality activities are as outlined in the core section of the Council's enforcement policy and in the introduction to the Environmental Health Enforcement Policy. However, the criticality of safe drinking water is paramount to public health and this will be the significant factor in deciding the appropriate course of action in any particular situation

1.1.28. In relation to large domestic private water supply systems and commercial supplies, the Council is more likely to take a formal approach, but every case will be judged on its merits, having regard to the public health circumstances.

1.1.29. If any private water supply is not deemed to be wholesome or any domestic supply is not deemed to have a supply that is wholesome and sufficient, the Council may serve a notice stating its reasons and the remedial steps that it believes are required, giving a suitable time period for compliance. If the notice is confirmed, the Council may undertake works in default. Whether the Council chooses to do so will depend on the circumstances of the case. Where the Council decides to undertake works in default, it will seek to recover its full costs, unless there are exceptional reasons not to do so.

1.1.30. If any private supply of water intended for human consumption constitutes a potential danger to human health, or is insufficient, the Council must serve a notice stating the grounds for serving the notice and the remedial action required. Failure to comply with the notice is an offence and the Council may consider prosecution proceedings in accordance its normal procedure for such matters.

1.1.31. The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so, unless there are exceptional circumstances.

6. Stray Dogs

1.7. Scope

1.1.32. The Council has a duty under the Environmental Protection Act 1990 to deal with stray dogs in the borough. Any stray dogs on public land must, if practicable, be seized and detained. Attempts must be made to advise the owner of the dog that the dog has been seized. Where any dog has been detained for seven clear days without the dog being claimed and the Council's expenses having been paid in full, the Council may dispose of the dog.

1.1.33. Regulations made in 2014 under the Animal Welfare Act 2006 made it mandatory from 6th April 2016 for dog owners to microchip any dog over 8 weeks old.

1.1.34. The Council may:

- serve on the keeper of a dog which is not microchipped a notice requiring the keeper to have the dog microchipped within 21 days;
- where the keeper of a dog has failed to comply with a notice under paragraph (a), without the consent of the keeper (i) arrange for the dog to be microchipped; and (ii) recover from the keeper the cost of doing so;
- take possession of a dog without the consent of the keeper for the purpose of checking whether it is microchipped or for the purpose of microchipping it in accordance with the above.

1.1.35. The Council's policy in relation to microchipping is to encourage voluntary compliance.

1.1.36. Formal action will normally only be considered in the case of repeat offences. The Council will incentivise dog owners to have their dogs microchipped in setting fees for handling stray dogs.

1.1.37. The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so unless there are exceptional circumstances.

Appendix E: Food Safety & Standards and Workplace Safety

1. Scope

- 1.1. This is a documented policy on food safety, food standards and workplace health and safety enforcement including prosecution. This Policy will be reviewed periodically and in response to new legislation, the Food Standards Agency (FSA), Department of Health (DoH), Department for Food, Environment and Rural Affairs (Defra), Health and Safety Executive (HSE) and other guidance etc as necessary. This document encompasses the principles of the Regulators' Code.
- 1.2. This Policy directs that enforcement action, be it the issue of written warnings, statutory notices, or prosecution, is based primarily upon an assessment of risk to public health. This risk is the probability of harm to health occurring due to non-compliance with food safety and health and safety law. Formal action should not, therefore, be the normal response to minor technical contraventions of legislation.
- 1.3. This Policy encompasses, for food standards and food safety, the guidance set out in the Food Standard Agency publication 'Framework Agreement on Local Authority Food Law Enforcement' and the Food Law Code of Practice (England) issued under Section 40 of the Food Safety Act 1990, and for workplace health and safety, the National Local Authority Enforcement Code.

Other relevant considerations

- 1.4. In this context, formal action includes the following:
 - Written warnings
 - Hygiene Improvement Notices
 - Food Information Regulation Improvement Notices
 - Hygiene Emergency Prohibition Notices and Orders
 - Voluntary (closure) process
 - Seizure and detention of food
 - Voluntary (surrender of food)
 - Remedial Actions Notices
 - Suspension/Revocation of Establishment Approval
 - Health and safety improvement notices
 - Health and safety prohibition notices
 - Prosecution procedures (including simple cautions)
- 1.5. The competency of officers carrying out food safety and workplace safety enforcement must follow the guidance set out in paragraph 1.3 above and other guidance issued from time to time by recognised bodies.
- 1.6. Signing of formal enforcement documents listed in paragraph 1.5 above will only be undertaken by officers who have been authorised to do so by the Council after demonstrating the relevant competencies and qualifications prescribed in paragraph 1.3 above. These must be qualified officers with experience in food law enforcement, in accordance with the Food Law Safety Act Code of Practice i.e.
 - a. Environmental Health Officers enforcing food hygiene
 - b. Holders of the Higher Certificate in Food Control Premises Inspection who are authorised to carry out food hygiene inspections
 - c. Equivalent qualifications with assessment of equivalency approved by the Food Standards Agency Holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect

- 1.7. The officer who signs the any formal enforcement notice must have witnessed the relevant contravention and be satisfied that it constitutes a breach of the relevant legislation.
- 1.8. In particular, Hygiene Emergency Prohibition Notices should be signed only by Officers who are suitably qualified and experienced in food safety matters, are currently involved in food law enforcement and who are properly trained, competent and duly authorised. The Officer will ensure a second opinion is obtained prior to the notice being issued.
- 1.9. The Council will ensure that all delegated officers are competent to act within their individual authorisations under The Food Safety and Hygiene (England) Regulations 2013, and the Health and Safety at Work Act 1974, and possess any qualifications, training and experience which would allow him / her to undertake the duties for which he/she has been authorised.
- 1.10. The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions which concern food safety and workplace safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice, other recognised and relevant guidance and advice offered through any relevant Primary Authority is always considered and followed where appropriate.
- 1.11. The Council will seek to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that the public is adequately protected. The Council will base all enforcement decisions on an assessment of risk to the public health and will consider the factors set out in the Food Law Code of Practice and National Local Authority Enforcement Code (Health and Safety) including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.
- 1.12. Officers should be aware of possible conflicts of interest that may arise in an enforcement situation.
- 1.13. In premises where the Council is the proprietor of a food business any breaches of the law must be brought, without undue delay, to the attention of the relevant Service Director.
- 1.14. Compliance should normally be achieved through letters and advice, and only in the more serious instances should formal enforcement through Improvement or Prohibition Notices be considered. Prosecutions and other higher-level sanctions should be reserved for the most serious offences which either result or could have resulted in serious risk to public health or which represent a blatant disregard by employers, employees or others of their responsibilities under food safety and workplace safety legislation.

2. The use of formal enforcement tools

FORMAL ACTION

- 1.15. Before formal action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to secure evidence).

PROSECUTION

- 1.16. The Authority recognises that the following are circumstances which are likely to warrant prosecution:

- i) The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is, or has been, put at risk.
 - ii) The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety and workplace safety, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
 - iii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
 - iv) There is a history of similar offences, related to risk to public health.
- 1.17. The Officer must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.
- 1.18. The following guidance criteria are some of the factors that it may be relevant to have regard to when considering the instigation of legal proceedings.
- i) the seriousness of the alleged offences;
 - ii) the previous history of the party concerned;
 - iii) the likelihood of the defendant being able to establish a due diligence defence for food law offences;
 - iv) the availability of any important witnesses and their willingness to co- operate;
 - v) the willingness of the party to prevent a recurrence of the problem;
 - vi) the probable public benefit of a prosecution and the importance of the case;
 - vii) whether other action (Simple Cautioning, improvement notices) will be more appropriate or effective.

SIMPLE CAUTIONS

- 1.19. In certain circumstances when legal proceedings are being considered, the Council may consider offering to discharge the matter by way of a Simple Caution. The procedure adopted and the form and content of the caution will be in accordance with relevant guidance. Any internal guidance will also be considered.

Appendix F: Highways

This appendix must be read in conjunction with London Borough of Barnet's overarching Enforcement and Prosecution Policy. Its purpose is to outline the areas of legislation used by the Highways team and to set out the Council's policy where the legislation permits discretion. All decisions on Highway's enforcement action will be made on the basis of available resources and following consideration of the overarching policy and this appendix.

1. Introduction

The Act and other mentioned legislation contain provisions enabling the Highway Authority to deal with various encroachments, obstructions, and unlawful interferences.

The Highways Service deals with (but is not limited to) the following activities:

- 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.
- Dealing with damage to the Highway caused by or associated with development works
- Administration of Public Rights of Way

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. Scope

This appendix covers the following types or levels of enforcement action:

- Informal Warning letters/Notices
- Formal Warning Letters/Notices
- Fixed Penalty Notices (FPN), where applicable
- Power to prosecute
- Powers to recover costs
- Powers to charge for enforcement action
- Powers to ensure compliance with notices/warnings issued in accordance with legislation
- Other Provisions.

3. Legislation

The Highways Team is responsible for ensuring that the Council performs their statutory functions, including but not limited to 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 Regulations 2015
- Rights of Way Act 1990
- Freedom of Information Act 2000
- Flood and Water Management Act 2010 and Flood Risk Regulations
- The Environment Act 2021
- London Local Authority and Transport for London Act 2003

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

and all other relevant legislation as detailed in the Council's Scheme of Delegation

and any other legislation approved by the Council

and any amendments or additions or superseding legislation

4. Enforcement Options

The Highways Team have the following (not necessarily exhaustive) options when dealing with Highway's contraventions:

Option1 Informal Letter/Notice – An informal notice may be issued to when LBB are satisfied that corrective action will be taken. The informal notice will be issued offering advice regarding the infringement.

Option 2 Formal Letter/Notice – A formal notice may be issued to when LBB are satisfied that an offence of some significance has been committed or where despite requests/advice, remedial action has not been taken.

Option 3* (where applicable) Since 1st July 2012 Barnet has run a Fixed Penalty Scheme. Under this scheme if any works on the Highway are identified as not having a permit or are working in breach of a permit condition LBB may issue a Fixed Penalty Notice (FPN).

Option 4* Prosecution – In some more serious instances, prosecution will be required, this is generally when it is in public interest to do so or if other options have failed. Prosecution is a last resort and any decision to prosecute will follow the overarching Enforcement and Prosecution Policy and the due court process. This action may be taken in tandem of the service of notice.

* Options 3 and 4, fall within Phase 3 of the enforcement process as stipulated in the main policy document.

The Highway's Service recognises that each case should be treated individually and will exercise a fair, risk based approach to its enforcement options taking into account the severity of the offence, risk to public safety, failure to heed to advice of instruction historic breaches/patterns of behaviour or any other appropriate factors.

5. General Powers to recover costs and /or charge for enforcement action

Within the above legislation the Council is entitled to make a reasonable charge as a means of recovering certain costs or expenses incurred when taking enforcement action.

These costs or expenses are applicable when in connection with various activities (investigatory or otherwise), including but not limited to repairing damage, putting things right or replacing, prevention of infringements, inspection of sites, making necessary enquires and subsequent consideration of action and in relevant cases the service of notices.

Where costs or charges are made it will be in accordance with the charges set out in the relevant legislation, or as detailed in the Council's fees and charges or any other appropriate applicable reasonable charge all of which may be amended from time to time.

Where appropriate, costs may be recovered by way of a charge against land/ property, and such a charge may be further enforced through sale of the land/ property

6. Other provisions

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

Appendix G: Licensing

1. Scope

The purpose of licensing is, in most cases, the protection of the general public. To achieve this, legislation requires licences, permits or registrations to be obtained for a wide range of activities. These administrative documents are normally subject to certain conditions, imposed either by legislation or the Council. The Licensing Service undertakes the Council's licensing functions, which includes the below.

1.1. Animal Welfare Licensing

- Dog breeding Licence
- Riding establishments Licence- hiring out horses
- Exhibition of animals Licence - Keeping or training animals for exhibition
- Animal boarding establishments Licence - providing or arranging for the provision of boarding for cats or dogs
- Selling animals as pets Licence - Pet shops
- Dangerous wild animals Licence
- Zoos Licence

1.2. Premises and Event Licensing (Licensing Act 2003)

The Licensing Act 2003 sets out the following four licensable activities that require an authorisation from the Licensing Authority;

- Sale of alcohol
- Sale of alcohol to members and guests in a members club
- Offering of regulated entertainment such as films, plays, indoor sports, boxing or wrestling, live or recorded music or dancing
- The sale of late night refreshment such as hot food or hot drinks between 11pm and 5am

The authorisations that can be obtained from the licensing authority are as follows;

- Premises Licences - this is a licence which allows one or more of the activities that need a licence in/on a premises
- Personal Licences - to sell alcohol from a premises (that has a premises licence) at least one person must be responsible for the sales of alcohol, this person will need a personal licence.
- Club Premises Certificate - similar to premises licence but for members only clubs
- temporary event notices - for one off events for a limited period of time and limited numbers of people permitting one or more licensable activity
- Film Classifications

1.3. Gambling (Gambling Act 2005)

London Borough of Barnet is the Licensing Authority under the provisions of the Gambling Act 2005 and responsible for the administration and enforcement of Premises Licences, Permits, Notices and Registrations. These Licences, Permits, Notices and Registrations are:

- Premises Licences (Bingo, Betting (non track), Adult Gaming Centers, Family Entertainment Centers, Casinos, Betting (Track))
- Gaming Machine Permits and Notifications (in alcohol licensed premises)

- Unlicensed Family Entertainment Centres
- Prize Gaming Permits
- Club Gaming Permits and Club Machine Permits.
- Small Society Lottery Registration
- Temporary use notice
- Occasional use notice

1.4. Miscellaneous Licensing

- Street Trading Licensing (including Market Licences)
- Sex shops/cinema Licensing
- Sexual Entertainment Venue Licensing
- Scrap Metal Licences (sites and collectors)
- Special Treatments Licensing
- Explosives Licensing
- Hypnotism Act Licensing

2. Other Relevant Considerations

In addition to the Regulators' Code this Policy is designed to reflect the following sources of primary legislation and any secondary legislation and guidance issued thereunder:

- Licensing Act 2003
- Gambling Act 2005
- Animal Welfare Act 2006
- Dangerous Wild Animals Act 1976
- Zoo Licensing Act 1981
- Scrap Metal Dealers Act 2013
- London Local Authorities Act 1990 (as amended)
- London Local Authorities Act 1991 (as amended)
- Local Government (Miscellaneous Provisions) Act 1982
- Greater London Council (General Powers) Act 1986
- Live Music Act 2012
- Police and Crime Act 2009
- Police and Crime Act 2017
- Police and Social Responsibilities Act 2011
- Business & Planning Act 2020
- Hypnotism Act 1952

3. The Use of Formal Enforcement Tools

The general principles relating to enforcement decision making are explained within the main body of this Policy.

1.1. General Enforcement Principles for Licensing

The main purpose of licensing enforcement activity is to secure compliance with legislative requirements ensuring the safety of the public. Ordinarily, a staged approach to enforcement will be undertaken to achieve this objective although this will not preclude formal enforcement action being the first intervention when appropriate e.g. serious risk to the public or deliberate/repeated non-compliance.

1.2. Specific Enforcement Activity Relating to Each Activity

Each licensing activity has its own specific policy which includes activity-specific enforcement options e.g. licence reviews under the Licensing Act 2003. These policies are to be read in conjunction with the overarching Enforcement and Prosecution policy.

Appendix H: Parking

The London Borough of Barnet undertakes Civil Parking Enforcement and decriminalised enforcement of Bus Lane and other traffic contraventions.

Parking and traffic enforcement are carried out to achieve the following objectives: -

- To ease congestion and maintain the free and safe flow of traffic.
- To improve the quality and accessibility of public transport.
- To actively support the needs of disabled people.
- To maintain and improve the safety of all road users including pedestrians.
- To maximise the availability of parking spaces in Town Centres and for businesses.
- To enable residents to park as close to their homes as possible.
- To support initiatives to improve air quality and other environmental objectives.

The aim parking enforcement is to have a fair and proportionate regime that benefits all who live in, work in, or visit the borough by deterring inconsiderate or dangerous parking or driving.

The authority enforces parking and traffic regulations mainly under or with reference to the following legislation:

- Traffic Management Act 2004 TMA 2004
- The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022
- The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022
- London Local Authorities Act 1996 LLA 1996
- London Local Authorities Act 2000 LLA 2000
- London Local Authorities and Transport for London Act 2003 LLA 2003
- Traffic Signs Regulations and General Directions 2016 TSRGD 2016
- Greater London Council (General Powers) Act 1974 GL(GP)A 1974
- Road Traffic Act 1988 RTA 1998

Enforcement takes place under the aegis and in line with the requirements of the specific legislation and regulation.

Penalty Charges Notices are issued when a Civil Enforcement Officer or other relevant officer believes a contravention has taken place on the basis of their direct observation or on the basis of evidence collected using a device which meets the requirements of the relevant legislation.

The current level of these charges (2022) can be found in the table below: -

	Parking		Bus Lane	Moving Traffic
	Lower rate	Higher rate		
Full	£80	£130	£130	£130
Discount (early payment)	£40	£65	£65	£65
Charge Certificate	£120	£195	£195	£195

The appeal process for all penalty types is prescribed by legislation and regulation.

Enforcement of Disabled Blue Badge misuse will be conducted by the council's Counter-Fraud Team where sanctions such as prosecution, simple cautions and warning letters will apply where appropriate.

Appendix I: Planning & Building Control

This Plan sets out what you can expect the Council as Local Planning Authority to do when a breach of planning control takes place in Barnet. It should be read in conjunction with the main body of this policy document.

1. 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

Planning enforcement operates primarily within the framework set out in the Town and Country Planning Act 1990 (as amended). Further guidance and advice is set out in the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). These set out the discretionary basis of the provision of the service and provide further background and guidance in relation to the delivery of the service. The guidance in the NPPG sets out that a Planning Enforcement Plan should be produced by the Council.

In addition to matters relating to the Town and Country Planning Act planning enforcement officers will have regard to powers and duties set out other primary and secondary legislation and 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. A breach of planning control is defined in the Town and Country Planning legislation as "the carrying out of a development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted".

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;
- works to a Listed Building that affect its character as a building of special architectural or historic interest;
- Total or substantial demolition in a Conservation Area;
- The display of advertisements;
- 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.

2. 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.

1.6. Submitting an Enquiry in Writing

A service request can be submitted by email to planning.enforcement@barnet.gov.uk or to 'Planning Enforcement, The London Borough of Barnet, 2 Bristol Avenue, Colindale, London NW9 4EW.

1.7. 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 2 Bristol Avenue, Colindale, London NW9 4EW. Customer's details are held in strict confidence in accordance with government legislation.

1.8. 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. WHAT WILL HAPPEN TO THE CASE?

Should at least a minimum level of information be provided with a request for service the council will aim to 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.

4. THE INVESTIGATION

1.9. The Planning Enforcement Process

The investigation into alleged breach of planning control will be undertaken in a manner compatible with government guidance and, the general approach will remain broadly consistent across all investigations.

1.10. 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 have powers of entry onto land connected with the investigation. It is an offence for a person to willfully 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 willful obstruction if such co-operation is not forthcoming.

5. 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.

1.11. 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.

1.12. 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.

1.13. Obtaining Further Information

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 72 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. ENFORCEMENT ACTION

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

1.14. 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.

1.15. 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.

1.16. 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

Who can enforce?

Parliament has given the Council, as Local Planning Authority, the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in its administrative area. Third parties, such as neighbours or interest groups, cannot initiate planning enforcement action nor require the Council to act when it considers there is no case to do so.

1.17. 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.

1.18. 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 relevant government department 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.

1.19. 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.

1.20. 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.

1.21. Direct Action

As an alternative or to complement the aforementioned powers, where any steps required by any remedial notice have not been taken within the period for compliance, the Local Planning Authority will consider whether it is expedient to exercise its powers under the provisions of The Town and Country Planning Act 1990, allowing the Local Planning Authority to appoint contractors to enter the land to take the required steps and to recover from the owner of the land any expenses reasonably incurred in doing so. The decision to take this action is usually taken under Delegated Authority.

The decision to take direct action will be at the discretion of the Local Planning Authority and will take into account the complexity of the works required and the likely upfront costs to the Local Planning Authority. Where compliance would involve extensive, complicated or expensive works, direct action may not be feasible. 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 purse. Where the public benefit from direct action does not outweigh the upfront costs in carrying out the action it is unlikely direct action will be taken.

The Local Planning Authority will endeavour to advise to notify interested parties of its intention to take direct action. However, they would not necessarily be advised of the time and date that this action would occur on. In exceptional circumstances, it may not be appropriate for the Local Planning Authority to give advanced notice of direct action.

The Local Planning Authority will take steps to recover all reasonable expenses incurred from carrying out direct action in accordance with legislation. An invoice will be raised, which if not paid in full will then be pursued as a debt. The sum will be appropriately entered onto public registers.

7. 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.

Appendix J: Private Sector Housing

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 Council's 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 (HMOs);
- 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, where practicable 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

The HHSRS enables the assessment of risks to the health and safety of occupiers posed by certain specified housing related hazards and scoring 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. 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 Action⁹;
- Serve a Hazard Awareness Notice;
- Make a Demolition Order¹⁰;
- Declare a Clearance Area¹¹;

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 section 5 below].

4.2 HHSRS Policies

⁹ Not available for Category 2 hazards

¹⁰ Available for Category 2 hazards only in prescribed circumstances

¹¹ Available for Category 2 hazards only in prescribed circumstances

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 certain circumstances action will be taken where only Category 2 hazards are present for example where there are concerns about a vulnerable person. This might include but not be limited to for example damp and mould cases. 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 where appropriate, 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.

4.3 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 to 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, for example:

- The occupier is aware of the risks posed by the hazard(s) but has 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 for example 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, for example:

- 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 may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people. It could be considered to be the most appropriate course of action in relation to the hazard where, for example:

- 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 may be considered appropriate where a hazard presents an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises. The Council may themselves take remedial action to remove the imminent risk and recover its reasonable expenses. Emergency Remedial Action may only be used where the Council are satisfied that there is or are category 1 hazard(s). The authority must serve a notice of Emergency Remedial Action on relevant persons within 7 days of taking that action. It could be considered to be the most appropriate course of action in relation to the hazard where, for example:

- 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 expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

An Emergency Prohibition Order may be made where a hazard(s) presents an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises. Such an order may only be used where the Council are satisfied that there is or are category 1 hazard(s). The Order imposes with immediate effect, such a prohibition or prohibitions on the use of any premises as are specified in the Order. It could be considered to be the most appropriate course of action in relation to the hazard where, for example:

- 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, for example:

- 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 or does not want to leave until a suitable property in a suitable location has been located.

4.4 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 Local Government Association (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 amount to a Category 2 hazard for which there is a discretionary power under Part 1 to take action. Care will be taken to ensure that where there is evidence of higher risk notified by the London Fire Brigade, tenant complaint, property use type, evidence of poor management of a portfolio etc these buildings are considered first.

The decision to carry out a full HHSRS may require a second officer input (Team Leader and/or Group Manager). MHCLG guidance note 2018 on Local Authority enforcement powers stated: *'Where a local authority is aware of a high-rise residential building with potentially unsafe ACM [Aluminum Composite Materials] 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.'* A 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'. The LGA advised in 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 necessary to take Part 1 action 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 Brigade

- the owners/managers are not examining fire safety risk of external wall systems/structures,
- there is no coherent plan for remediation,
- there is no agreement with the local authority/London Fire Brigade 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 London Fire Brigade

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 HAN might be the most appropriate action (for Category 1 or 2 hazards) if:

- Interim measures are in place and agreed with the London Fire Brigade 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 buildings. Liaison with the London Fire Brigade 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 to consider the financial risks with the Council reclaiming debts.

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

The DLUHC (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 or Orders made 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 or other appropriate circumstances, 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 the signing of the designation of an Additional HMO Licensing Scheme, HMOs as detailed in the designation will require a licence.

Following the signing of the designation of 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 compulsorily 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.

7.5 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

8.0 Civil Penalties

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:

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, a breach of licence conditions or a breach of the permitted number of persons or households (section 72 Housing Act 2004),
- failure to licence or be licensed in respect of a Selective Licensing Scheme, or failure to comply with selective licensing conditions (section 95 Housing Act 2004),
- 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.

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 internal 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, although where that offence is committed by more than one party, a penalty can be imposed on each of those parties.

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 standard 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 has been committed. It would also need to be in the public interest to have taken the prosecution (Crown Prosecution Service *Code for Crown Prosecutors*).

Before the penalty can be imposed, the local authority must serve a notice of its intention to impose a penalty and consider any representations made by the recipient.

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 to 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 a notice of intention to impose a civil penalty.

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 states that "*the amount levied in any particular case should reflect the severity of the offence, as well as taking into account the landlord's 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 of those. For example, the landlord may have been 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. These should be assessed separately. An independent assessment will be undertaken of each party -for an offence and a totality assessment completed to ensure that the overall sum, is fair reasonable and proportionate.

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 DLUHC (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 about 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 is to be assessed against the degree of potential or actual harm caused, both to individual tenant and more widely, for example (but not exclusively) to take account of:

- 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 and execute 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, pre meditation etc may be relevant.

Considerations will include for example (but not exclusively):

- Has the landlord committed similar offences before in the last 5 years, resulting in formal or informal action?
- Was the offence was planned?
- Is this an experienced landlord who should therefore know their responsibilities?
- Does the landlord own 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
- A high level of profit has been derived from committing the offence
- The offender is a letting, managing or estate agent
- There has been an 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 have been obvious to most people

Knowledge: has knowledge of the specific risks associated with their actions even though they do 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, reviewing the offence and culpability against the assessment baseline.

A 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 the band or change the 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 retaining the existing penalty unaltered is justified) with a clear explanation of the approach taken.

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

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.

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:

- 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:

- 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 four 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

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	£				
Step 4: Check					
<p>Check that the provisional civil penalty assessment meets the aims of the sentencing principles:</p> <ul style="list-style-type: none"> ▪ 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 					

<p>Check that the provisional assessment is proportionate and will have an appropriate impact.</p> <ul style="list-style-type: none"> • 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 may 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).

9.0 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.

10.0 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)

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. Each case should be decided independently.

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.

11.0 Statement of Principles for The Smoke and Carbon Monoxide (England) Regulations 2015- Introduced at Housing Committee 23rd October 2017

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;

1. the reason for imposing the penalty;
2. the premises to which it relates;
3. the number and type of alarms the Council has installed at the premises;
4. the amount of the penalty (including eligibility for first offence early payment discount);
5. details to make payment; and,
6. 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 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, that 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, this 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 any representations 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.

12 MEES going to Jan HAG committee and will be adopted

13 Electrical regs going to Jan HAG committee and will be adopted

14 Other provisions

All other housing legislation within the team's remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy, unless a departure from the policy can be justified. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

Appendix K: Trading Standards

Trading Standards enforce the law across a wide range of subject areas, including:

- age restricted products such as alcohol, tobacco, vapes, knives, fireworks
- animal feed
- counterfeit goods and/or illicit goods such as alcohol and tobacco
- doorstep crime
- fair trading including pricing and descriptions of goods, services and digital content
- fireworks storage
- fraud
- intellectual property
- lettings agents and estate agents
- product safety
- weights and measures

For a full list see this link [Trading Standards legislation](#)

The Trading Standards Service aims to create an environment of confident consumers and trusted traders by providing advice and guidance to consumers and businesses to enable compliance. However, there will be occasions when more formal actions may be necessary to deal with cases where trading standards laws have been breached by businesses or others. General enforcement principles and approach, and sanctions available are set out in the main body of this Policy. These are applicable to most enforcement action contemplated by Trading Standards and the Council.

In addition to these and in alignment with the general principles set out, there are the following sanctions available to Trading Standards:

- Undertakings and Enforcement Orders under the Enterprise Act 2002 in the civil courts – undertakings are formal promises from businesses who agree to comply with their legal obligations, then Enforcement Orders can follow in the case of non-compliance. Breach of an Order is considered to be contempt of court.
- Compliance Notices – in appropriate cases, Trading Standards can issue a notice requiring a business to take action or to refrain from certain actions, without the need for court proceedings. In general, there will be a deadline to comply with the notice. Failure to comply can lead to court proceedings. If a business disagrees with the notice, then they usually have the opportunity to appeal to the appropriate court or tribunal. Compliance notices are available under various legislation including product safety, weights and measures, and fair trading.
- Penalty Notices – Trading Standards have the ability to issue certain penalty notices without the need for court proceedings under legislation relating to letting agents, secondary ticketing, single use carrier bags and energy performance. Under letting agents legislation statutory guidance states that the authority must produce an Enforcement Policy which sets out guidance to be followed when setting financial penalties [London Borough of Barnet Lettings Enforcement Policy](#). Appeals regarding letting agents penalty notices are to the First Tier Tribunal.