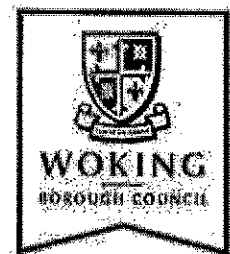


Housing Standards Enforcement Policy

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1. Executive summary

- 1.1 Woking is estimated to have around 6,566 properties that are rented privately¹ which provides a smaller private rented sector (16.6% of the housing stock) than the national average (currently 20.0%²).
- 1.2 Spiralling private rents have resulted in some forms of private rented accommodation becoming unaffordable for many residents. This has resulted in increasing demand for affordable private rented accommodation which has resulted in an unwelcome supply of poor quality accommodation within the private rented sector.
- 1.3 The Council has a wide range of tools available to intervene in the private rented sector and currently utilises its powers predominantly under Parts 1 and 2 of the Housing Act 2004 (housing conditions and licensing of HMOs respectively) in addition to other relevant legislation.
- 1.4 To promote responsible renting, the Council launched a landlord accreditation scheme for private landlords and letting agents in September 2016. It is expected that accredited landlords will comply with legislative requirements and will not be subject to enforcement action by the Council.
- 1.5 This policy sets out how the Council aims to intervene in the private rented sector and utilise its wide-ranging statutory powers and duties to improve housing standards across all housing tenures and in particular within the private rented sector.
- 1.6 This policy replaces the Council's Private Sector Housing Enforcement Guidance (November 2007).

2. Background

- 2.1 Housing is a key determinant of health and well-being, and poor housing directly impacts residents' health. The Council has a wide range of statutory powers and duties at its disposal in improving private sector housing and many of these are contained within the Housing Act 2004, while others include legislation relating to public health, statutory nuisance, and housing management.
- 2.2 Poor housing also has the potential to contribute negatively on local neighbourhoods and the wider housing market and by facilitating investment in the Borough's housing stock the Council will provide a positive contribution to the local economy and built environment.

¹ Census 2011

² The English Housing Survey 2015/16

- 2.3 When enforcing legislation the Council is required to both meet the specific requirements of individual pieces of legislation as well as the wider principles of good regulation set out in the Regulators' Code³.
- 2.4 The Regulators' Code aims to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
- 2.5 The Regulators' Code does not apply in respect of the Council's actions taken under Part 1 of the Housing Act 2004 (enforcement of housing conditions).
- 2.6 This policy has been drafted having regard to the principles of the Regulators' Code.
- 2.7 The Council will also have regard to relevant enforcement guidance when taking enforcement action, including the Housing Health and Safety Rating System Enforcement Guidance⁴.
- 2.8 The Council is mindful that each case must be considered on its merits and where the circumstances demand, the Council may depart from this policy.

3. The aims of the policy

- 3.1 The Council's Housing Strategy sets out the strategic priorities for the Council. This policy should be read in conjunction with the Housing Strategy, as well as the Council's Housing Assistance Policy, Empty Homes Plan, and Houses in Multiple Occupation Licensing Policy.
- 3.2 This policy deals with the practical application of enforcement procedures that will be used to achieve improvements to housing. It sets out what owners, landlords, managing agents and tenants of private sector properties can expect from officers.
- 3.3 This policy aims to:
- i) Improve the standard of privately rented housing within the Borough and to provide a safer and healthier private housing sector;
 - ii) Set out the principles and practices that will be followed when enforcing legislation;
 - iii) Ensure that housing standards enforcement decisions are fair, transparent, consistent and proportionate;

³ Regulators' Code – Better Regulation Delivery Office, April 2014

⁴ Housing Health and Safety Rating System Enforcement Guidance, ODPM, February 2006

- iv) Support responsible landlords operating professionally to maintain appropriate standards of accommodation;
- v) Incentivise responsible renting and increase public confidence in the quality and management of accommodation leading to a vibrant private rented sector in the Borough;
- vi) Hold persons responsible for their actions which are detrimental to local environmental quality or to the health, safety and welfare of other residents.

4. The scope of the policy

4.1 Enforcement action is an action carried out in exercise of the Council's functions in respect of its statutory powers and duties. This includes both formal and informal action along with visits and inspections and consequently includes:

- i) Providing advice and guidance to support compliance with the law;
- ii) Undertaking investigations (either proactively or in response to a complaint) to establish whether intervention is appropriate;
- iii) Taking informal action including where no action is taken;
- iv) Requiring the provision of information;
- v) Serving enforcement notices and making enforcement orders⁵;
- vi) Taking emergency action⁶;
- vii) Licensing private rented accommodation (including houses in multiple occupation)⁷;
- viii) Carry out works in default where a person has failed to comply with the requirements of a notice or order⁸;
- ix) Issuing Civil Penalties⁹;
- x) Instigating Rent Repayment Orders¹⁰;
- xi) Issuing simple cautions,
- xii) Instigating prosecution proceedings;
- xiii) Applying for banning orders¹¹,
- xiv) Applying for Criminal Behaviour Orders¹²;
- xv) Entering enforcement records on the Rogue Landlord Database¹³;

⁵ Housing Act 2004, Part I

⁶ Housing Act 2004, Sections 40 and 43

⁷ Housing Act 2004, Parts II and III

⁸ Housing Act 2004, Schedule 3

⁹ Housing and Planning Act 2016, Schedule 9

¹⁰ Housing Act 2004, Sections 73 and 96, and Housing and Planning Act 2016, Chapter 4

¹¹ Housing and Planning Act 2016, Chapter 2

¹² Part 2 of the Anti-social Behaviour, Crime and Policing Act 2014

- xvi) Offences in respect of the Smoke and Carbon Monoxide Alarm (England) Regulations, and;
 - xvii) Offences in respect of letting agents and property managers not belonging to an approved redress scheme¹⁴.
- 4.2 The Council will target its enforcement action to maximise the benefit from the action and to make best use of resources, while having regard to the general principle that formal enforcement action will be targeted at those cases where it is needed.
- 4.3 Examples where enforcement action may be targeted include (but are not limited to):
- i) Area-based action where there are particular local issues or circumstances;
 - ii) Empty homes;
 - iii) Portfolio landlords who persistently fail to manage privately rented accommodation in accordance with legal requirements;
 - iv) Property types that exhibit high risks for a particular hazard, and;
 - v) Licensed properties to review licence conditions.

5. Providing advice and guidance

- 5.1 Wherever practicable the Council aims to provide private landlords and their tenants with clear and accessible advice and guidance to support responsible renting and help landlords comply with their legal requirements. We will also endeavour to provide advice and guidance on related matters for which the Council may not be the enforcing authority, for example tenancy deposit protection.
- 5.2 This will include, but is not limited to information provided through:
- i) The Council's website;
 - ii) Direct advice;
 - iii) Information freely available through relevant resources;
 - iv) Landlord, letting agent and tenant forums, and;
 - v) Referrals to partner agencies.
- 5.3 The provision of information and advice does not preclude the Council taking additional action, including enforcement action, indeed where enforcement action is taken it is likely that further information and advice will be provided to support responsible renting.

¹³ Housing and Planning Act 2016, Chapter 3

¹⁴ The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Regulations 2014

- 5.4 The Council operates a Private Landlord Accreditation Scheme in conjunction with the National Landlords Association (NLA), and supports landlords to become accredited to facilitate access to a wide range of independent guidance and information to both assist compliance and to improve professionalism in the landlord sector.

6. Undertaking investigations

- 6.1 The Council receives information regarding the private rented sector from a range of sources. Information received also varies in accuracy and credibility.
- 6.2 Where the Council receives information regarding alleged poor conditions or other breaches of appropriate legislation it will normally undertake initial investigations by making contact with the occupier/s of the property in question to establish whether there are any matters that require the Council's intervention.
- 6.3 In the event that the Council considers that there are matters that warrant further action, the Council may contact the landlord to require further information, or to give notice of an inspection to identify any relevant actions.
- 6.4 Where the Council gathers evidence of alleged offences it may invite alleged offenders or other relevant persons to attend for interview under caution as part of the Council's investigation.
- 6.5 Where the Council undertakes interviews under caution they will comply with the requirements of the Police and Criminal Evidence Act 1984, and will be recorded. Individuals will have the right to attend with their legal advisor and a copy of the interview will be provided on request.

7. Using powers of entry

- 7.1 Where appropriate the Council will exercise its powers of entry as necessary to undertake appropriate investigations.
- 7.2 In some cases the Council may exercise its powers of entry by obtaining a warrant of entry from the Magistrates' Court for example where officers have been obstructed previously, or where notification would negate the purpose of the visit (e.g. an offence would not be discovered).

8. Requiring the provision of information

- 8.1 Where the Council conducts an investigation it will normally be appropriate to require those persons who have an interest in the property to provide ownership and other information so that the Council ensures that it is corresponding with the appropriate parties.

Requisition for Information

- 8.2 The Council has powers to serve legal notices under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 that require individuals to provide ownership and other information.
- 8.3 The use of this power is to assist the Council's investigations and does not necessarily lead to the instigation of further enforcement action.
- 8.4 Where a Requisition for Information is not complied with prosecution proceedings may be the appropriate course of action due to the negative impact this may have on the Council's investigation.

Requirement to Provide Documents

- 8.5 The Council has powers to serve legal notices under Section 235 of the Housing Act 2004 to require certain individuals to provide the Council with relevant documents on a given date and time.
- 8.6 The use of this power is to assist the Council's investigations and does not necessarily lead to the instigation of further enforcement action.
- 8.7 Where a legal notice served under Section 235 is not complied with proceedings may be the appropriate course of action due to the negative impact that failing to provide the information may have on the Council's investigation prosecution.

9. Taking informal action

- 9.1 The Council aims to resolve as many cases as possible through the use of informal action. "Informal action" is to secure compliance with legislation, including offering advice, issuing verbal warnings and requesting action, the use of letters, and the issue of informal schedules of works. The preferred approach is to work with people to help to prevent the need for official enforcement. However, where the circumstances justify it, the Council will take formal action in the first instance for example where the landlord has a history of non-compliance, or where the Council has obtained evidence of a criminal offence.
- 9.2 It should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken.
- 9.3 It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

- 9.4 In some cases the Council may choose to take no action, for example where there are no matters in which the Council has the power to intervene, where the impact on health, safety or welfare is negligible, or where the impact on other members of the public are negligible.
- 9.5 The Council may also have regard to the views of occupiers when considering whether to take action, and the Council accepts that in some cases occupiers would prefer that the Council did not take action at that time.
- 9.6 When considering the most appropriate course of action to take in respect of hazards under the Housing Health and Safety Rating System (HHSRS) the Council may decide to issue a Hazard Awareness Notice that makes property owners and responsibly parties aware of the hazard/s but does not constitute formal enforcement action.

10. Taking formal action

- 10.1 There are a wide range of circumstances where it is likely to be appropriate and proportional for the Council to take formal action. These include (but are not limited to) where:
 - i) The Council has a statutory duty to take formal action;
 - ii) There is evidence of a criminal offence being committed;
 - iii) There are one or more hazards which present a risk to the health, safety or welfare of occupiers;
 - iv) The individual or organisation has a record of non-compliance or criminal behaviour, and;
 - v) An informal approach has not been successful in resolving an issue.
- 10.2 Each case will be considered on its individual merits. Where formal action is taken the Council aims to advise why it is appropriate for the formal action to be taken rather than informal action.
- 10.3 The Council has a plethora of types of formal action that it can take depending on the individual circumstances of each case, the relevant legislation and the risk to health and safety, including:
 - i) Serving a legal notice or making a legal order;
 - ii) Taking emergency action;
 - iii) Carrying out works in default of a legal notice;
 - iv) Applying for a Rent Repayment Order;
 - v) Applying for a Management Order;
 - vi) Granting or refusing a property licence application;
 - vii) Applying for a Compulsory Purchase Order;

- viii) Making a Demolition Order;
- ix) Making a Clearance Area;
- x) Issuing a Financial Penalty;
- xi) Issuing a simple caution, and;
- xii) Instigating prosecution proceedings.

10.4 The following sections set out the instances in which the Council intends to utilise these enforcement powers.

Serving a legal notice or making a legal order

10.4.1 Notices and orders will be served or made in accordance with the requirements of the relevant legislation.

10.4.2 The recipient of the notice or order will be informed of the reason that the action is being taken and the notice or order will clearly state the required actions to be taken, the timescales in which they should be completed and the potential penalty for non-compliance with the requirement/s of the notice or order.

10.4.3 Notices and orders will be accompanied by notes setting out details of rights of appeal (if applicable) including the details of any time limits for an appeal to be made.

10.4.4 Where the Council becomes aware of circumstances that trigger a duty to take action it will be obliged to take action, for example where the Council identifies a Category 1 hazard under the Housing Health and Safety Rating System (HHSRS). This may result in the service of a legal notice, or the making of a legal order.

10.4.5 Where the Council has a power to take action the Council will have regard to a range of matters in deciding whether to serve the notice or make the order, including (but not limited to) the:

- i) Responsible party's compliance history;
- ii) Severity of the matter/s to be remedied;
- iii) Impact on the occupiers or other parties affected by the matter/s to be remedied;
- iv) Impact on the occupier's or other party's legal rights;
- v) Responsible party's failure to respond to informal action, and;
- vi) Responsible party's proposals to take remedial action.

Serving an Improvement Notice under the Housing Act 2004

- 10.4.6 The reasons for making the decision to serve an Improvement Notice will be set out in the Council's statement of reasons attached to the notice.
- 10.4.7 The Improvement Notice will ordinarily relate to a single HHSRS hazard. An Improvement Notice may relate to more than one HHSRS hazards where:
- i) More than one hazard requires works of a similar nature (for example remedial works to a heating system are likely to relate to the hazard of excess cold and damp and mould growth), or;
 - ii) No works are required to be undertaken within the short-term, or;
 - iii) It would be acceptable for all works to be suspended in the event of an appeal to the First-tier Tribunal.
- 10.4.8 The Improvement Notice may relate to both Category 1 and Category 2 HHSRS hazards where:
- i) Category 1 and 2 hazards require works of a similar nature, or;
 - ii) No works are required to be undertaken within the short-term, or;
 - iii) It would be acceptable for all works to be suspended in the event of an appeal to the First-tier Tribunal.
- 10.4.9 The Improvement Notice may require works to be completed at different times to reflect the:
- i) Urgency of certain works (for example remedial works in respect of excess cold hazards during periods of cold weather), and/or;
 - ii) Level of complexity associated with some works, and/or;
 - iii) Lead-in time for arranging some works (for example ordering replacement windows that are made to order), and/or;
 - iv) Requirement for some works to be completed to facilitate other works (for example the provision of an electrical installation report to enable a full assessment of an electrical hazard).
- 10.4.10 The operation of the Improvement Notice may be suspended in accordance with Section 14 of the Housing Act 2004 and any reasons for suspending the notice will be set out in the Council's statement of reasons attached to the notice.
- 10.4.11 Where an Improvement Notice is suspended the Council may review the case at any time to determine whether the suspension of the notice remains appropriate.

10.4.12 Should the notice not be complied with, the Council can carry out the works in default and recharge the person upon whom it was served. Not complying with a notice is a criminal offence and the Council is able to prosecute the person who received the notice if he failed to comply with it.

Making a Prohibition Order under the Housing Act 2004

10.4.13 The reasons for making the decision to make a Prohibition Order will be set out in the Council's statement of reasons attached to the order.

10.4.14 The Prohibition Order will ordinarily relate to all HHSRS hazards identified unless:

- i) It is appropriate for emergency or other works to be undertaken pending the Prohibition Order becoming operative, or;
- ii) The Prohibition Order relates to part of the premises and other hazards exist within the premises.

10.4.15 The operation of the Prohibition Order may be suspended in accordance with Section 23 of the Housing Act 2004 and any reasons for suspending the order will be set out in the Council's statement of reasons attached to the notice.

10.4.16 Where a Prohibition Order is suspended the Council may review the case at any time to determine whether the suspension of the notice remains appropriate.

10.4.17 Where a Prohibition Order is suspended for a period in excess of 12 months the Council is required to review the case at least once every year to determine whether the suspension of the notice remains appropriate.

10.4.18 Using premises or permitting premises to be used, knowing that a prohibition order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.

Taking emergency action

10.4.19 The reasons for making the decision to take emergency action will be set out in the Council's statement of reasons attached to the Emergency Remedial Action notice or the Emergency Prohibition Order.

10.4.20 Where the Council takes emergency action, the Council will seek to recover its full costs, including an administration charge in addition to the costs of works, officer costs and any charge for taking enforcement action. The Council's administration charge will be reviewed annually

through the Council's Fees and Charges setting process and will be agreed formally by Council.

10.4.21 The Council may take emergency action in addition to taking other enforcement action in respect of the property.

Applying for a Rent Repayment Order

10.4.22 The Council aims to seek to apply for a Rent Repayment Order in all cases where evidence of a relevant offence is found.

10.4.23 Relevant offences for which Rent Repayment Order provisions apply include:

- i) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004;
- ii) Failure to comply with a Prohibition Order under Section 32 of the Housing Act 2004;
- iii) Failure to licence a house in multiple occupation under Section 72 of the Housing Act 2004;
- iv) Failure to licence a private rented dwelling under Section 95 of the Housing Act 2004;
- v) Breach of a Banning Order made under Section 21 of the Housing and Planning Act 2016;
- vi) Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977, and;
- vii) Illegal eviction or harassment of occupiers of a property under Section 1 of the Protection from Eviction Act 1977.

10.4.24 Where the Council does not have the power to apply for a Rent Repayment Order, it will assist other parties (for example occupiers) where they are able to apply for a Rent Repayment Order.

Applying for a Management Order

10.4.25 The decision to apply for a Management Order as set out in Part 4 of the Housing Act 2004 is a complex decision that may only be considered on a case by case basis.

10.4.26 The decision to make a Management Order will usually only be made as a last resort where there are no prospects of improvements being secured through other enforcement options, unless the Council has a duty to make a management order.

Granting or refusing a property licence application

10.4.27 The Council's Houses in Multiple Occupation Licensing Policy¹⁵ sets out the range of enforcement actions in respect of HMO licence applications.

Applying for a Compulsory Purchase Order

10.4.28 The decision to apply for a Compulsory Purchase Order is a complex decision that may only be considered on a case by case basis.

10.4.29 The decision to apply for a Compulsory Purchase Order will only be made as a last resort where there are no prospects of necessary improvements being made through other enforcement routes.

Making a Demolition Order

10.4.30 The making of a Demolition Order in respect of a dwelling is a potential course of enforcement action where the Council is satisfied that a Category 1 hazard under the Housing Health and Safety Rating System is present.

10.4.31 The reasons for taking the decision to make a Demolition Order will be set out in the Council's statement of reasons attached to the Emergency Remedial Action Demolition Order notice.

10.4.32 A Demolition Order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied after a demolition order has come into effect. Should the building not be demolished the Council can demolish it and recharge the person upon whom the notice was served.

Making a Clearance Area

10.4.33 The making of a Clearance Area in respect of a group of dwellings is a potential course of enforcement action where the Council is satisfied that a Category 1 hazard under the Housing Health and Safety Rating System is present in each dwelling, or they are dangerous as a result of bad arrangement.

10.4.34 The Council will undertake a consultation prior to taking the decision to make a Clearance Area, and in certain circumstances compensation is payable following the declaration of a Clearance Area.

¹⁵ Woking Borough Council Houses in Multiple Occupation Licensing Policy 2015

Issuing a simple caution

10.4.35 Where the Council has gathered evidence of an offence and is considering instigating prosecution proceedings, the Council may decide to issue a simple caution to the offender as an alternative to instigating prosecution proceedings.

10.4.36 Simple cautions will be considered on a case by case basis where the alleged offender acknowledges their guilt and expresses a clear and demonstrable desire to alter their offending behaviour.

10.4.37 The decision to issue a simple caution will be taken in accordance with the Ministry of Justice's relevant guidance¹⁶.

10.4.38 A record of the caution is kept by the Council and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

Instigating prosecution proceedings

10.4.39 Where the Council has gathered evidence of an offence and it is not appropriate (or possible) to issue a civil penalty or issue a simple caution the Council may instigate prosecution proceedings against the alleged offender.

10.4.40 The Council's decision to pursue prosecution proceedings will be taken by the Council officer with delegated authority to do so as set out in the Council's Scheme of Delegation.

10.4.41 Any decision to instigate prosecution proceedings will be taken having regard to the Council's legal obligations, including the evidential and public interest tests set out in the Code for Crown Prosecutors¹⁷.

10.4.42 Where the Council takes prosecution proceedings it will seek to recover its full costs resulting from the proceedings, this is likely to include both the investigating officer's time in preparing the case as well as all legal costs associated with bringing the case. These costs will be sought on sentencing by the relevant Court.

11. Enforcement of management in Houses in Multiple Occupation (HMOs)

11.1 The Council has powers to ensure that the managers of houses in multiple occupation (HMOs) manage their properties appropriately to protect the health, safety, and welfare of their tenants.

¹⁶ Simple Cautions for Adult Offenders, Ministry of Justice, November 2013

¹⁷ Code for Crown Prosecutors, Crown Prosecution Service

- 11.2 The Council's powers are enforced through the Management of Houses in Multiple Occupation (England) Regulations 2006¹⁸ along with the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007¹⁹ which place a duty on every manager of an HMO to manage their HMO appropriately. The regulations cover a wide range of issues, including safety matters and cleanliness. The regulations also place certain duties on the tenants living in HMOs.
- 11.3 It is a criminal offence if a person controlling or managing a HMO does not have the required licence. Breaching any condition of a licence is also an offence.
- 11.4 Where offences are committed the Council has a power to issue a civil penalty or instigate prosecution proceedings in respect of management offences. The Council does not have any power to serve a legal notice requiring works.
- 11.5 Where the alleged offences do not present a severe risk of negative impact on the occupiers, the Council will inform the HMO manager of the alleged offences to seek compliance informally. Where informal action is not successful in securing compliance, the Council may issue a civil penalty or instigate prosecution proceedings.
- 11.6 Where informal action is not appropriate, the Council (in deciding whether to issue a civil penalty or instigate prosecution proceedings for HMO management offences) will have regard to a range of matters, including (but not limited to) the:
- i) Responsible party's compliance history;
 - ii) Severity of the alleged offences;
 - iii) Impact on the occupiers affected by the alleged offences, and;
 - iv) Responsible party's failure to respond to informal action.
- 11.7 The Council may instigate formal enforcement action immediately without prior warning in cases where there is a high likelihood of a severe impact on the occupiers.

12. Smoke and Carbon Monoxide Alarm Regulations

- 12.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015²⁰ introduced a requirement for all landlords to ensure that any rented accommodation has:
- i) A smoke alarm to each storey of the accommodation where there is a room used wholly or partly as living accommodation;

¹⁸ SI 2006 No. 372

¹⁹ SI 2007 No. 1903

²⁰ SI 2015 No. 1693

- ii) A carbon monoxide alarm to any room which is used wholly or partly as living accommodation and contains a solid fuel burning appliance, and;
- iii) Checks made by the landlord to ensure that prescribed alarms are in proper working order on the day a new tenancy begins.

12.2 Where the Council is aware of an offence it is required to serve a Remedial Notice on the landlord or letting agent setting out the necessary remedial works. The notice allows 28 days for compliance.

12.3 Where a Remedial Notice is not complied with, the Council will carry out works in default of the notice.

12.4 Where a Remedial Notice is not complied with the Council will also issue a penalty charge (maximum £5,000) in accordance with the Council's Statement of Principles set out in Appendix 1 to this Policy.

13. Requirement for letting agents and property managers to belong to a redress scheme

13.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014²¹ introduced a requirement for letting agents and property managers to belong to an approved redress scheme.

13.2 The redress scheme must be approved by Government or designated as a Government administered redress scheme.

13.3 Where the Council is aware of an offence it is required to take enforcement action relating to activities undertaken within the Borough and may serve a Notice on the perpetrator requiring the payment of a monetary penalty of an amount determined by the Council.

13.4 The monetary penalty must not exceed £5,000, and the Council will consider a range of relevant matters when determining the level of financial penalty, including (but not limited to):

- i) The number of properties being managed;
- ii) Steps taken to secure compliance;
- iii) The level of negative impact on occupiers, and;
- iv) Details of any previous enforcement action taken by the Council or its partners.

13.5 Where a Notice is served requiring a monetary penalty, there is a right of appeal to the First-tier Tribunal, and the Notice is suspended until the appeal is determined or withdrawn.

²¹ SI 2014 No. 2359

13.6 Where the monetary penalty is not paid, the Council may recover the penalty through a Court order.

14. Charging for enforcement action

14.1 Where the Council takes formal action and has a power to make a charge for the action (for example when taking certain action under the Housing Act 2004) a charge for enforcement will be made.

14.2 The charge for enforcement will be assessed taking into account the Council's costs incurred in taking the enforcement action. Enforcement charges will be reviewed annually through the Council's Fees and Charges setting process and will be agreed formally by Council.

14.3 Where the Council takes enforcement action under the Housing Act 2004 in respect of more than one HHSRS hazard and serves more than one notice or order, a separate charge for enforcement action will apply to each notice or order served.

15. Carrying out works in default of a legal notice

15.1 Where the Council takes enforcement action and the requirements of the notice or order are not complied with within the required timescales, the Council has powers to carry out necessary works in default of the notice or order.

15.2 The matters that the Council will consider when determining whether to carry out works in default of the notice or order include, but are not limited to:

- i) The negative impact of the work not being undertaken;
- ii) Any urgency for the works to be undertaken;
- iii) Any evidence of obstruction or frustration by occupiers, or;
- iv) An undertaking from the responsible party to carry out the works.

15.3 Where the Council undertakes works in default, the Council will seek to recover its full costs for works carried out in default of legal notices, including an administration charge in addition to officer costs. Debts will also be subject to interest, and a late payment charge will also apply where invoices are not paid in accordance with the Council's payment terms.

15.4 The Council's charges will be reviewed annually through the Council's Fees and Charges setting process and will be agreed formally by Council.

15.5 There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of Notice that has been served. If the invoice is not paid within the requisite period it will be referred to the Council's Legal Section for possible County Court action. The Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local

Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.

- 15.6 The ultimate method by which the Council can reclaim its costs is to bring about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

16. Civil penalties

- 16.1 The Council has the power to issue a civil penalty as an alternative course of action to instigating prosecution proceedings for a range of offences under the Housing Act 2004²².

- 16.2 Wherever possible the Council will utilise its power to issue a civil penalty as an alternative course of action to issuing a simple caution or instigating prosecution proceedings.

- 16.3 The Council's use of civil penalties will be in line with statutory guidance issued under Schedule 9 of the Housing & Planning Act 2016. Further information can be downloaded at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf

- 16.4 The proposed civil financial penalties are intended to be proportionate to both the offence and its impact, and a range of factors will be considered in each case when setting the level of financial penalty, including but not limited to:

- i) The severity of the offence;
- ii) The level of culpability of the offender;
- iii) The harm caused to the tenant;
- iv) The costs of compliance and the financial benefit of failing to comply;
- v) The importance of deterring the offender from repeat offending and deterring others from committing similar offences, and;
- vi) The offender's assets and financial means.

17. Primary authority principles

- 17.1 The Council acknowledges that the primary authority principles as set out in the Regulatory and Sanctions Act 2008 and administered by the Better Regulation Delivery Officer (BRDO) apply to areas of housing standards enforcement.

- 17.2 Where there is a primary authority in place the Council will comply with the appropriate primary authority requirements.

²² As set out in the Housing and Planning Act 2016, Schedule 9, and introduced from 06 April 2017

18. Publicising enforcement action

18.1 Where the Council takes enforcement action it may publicise that action to highlight and dissuade unlawful activity and to promote best practice.

18.2 In cases where the responsible person is the subject of serious failures the Council will publicise the enforcement action taken. The types of enforcement action that would warrant publicity includes, but is not limited to, the following:

- i) Prosecution proceedings;
- ii) Simple cautions;
- iii) Issuing civil penalties and other financial penalties;
- iv) Taking emergency action;
- v) Carrying out works in default;
- vi) Obtaining a management order
- vii) Obtaining a rent repayment order;
- viii) Obtaining a banning order, and;
- ix) Obtaining a compulsory purchase order.

18.3 Where the Council publicises enforcement action it will include the name and address details of each offender and publicity material will only be amended in the event that the enforcement action publicised is subject to a successful appeal.

19. Consultations prior to taking enforcement action

19.1 Where the Council takes enforcement action it may consult with partners and stakeholders regarding the proposed action. This may include internal stakeholders, for example the planning enforcement team.

19.2 Where the Council takes action under the Housing Act 2004 in respect of a Category 1 HHSRS hazard it is obliged to consult with Surrey Fire and Rescue Service on the scope of works required prior to taking enforcement action. This will usually take the form of a formal consultation; however this may not always be practicable - for example where emergency action is appropriate.

Appendices

Appendix 1 - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Statement of Principles

1. Introduction

- 1.1 This statement sets out the principles that Woking Borough Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

2. Purpose of the Statement of Principles

- 2.1 The Council is required under these Regulations to prepare and publish a statement of principles which it must follow when deciding on the amount of a penalty charge. When deciding on the amount of a penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.
- 2.2 The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

3. The legal framework

- 3.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015²³ (the Regulations) came into force on 01 October 2015.
- 3.2 The Regulations place a duty on landlords (including freeholders or leaseholders) who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.
- 3.3 The duty requires that landlords ensure that:
- i) A smoke alarm is installed on each storey of premises where there is living accommodation
 - ii) A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.
- And for tenancies starting from 1 October 2015, that:
- iii) Checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.
- 3.4 Where the Council believes that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord²⁴.
- 3.5 If the landlord then fails to take the remedial action specified in the notice within specified timescale, the Council can require the landlord to pay a penalty charge²⁵.
- 3.6 A landlord will not be considered to be in breach of their duty to comply with the remedial notice if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council within 28 days of the date that the remedial notice is served.

²³ SI 2015 No.1693

²⁴ Regulation 5

²⁵ Regulation 8

4. The purpose of imposing a financial penalty

- 4.1 The purpose of the Council exercising its regulatory powers is to protect the interests of the public and the aims of imposing financial penalties on landlords are to:
- i) Reduce the risk to tenant's health and safety;
 - ii) Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord;
 - iii) Change the behaviour of the landlord and aim to prevent future non-compliance;
 - iv) Penalise the landlord for not installing alarms after being required to so, under notice;
 - v) Eliminate financial gain or benefit from non-compliance with the regulations, and;
 - vi) Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.
- 4.2 The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

5. Criteria for the imposition of a financial penalty

- 5.1 Failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge.
- 5.2 In deciding whether it would be appropriate to impose a penalty the Council will take full account of the particular facts and circumstances of the breach under consideration. The Council will consider the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.
- 5.3 For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.
- 5.4 Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy. This can be achieved for example, by tenants signing an inventory form stating that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.
- 5.5 In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the facts and circumstances of the breach under consideration.
- 5.6 A financial penalty will be considered appropriate if the Council is satisfied, on the balance of probabilities, that the landlord who had been served with a remedial notice had failed to take the remedial action specified in the notice within the time period specified.

6. Penalty Charge Notices

- 6.1 The Regulations impose a number of procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge
- 6.2 When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice a penalty charge notice will be served within 6 weeks.
- 6.3 A penalty charge notice will include the following information:
- i) The reasons for imposing the penalty charge;
 - ii) The premises to which the penalty charge relates;
 - iii) The amount of the penalty charge;
 - iv) A requirement for the person committing the breach, within a period specified in the notice:
 - a) to pay the penalty charge, or;
 - b) to give written notice to the Council that the landlord wishes the Council to review the penalty charge notice;
 - v) How payment of the penalty charge must be made;
 - vi) Any reduction for early payment of the penalty charge;
 - vii) The statutory appeals process, and;
 - viii) The contact details for the person to whom a review of the notice be made.
- 6.4 Where a review is requested within 29 days from the date the penalty charge notice is served, the Council will consider any representations made by the landlord²⁶. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.
- 6.5 A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review.
- 6.6 If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the Court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.
- 6.7 However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn

²⁶ All representations are to be sent to the address at the end of this document.

7. The amount of a financial penalty

- 7.1 The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council's contractors.
- 7.2 The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served.
- 7.3 The penalty charge must not exceed £5,000, and the Council will set penalty charges as follows:

Mitigating factors	Level of Penalty Charge
No previous history of non-compliance with relevant housing legislation	Up to £2,500
No relevant mitigating factors	Up to £5,000

8. Remedial Action undertaken

- 8.1 Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale (and consent is given by the occupier) the Council will arrange for remedial works to be undertaken. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a short-term and immediate response.

Smoke Alarms

- 8.2 In order to comply with these Regulations smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may present a high risk due to:
 - i) Its mode of occupancy such as a house in multiple occupation or building converted into one or more flats and/or;
 - ii) Having an unsafe internal layout where fire escape routes pass through a high-risk room (e.g. living room or kitchen) and/or;
 - iii) It being 3 or more storeys in height.
- 8.3 Consultation with Surrey Fire and Rescue Service will be undertaken in these cases to consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows, and structural fire separation (e.g. fire doors, walls, and ceilings).
- 8.4 Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

Carbon Monoxide Alarms

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

9. Address for representations

- 9.1 All representations made against the Remedial Notice or the Penalty Charge Notice are to be sent to:

Housing Standards Manager
Woking Borough Council
Civic Offices
Gloucester Square
Woking
GU21 6YW

Or by email to: housingstandards@woking.gov.uk