

**Private Rented Housing Policy for HMO Licensing and Regulation**

**Agreed by Islington Executive 03 November 2005**

**Amended September 2015**



## **1. Introduction**

- 1.1 The Housing Act 2004 radically overhauls the way the council regulates standards in private rented housing. It also introduces compulsory licensing of certain houses in multiple occupation (HMO) see 3.2 below for definition. These changes came into force on 6<sup>th</sup> April 2006.
- 1.2 The council aims to maximise the availability of private rented accommodation in Islington and ensure that it is of a decent standard to protect the health and safety of tenants. The availability of HMO lettings is also important in order to sustain affordable housing. The council sees the new legislation as an opportunity to improve the services provided by private landlords as part of its aim to ensure decent homes for all residents of the borough.
- 1.3 This policy sets out the way Islington carries out the requirements of the Housing Act 2004 in relation to HMO licensing and health and safety hazards. It also outlines how we use the discretionary powers in the new act to ensure fair and equal enforcement.

(A glossary of terms used in this document can be found in appendix D)

## **2. The Wider Picture**

- 2.1 There is a shortage of housing in Islington and house prices are so high that very few people can afford to become owner-occupiers. Twenty Five percent of households rent from private landlords, which is well above the national average. The borough has some of the best and some of the worst private rented housing in the country but with 16 percent of dwellings in Islington's Private Rented sector having Category 1 hazards, housing conditions are poorer in the private rented sector than in any type of tenure in the borough. Dwellings in poor condition can affect the health and safety of tenants and the quality of the street environment.
- 2.2 The council reviews changes in private sector housing by carrying out a house condition survey of a sample of at least 1,000 dwellings every five years. In addition, street surveys are carried out in at least three wards each year to identify HMOs, non-decent homes and empty properties so that we can tackle poor housing pro-actively.

### 3. HMO Licensing

- 3.1 The aim of HMO licensing is to ensure the poorest properties in the private rental market meet the legal standards and are properly managed.
- 3.2 An HMO is a building occupied by more than one household and includes houses containing bedsits, hostels and shared houses. The Housing Act 2004 includes a new definition of households, which is families, including single persons and co-habiting couples (whether or not of opposite sex). This has clarified past confusion and means that shared houses will always be HMOs.
- 3.3 HMOs of three or more stories, with five or more occupiers will need to be licensed under the Governments mandatory licensing scheme. Social housing and HMOs owned by the police, health authorities, universities and some other listed organisations are exempt, as are buildings converted into flats. More information on licensable HMO's falling under the Governments mandatory scheme can be found at <http://www.islington.gov.uk/services/housing/landlords/hmollicences/Pages/default.aspx>
- 3.4 On 1<sup>st</sup> June 2015 the council made a designation for an Additional Licensing Scheme for privately rented shared houses and flats (HMOs) on Caledonian Road and Holloway Road which was introduced on 1 September 2015. More information about this HMO licensing scheme can be found at <http://www.islington.gov.uk/services/housing/landlords/hmollicences/Pages/Additional-Licensing-Scheme-for-Caledonian-Road-and-Holloway-Road-.aspx>
- 3.5 Licences will be granted where the house is reasonably suitable for occupation as an HMO, the management arrangements are satisfactory and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence. A member of the environmental health team may visit before licensing an HMO, to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.
- 3.6 The council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them\* are fit and proper people to own or manage an HMO.

A person will be considered fit and proper if the council is satisfied that:

- they have no unspent convictions\*\* relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
- they have no unspent convictions relating to housing or landlord and tenant law
- they have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
- they have not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S197 of the act within the last five years
- they have not been in control of a property subject to an HMO Control Order an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority

\*If a person associated or formally associated with the applicant or any manager, has done any of the things stated above, the council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

\*\* A conviction where the penalty is a fine is spent after five years.

3.7 Licences will be valid for up to five years and will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. We aim to issue draft licenses within eight weeks of a full application. However an exceptionally high number of applications made just before the statutory deadline will cause delays. This response time will be reviewed after six months.

3.8 The following mandatory conditions must be applied to all licences:

- to provide copies of gas safety certificates annually
- to keep electrical appliances and furniture safe
- to keep smoke alarms in working order
- to provide tenants with a written tenancy agreement.

A draft licence must be served on all interested parties, allowing at least fourteen days for representations before granting the actual licence.

3.9 Following licensing, HMOs will be prioritised for assessment under the Housing Health and Safety Rating System (HHSRS – see below). The owner must deal with all Category 1 hazards within five years of the licence being granted. If they do not, then the council is expected to use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued and information made available to help them identify and deal with Category One Hazards.

3.10 The council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit until the HMO is licensed.

3.11 Where a landlord fails to license an HMO, the council can take a prosecution case to the Residential Property Tribunal (RPT). The RPT will replace the courts in judging cases relating to some offences and appeals under the Act. On conviction for failure to licence, the RPT has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the council where a tenant is on housing benefits. The licensee has a right of appeal to the RPT against refusal to licence, licensing conditions and the maximum number of occupiers or households specified on the licence.

3.12 Where there is no prospect of an HMO being licensed, the act requires that the council use its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the council also having the power to grant tenancies. The North London Sub-Region will appoint a preferred partner to manage HMOs subject to management orders.

- 3.13 If the council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked. The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.
- 3.14 The council has the power to set up additional local area HMO licensing schemes, to enable HMOs, considered to be badly managed, to be licensed.
- 3.15 Many HMOs in Islington will not be licensable. These include houses containing self-contained flats and smaller HMOs. The only additional regulation of these HMOs will be under the proposed HMO Management Regulations. They will need to be free of all Category 1 hazards under the HHSRS, which applies to all dwelling irrespective of whether they are an HMO.

#### **4. Housing Health and Safety Rating System and Enforcement Regime**

- 4.1 The Housing Health and Safety Rating System (HHSRS) is a risk assessment of the effect of housing conditions on the health of occupiers. The HHSRS involves the assessment of 29 potential hazards (see appendix A) and scoring of their severity to decide whether improvements are needed. If more serious Category 1 hazards are found the council has a duty to require the owner to remedy the defect. If less serious Category 2 hazards are found, the council has discretionary power to require action. Where a fire hazard is identified, the council will consult the fire brigade on works required before taking enforcement action.
- 4.2 The enforcement regime involves a new set of notices to deal with these HHSRS hazards requiring improvement, prohibition of the use of the dwelling or demolition. The notices are similar to those we currently use except that a prohibition notice can be served to prohibit the use of part of a dwelling or use by a description of persons, for example those aged under five or over 60.
- 4.3 When a hazard is identified, the council must decide the most practical course of action. There is no longer a legal requirement for a prior warning notice to be served, so the council will ensure that the landlord and tenant(s) have the opportunity to discuss the council's proposed action before a notice is served.
- 4.4 An improvement notice will be the most practical remedy for most hazards; repair or renewal is generally cost-effective because of the high value of property in Islington. However, prohibition orders may be required on part or all of a dwelling, for example, where there is inadequate natural lighting or there is no fire escape from the top floor.

## 5. Enforcement Policies

**Policy 1 – Fair and Consistent Enforcement** The council is committed to carrying out its duties in a fair and consistent manner. Residential Environmental Health will follow this policy and the council's Public Protection Enforcement Policy in the regulation of the private sector housing.

The enforcement policy adopted by public protection is in appendix B.

The council believes that enforcement alone is unlikely to have much effect on improving standards: our ethos is to work in partnership with landlords. However, where landlords do not co-operate, enforcement action will be taken.

Enforcement action will be based upon receipt of a complaint, receipt of a licence application, where an assessment of risk indicates a property is sub-standard or proactively finding a dwelling which is sub-standard. In the case of a complaint, the council expects the tenants to have informed the landlord of the problem and allowed time for remedial action, before contacting the service for assistance.

We will prioritise resources towards the most vulnerable tenants in the most harmful conditions. The level of service provision offered will be assessed by the Environmental Health Manager

For tenants who are deemed to be less vulnerable and exposed to less risk of harm we will write formally to their landlord. The correspondence sent will detail the tenant's concerns and set out clear expectations of the standards their landlord should adhere to.

In exceptional circumstances the service manager can decide if a tenant can be assisted further particularly if their vulnerability or the risk of harm increases.

Before serving a notice, we will discuss the need for a notice with the landlord and tenants, where we are able to contact them using reasonable effort; we will also outline the works required.

In addition to carrying out the requirements of the Housing Act 2004, in private sector homes the council has a duty to investigate complaints of statutory nuisance, defective sanitary appliances and drainage and other related matters and serve notice. We also have the power to make a compulsory purchase order to acquire property for housing purposes. This action is only taken where all other means of bringing a property back to use have been explored and where possible, the property will be brought back into use as social housing.

Where notices are not complied with, the council will use its powers to prosecute and to carry out the work in the owner's default, reclaiming the costs. Prosecution will be the preferred initial option, unless the Service Manager considers that there is an urgent need for the works to be carried out to protect the health and safety of the tenant.

### **Policy 2 – Owner-Occupied Dwellings**

**Other than in exceptional cases, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy problems of disrepair or nuisance.**

Owner-occupiers are in a stronger position to invoke their lease or their statutory rights, whereas short-term tenants of private landlords can lose their homes as a result of invoking their rights. Grants are available to some owner-occupiers for repairs, heating improvements and security works (contact Residential Environmental Health for more details).

The majority of enforcement work is carried out in dwellings owned by private landlords or housing associations. As the council enforces the above statutes, the Public Protection Division has little power to deal with council owned dwellings, including those owned by Homes for Islington.

A Environmental Health Manager will decide whether there are exceptional circumstances in which an owner-occupier will be assisted.

## **6. HMO Licensing Policies**

### **Policy 3 - Encouraging Applications**

**The council will encourage landlords to apply for licences using a variety of methods.**

We will:

- publicise the need to license HMOs
- send letters and reminders to landlords
- provide electronic and paper application forms
- set up a help-line
- arrange drop-in sessions to assist with applications • offer a service assisting applicants with completion of forms and measuring rooms, where resources permit (an additional fee of £325 will be charged)
- Send letters warning of prosecution and consider application for a rent repayment order

### **Policy 4 - Fees For Licences**

**The council will charge a basic licence fee of £260 per letting. Discounts will apply for early applications and/or where landlords are accredited through the London Landlords Accreditation Scheme (LLAS).**

The fees have been set to cover the council's costs of licensing HMOs and are comparable to fees being charged by other inner London boroughs. The discounts aim to reward the more responsible landlords. Full details of fee for five year licences are in Appendix C.

Details of LLAS are available at [www.londonlandlords.org.uk/accreditation](http://www.londonlandlords.org.uk/accreditation) and on request from Residential Environmental Health.

### **Policy 5 - Rent Repayment Orders**

**Where a landlord is convicted for failure to license and the rent is paid as Housing Benefit, the council will apply to the RPT for a Rent Repayment Order (RRO) and will advise tenants to do the same.**

The council intends to use its powers under the Act to seek RROs for repayment of twelve months' housing benefit or for the period since the landlord was required to license the HMO. We will provide tenants not on housing benefits with information on how to apply. The service manager will consider any exceptional circumstances where the council should not seek an RRO.

### **Policy 6 – HMO Standards**

**The council will determine the number of people an HMO is licensed for in accordance with compliance with the relevant HMO Code of Practice for room sizes and kitchen and bathroom facilities.**

These codes of practice are available at [www.islington.gov.uk/Housing/PrivateHousing/HMO.asp](http://www.islington.gov.uk/Housing/PrivateHousing/HMO.asp) or on request from Environmental Health. There is a code of practice for bedsit HMOs and another for shared houses. They require bedrooms/bed-sitting rooms to be at least 8 to 15 square metres, depending on whether there is a shared kitchen or whether the kitchen is in the room. In general, bathrooms should be available for every five occupiers. In bedsit HMOs, one kitchen per household should be provided where possible and in shared houses, up to five occupiers can share a kitchen.

Applications will need to include dimensions of rooms and details of the kitchen and bathroom facilities to enable assessment of the number of occupiers permitted in the licence. The council will continue to keep its code of practice for HMOs under review.

### **Policy 7 – Fit and Proper Persons**

**In addition to the criteria listed in the legislation (see 3.5 above), the council will take into account whether the applicant and any manager is accredited under the London Landlords Accreditation Scheme (LLAS) or other equivalent accreditation before deciding whether to license.**

Where an applicant or manager and any person associated with them or formerly associated with them contravenes one or more of the criteria, we will consider any accreditation under the LLAS before deciding whether to license.

### **Policy 8 – Management Arrangements**

**We will expect the licensee to have satisfactory arrangements and funding in place for the management of the HMO.**

Satisfactory arrangements for management will include:

- a reliable contact for tenants to report defects, including in emergencies, who will arrange for repairs to be carried out within a reasonable period
- where the manager of the HMO is not the owner, the manager must have the authority to fund urgent repairs, when the owner's approval cannot be obtained
- arrangements in place for periodic inspections to identify where repair or maintenance is needed
- a system for dealing with anti-social behaviour caused by tenants or their visitors, which causes nuisance or annoyance people in the locality.



### **Policy 9 – Discretionary Licence Conditions**

**In addition to the mandatory licensing conditions (see 3.7 above), the council will apply discretionary conditions to all licences.**

These will include:

- the HMO will comply with the statutory Management Regulations\* within three months
- to provide copies of reports of fire detection, alarm system and emergency lighting to the council annually
- the name, address and telephone number for licensee or manager is to be displayed in the common parts of the HMO
- a copy of a valid gas safety certificate to be displayed in the common parts
- a copy of the licence to be displayed in the common parts
- that anti-social behaviour caused by tenants or their visitors, which causes nuisance or annoyance to people in the locality is dealt with and possession sought through the courts where other remedies have been exhausted (the local authority can provide informal advice)
- the licensee and any manager must become accredited under LLAS within two years (where these people are accredited under other similar schemes, if the scheme includes similar training and testing, they will be exempt from this condition).

The council may apply other conditions to individual licences with respect to the use, management and occupation of the HMO, where appropriate and may seek evidence of compliance with conditions at any time. These regulations require HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration.

### **Policy 10 – Temporary Exemption Notices**

**The council will not routinely grant more than one three month Temporary Exemption Notice (TEN).**

A TEN will be served where an owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months. The council does not wish these notices to be used routinely, and therefore a second notice will only be acceptable in exceptional and unforeseen circumstances agreed by the service manager.

### **Policy 11 - Discretionary HMO Licensing**

On 1st June 2015 the council made a designation for an Additional Licensing Scheme for privately rented shared houses and flats (HMOs) on Caledonian Road and Holloway Road which was introduced on 1 September 2015

The scheme is in operation for a period of five years from 1<sup>st</sup> of September 2015.

### **Policy 12 – Bed and Breakfast Hotels**

**The council will declare bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 days.**

We believe that where this accommodation is used as a main residence, the same standards as for other HMOs should be met. People who use a hotel as a main residence are likely to be either homeless and placed there by a local authority or their home will be in another country.

## **7. Health and Safety Rating System Policies**

### **Policy 13 – Category 2 Hazards**

**The council will only deal with Category 2 hazards in exceptional circumstances.**

We have discretionary powers to deal with Category 2 hazards, but our resources will not allow us to deal with all of them. We will only deal with these hazards in exceptional circumstances where there is hazard scoring over 500 points relating to health, vulnerability, cold and entry by intruders. A principal environmental health officer will verify these exceptional circumstances.

### **Policy 14 - Improvement Notices**

**Where an Improvement Notice is served, the council will require sufficient works to abate the hazard for five years.**

The law prescribes that the minimum works must abate the hazard. We will require works of a reasonable duration to prevent recurrence. We consider five years to be reasonable.

## APPENDIX A

### Housing Health And Safety Rating System

#### Description Of Hazards

- 1) **Damp and Mould Growth** – Exposure to house dust mites, mould or fungal growths resulting from dampness or high humidity.
- 2) **Excess Cold** – A temperature which is less than 18 degrees centigrade.
- 3) **Excess Heat** – A temperature which is more than 25 degrees centigrade.
- 4) **Asbestos and MMF** – Exposure to asbestos fibres or manufactured mineral fibres.
- 5) **Biocides** – Exposure to chemicals used to treat timber and mould growth.
- 6) **Carbon Monoxide and Fuel Combustion Products** – Exposure to carbon monoxide, nitrogen dioxide, sulphur dioxide and smoke.
- 7) **Lead** – The ingestion of lead.
- 8) **Radiation** – Exposure to radon gas.
- 9) **Uncombusted Fuel Gas** – Exposure to uncombusted fuel gas.
- 10) **Volatile Organic Compounds** – Exposure to volatile organic compounds that are gaseous at room temperature.
- 11) **Crowding and Space** – A lack of adequate space for living and sleeping.
- 12) **Entry by Intruders** – Difficulties in keeping the dwelling or HMO secure against unauthorised entry.
- 13) **Lighting** – A lack of adequate lighting.
- 14) **Noise** – Exposure to noise.
- 15) **Domestic Hygiene, Pests and Refuge**
  - a) Poor design, layout or construction such that the dwelling or HMO cannot readily be kept clean.
  - b) Exposure to pests.
  - c) An adequate provision for the hygienic storage and disposal of household waste.
- 16) **Food Safety** – An inadequate provision of facilities for the storage, preparation and cooking of food.
- 17) **Personal Hygiene, Sanitation and Drainage**
  - a) Facilities for maintaining good personal hygiene;
  - b) Sanitation and drainage.
- 18) **Water Supply** – An inadequate supply of water for drinking and other domestic purposes.
- 19) **Falls Associated with Baths** – Falls associated with baths, showers or other washing facilities.
- 20) **Falls on Level Surfaces etc** – Falls on any level surface or falls between surfaces where the change in level is not more than 300 millimetres.
- 21) **Falls Associated with Stairs etc** – Falls on stairs, steps or ramps where the change in level is more than 300 millimetres.

22) **Falls between Levels** – Falls between levels where the difference in levels is more than 300 millimetres.

23) **Electrical Hazards** – Exposure to electricity.

24) **Fire** – Exposure to uncontrolled fire.

25) **Flames, Hot Surfaces etc** Contact with:

a) Controlled fire or flames;

b) Hot objects, liquid or vapours.

26) **Collision and Entrapment** – Collision with or entrapment of body parts in doors, windows or other architectural features.

27) **Explosions** - An explosion at, or near, the dwelling or HMO.

28) **Position of amenities etc** – The position and location of amenities, fittings and equipment.

29) **Structural Collapse and Falling Elements** – The collapse of the whole or part of the dwelling or HMO.

## APPENDIX B

# PUBLIC PROTECTION ENFORCEMENT POLICY

### Introduction

All local authorities have powers to enable them to enforce legislation intended to protect both the individual and the community as a whole. The public protection division is responsible for exercising these powers in Islington in relation to public health, consumer safety and welfare. The public protection division encompasses the following service areas:

- pest control
- animal welfare
- trading standards
- street trading
- licensing
- Food safety
- Cemeteries
- anti-social behaviour
- workplace health and safety
- smoke free public places
- private sector housing
- noise
- pollution
- infectious disease control
- CCTV

It is the responsibility of every business and individual to comply with the law and it is recognised that most want to do so. The public protection division is responsible for providing help and assistance for this purpose and, for taking action against those who do not meet their responsibilities.

This enforcement policy helps to promote efficient and effective approaches to inspection and enforcement which will improve compliance with regulatory requirements without imposing unnecessary burdens.

The purpose of this policy is to explain fully how the public protection division will fulfil this role.

## **Council Aims and Objectives**

Each year, Islington Council sets out its strategic aims and objectives in its performance plan. The Environment & Regeneration department (of which the public protection division is part) has set part of its aim to:

“Deliver high quality services to those who live and come here – delivering a better environment for all - and to work with our partners towards the achievement of the Council’s overall aims and objectives”.

For the public protection division this means:

- ensuring a fair and safe trading environment for residents, businesses and visitors to the borough
- securing health and safety in the workplace
- improving the environment
- assisting in the provision of safe, secure, warm and affordable housing
- assisting in the delivery of the council’s Crime Reduction Strategy

Our plans are drawn up to reflect the needs of Islington as identified through consultation, customer feedback and the results of our actions.

## **Approach to Enforcement**

A range of activities are used by the public protection division to ensure that there is compliance with the law that they enforce.

Officers carry out inspections of premises on a routine programmed basis, or as a response to complaints and enquiries from the public. In some instances, targets for inspections or actions are set by other Agencies and where this happens, the public protection division will aim to meet those targets fully. Where actions take place with other agencies having a complementary role, documented decisions will be made as to who is to managing the case and whose action will have primacy. Where a business has a Primary Authority, early communication and consultation will take place with that council.

Officers will generally be visiting premises with the consent of the owner or occupier. In certain situations where consent can’t be obtained or is refused, officers have powers that enable them to obtain entry by getting a warrant and/or in the company of the police. Unless entry is required as an emergency or where obtaining consent would defeat the object of the visit, the owner or occupier will always receive notification of our intention to gain access. If officers are obstructed when carrying out their duties, action will be taken against that person or persons.

The service has a scheme of delegation which can be accessed on the [Council's Democracy](#) pages, in Part 3 of the Council Constitution. In situations where the council may have an interest in a case, any decision making will exclude officers or members of the council with any involvement in that service area.

Where non-compliance with the law is discovered, enforcement options that we will take to ensure compliance include:

- take no action
- informal action including giving advice, inviting owners to attend a meeting and writing warning letters allowing time to comply

- formal action by serving statutory notices and/or prohibiting activities
- seizing equipment, documents or goods
- issuing licences and approvals with conditions
- removing licences and approvals or varying conditions
- issuing a simple caution
- issuing a fixed penalty notice
- agreeing a voluntary undertaking
- prosecution
- seeking an Injunction, Enforcement Order or similar

### **Enforcement Actions**

The decision to use enforcement action will depend on how serious the offence is. Factors that will be taken into consideration include:

- the risk that is posed to the safety, health or welfare of the public or to individuals
- if action was pre-meditated
- a formal notice, licence, approval or order hasn't been complied with
- if there is a history of previous warnings or a similar offence has been committed before.
- if there has been an attempt to stop an officer from doing their work
- if there has been a failure to disclose information or false statements have been made.
- there has been aggressive behaviour towards the public or staff

All enforcement decisions are documented and, other than when emergency enforcement action is taken, we will always inform people of the action we propose to take. If there are concerns that we have taken an unfair decision, then any person can request that an appropriate manager review the decision. When formal enforcement action is taken, we will always advise people of the appeals process available to them.

The decision we make in respect of enforcement action aims to

- change the behaviour of the person committing the offence
- remove hazards and eliminate any financial gain or benefit from non-compliance
- be responsive and appropriate to the offence and those who commit it
- be proportionate to the offence and the harm its caused
- restore the harm caused if that's appropriate
- deter further non-compliance

Enforcement actions have to be taken within the context of the legal and policy framework set for all enforcement agencies. Our approach to enforcement, which is consistent with the Regulators Compliance Code, incorporates the following principles of good enforcement:

- drawing up clear standards
- setting out the level of service and performance the public and business can expect to receive
- dealing with the public and the business in an open and honest way
- providing a courteous, efficient and helpful service
- responding promptly and positively to complaints about the service
- ensuring that enforcement action is proportionate to the risks to the public
- carrying out duties in a fair, equitable and consistent manner

Occasionally we may conclude that a provision of the Regulators Compliance Code or this enforcement policy is either not relevant or is outweighed by another provision. If this happens we will ensure that any decision to depart from the code or the enforcement policy is properly reasoned, based on material evidence and documented.

Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details the public interest and evidential considerations to be taken in when bringing proceedings. Advice will be provided by the council's legal services, who will initiate proceedings on our behalf. A full copy of the code is available at [hyperlink](#) Where appropriate, in the most serious cases, we will use the provisions of the Proceeds of Crime Act 2002 to take action to recover assets that have been accrued through criminal activity.

All enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act 1998
- The Crime and Disorder Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Equal rights and anti-discrimination legislation

If it is in the public interest and appropriate, information concerning non-compliance will be shared with other enforcement agencies. Where this takes place, we will ensure that the Data Protection Act 1998 and Human Rights Act 1998 are observed. In some cases we will not be the enforcement agency for a particular matter, and in these cases we will ensure that we refer them on to the right Agency.

### **Authorisation of Officers**

Only officers who we can say are competent will be authorised to take enforcement action. They will hold appropriate qualifications or experience. Officers will also have sufficient training and understanding of this enforcement policy and their area of work to ensure a consistent approach to their duties. We will monitor to ensure that our actions are always in accordance with our policies.

All officers carry identification and an authorisation to show what legislation they are able to enforce. They are required to show these if asked.



All officers are required to carry out their duties in accordance with set procedures. These procedures vary depending on the service area involved.

## **Openness and Helpfulness**

We aim to be open about the work we do and will be available to provide general advice, deal with specific cases and investigate complaints. We view formal enforcement as a last resort and prefer to work with our clients to achieve compliance. We will also provide you with a case officer and their contact details. If English is not your first spoken or written language, we will provide translation and interpretation for you.

If you are dissatisfied with the action that an officer has taken, then a manager will investigate your concerns. The council also has a formal complaints procedure and a form can be obtained from the public protection division if you prefer to take this route or are dissatisfied with the findings of your initial complaint.

This policy add hyperlink was endorsed and adopted by the Environment & Regeneration Management Team of Islington Council. It is reviewed periodically and we would be pleased to receive any comments you have on it.

This is a public document. Further copies of this and other documents listed above can be obtained from Jan Hart, Service Director - Public Protection, Islington Council, 222 Upper Street, London N1 1XR (telephone (020) 7527 2300). Many of the documents can also be found on our website - <http://www.islington.gov.uk>.

We invite your comments on this document by post at the above address or by e-mail to [Env.Health@islington.gov.uk](mailto:Env.Health@islington.gov.uk)

## **Appendix A - Legislation, Guidance and Codes that influenced the preparation of the Enforcement Policy**

### **A. Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires us to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>1</sup>. For local authorities, the specified functions include those carried out by our regulatory services in Public Protection.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

<sup>1</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **B. Regulators' Code (BRDO, 2013)**

We have had regard to the [Department for Business Innovation & Skills](#) Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **C. Human Rights Act 1998**

As a public authority for the purposes of the Human Rights Act 1998, we apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

## **D. Data Protection Act 1998**

Where there is a need for us to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

## **E. The Code for Crown Prosecutors**

When deciding whether to prosecute we have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, we will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

b. Public Interest Test - is it in the public interest for the case to be brought to court?

We will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Appendix C.

## **F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority

## **Appendix B - Conduct of Investigations**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to council business

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000

- the Criminal Justice and Police Act 2001 the Human Rights Act 1998 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

## **Appendix C - Enforcement Actions available in Respect of Criminal and Civil breaches**

### **A. Compliance Advice, Guidance and Support**

We use compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be used in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

We recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and we will take this advice into account when considering the most appropriate enforcement action to take.

Where more formal enforcement action, such as a simple caution or prosecution is taken, there is likely to be an on-going need for compliance advice and support to prevent further breaches.

### **B. Voluntary Undertakings**

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **C. Statutory (Legal) Notices**

In respect of many breaches we have powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices/Orders', 'Emergency Prohibition Notices/Orders and 'Improvement Notices'. Such notices are legally binding. 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.

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.

### **D. Financial penalties**

We have powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach then we will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

We are only able to issue fixed penalty notices where there are specific powers to do so. If fixed penalty notices are available, their issue is at our discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

### **E. Injunctive Actions, Enforcement Orders etc.**

In some circumstances we 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.

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

We are required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

### **F. Simple Caution**

We have the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how we and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. 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.

Simple cautions will be used in accordance with the Ministry of Justice Guidance on Simple Cautions. [Add hyperlink](#)

### **G. Prosecution**

We may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute we have regard to the provisions of [The Code for Crown Prosecutors](#) 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).

Before deciding that prosecution is appropriate, we will consider all relevant circumstances carefully and will have regard to whether it is in the public interest.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

### **H. Refusal/Suspension/Revocation of Licences**

We issue a number of licences and permits and have 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. Other enforcement action including prosecution could also be taken.

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

## APPENDIX C

### Fees for HMO Licensing

#### ISLINGTON COUNCIL

#### Fees for HMO Licensing – from 1<sup>st</sup> April 2015

Application fee	£260 per letting*	*A letting includes: a. bedsit rooms b. bedrooms in a shared house or flat which is occupied by more than one household (even if there is only one tenancy agreement for all tenants) c. self-contained flats in single household occupation within the HMO (See page 2 for converted
Application fee for LLAS Accredited** licence holder or manager	£220 per letting*	* See note above. Reduces the need for background checks on fitness/competency to manage thereby reducing cost
Assisted application	Additional £325 per HMO	Additional cost of assistance with measuring rooms, producing plans and completing the application form.
Renewal of licence	£200 per letting*	If no change in property or licence holder or manager, otherwise fee charged as for new application * See note above.
Renewal of licence for LLAS Accredited** licence holder or manager	£180 per letting*	If no change in property or licence holder or manager, otherwise fee charged as for new application * See note above.
Minor amendments	Included above	Change of Address (for licence holder or manager)
Change of Manager (if no change of licence holder) ***	Included	Licence holder changing nominated manager (manager has to complete a Fit & Proper Person declaration)
Variation of licence (if no change of licence holder) ***	Included	Material change to the licence such as new facilities installed and licence can be varied for a greater number of occupiers
Revocation of licence / no longer licensable / refuse to licence / numbers of occupants reduced by conditions on licence	No refund	Once application submitted for specified number of lettings, costs have been incurred in processing application, draft and/or full licence
Student Accommodation:- Application fee for large	£30 per bed space	This fee only applies to licensable large scale purpose built or converted student accommodation where the

student accommodation developments		provider has signed up to the ANUK/Unipol Code of Practice.
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**Fees for licensing s257 HMOs – Converted buildings containing self-contained flats**

Application fee	£650 per building*	*Any building converted into self-contained flats where the building and flats are in the same ownership and the conversion work did not comply with the Building Regulations 1991 (or later regulations if applicable) and it still does not comply (these are known 's257' HMOs).
Application fee for LLAS Accredited** licence holder or manager	£550 per building	* See note above. (This reduces the need for background checks on fitness/competency to manage and therefore reduces processing costs)
Assisted application	Additional £160 per building	Additional cost of assistance with completing the application form.
Renewal of licence	£520 per building*	If no change in property or licence holder or manager, otherwise fee charged as for new application * See note above.
Renewal of licence for LLAS Accredited** licence holder or manager	£450 per building*	If no change in property or licence holder or manager, otherwise fee charged as for new application * See note above.
Minor amendments	Included above	Change of Address (for licence holder or manager)
Change of Manager (if no change of licence holder) ***	Included	Licence holder changing nominated manager (manager has to complete a Fit & Proper Person declaration)
Variation of licence (if no change of licence holder) ***	Included	Material change to the licence such as new facilities installed and licence can be varied for a greater number of occupiers
Revocation of licence / no longer licensable / refuse to licence / numbers of occupants reduced by conditions on licence	No refund	Once application submitted for specified number of lettings, costs have been incurred in processing application, draft and/or full licence

\*\* Accredited under London Landlords Accreditation Scheme. For more information see <http://www.londonlandlords.org.uk/landlords/> or phone 020 7974 5893 or e-mail [LLAS@camden.gov.uk](mailto:LLAS@camden.gov.uk)

\*\*\* If there is a change of licence holder, this will be treated as a new application

## **Appendix D**

### **Glossary**

#### **Category one /Category two hazards**

See paragraph 4.1.

#### **Fit and proper person**

See paragraph 3.5 and policy 7.

#### **HHSRS**

Housing Health and Safety Rating System, see paragraph 4.1 and policies 13 and 14.

#### **HMO**

House in multiple occupation, see paragraph 3.2.

#### **Interim Management Order**

See paragraph 3.11.

#### **Licensable HMO**

See paragraph 3.3 and information on council website at:

<http://www.islington.gov.uk/services/housing/landlords/hmollicences/Pages/default.aspx>

#### **RPT**

Residential property tribunal, see paragraph 3.10.

#### **Rent Repayment Order**

See paragraph 3.10.

#### **TEN**

Temporary exemption notice, see paragraph 3.9.