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# Private Sector Housing Enforcement Policy

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Revised January 2020



**Elmbridge**  
Borough Council  
*... bridging the communities ...*

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## 1.0 Introduction

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1.1 Elmbridge Borough Council is committed to improving standards in the housing stock with the borough, bringing empty properties back into use and ensuring that all privately rented accommodation is well managed, properly maintained, safe and habitable.

1.2 Although Elmbridge has some excellent landlords and letting agents, the Council has a vital role to play in tackling criminal, rogue and irresponsible landlords and preventing them from profiting from their non-compliance.

1.3 In order to regulate private sector housing, the council's Private Sector Housing team (PSH), will conduct pro-active and re-active property inspections, routinely respond to requests for visits and investigate complaints of disrepair together with other teams from within Elmbridge Borough Council, including Housing Options, Environmental Health Services, Planning and Audit. The council will request information, carry out inspections, process licence applications, bring empty properties back into use, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.

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## 2.0 Aims and principles of the enforcement policy

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2.1 The overall aim of the council is to raise standards in the private sector housing stock. This benefits the health and wellbeing of Elmbridge residents and helps maintain the housing stock for future generations.

2.2 The principles of the Private Sector Housing Enforcement Policy are to ensure that:

Tenants of private landlords and registered providers of social housing live in homes that are free of unacceptable hazards and risks to their health and safety;

All Houses in Multiple Occupation are safe, well managed and all relevant Management Regulations are adhered to;

All licensable Houses in Multiple Occupation are licensed, and all licensing conditions are met;

Private housing is not left empty for an unreasonable amount of time and/or becomes an eyesore, unsafe or a nuisance to neighbouring properties;

Privately owned property and land does not present a statutory nuisance to other

land owners, is not detrimental to the amenity of the area, does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and

The council meets its statutory obligations in relation to private housing.

2.3 This Enforcement Policy provides an overview of the broad principles and processes with which the council will seek to comply when acting to ensure that all private sector housing in the borough is healthy, well managed and safe. It should be read in conjunction with other strategies and policies.

2.4 When discharging its duties in relation to private sector housing, the council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil (financial) penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities

2.5 The council will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers. In doing so, it will have regard to the local economy, the role of inspections, compliance visits and advice and guidance, and the principles underpinning enforcement activity.

### Property inspections and compliance visits

2.6 The council will undertake proactive property inspections, based on risk and intelligence, and ensure that its resources are targeted at the worst properties first including, for example, licensable Houses in Multiple Occupation that are avoiding Mandatory HMO licensing.

2.7 Officers will target 'eyesore' empty properties and land to end the blight, improve neighbourhoods and increase the supply of housing.

2.8 The council will respond to residents' complaints about substandard, unsafe and problematic private housing and adopt a proportionate, escalating regulatory approach to enforcement.

## Principles underpinning enforcement action

2.9 The Private Sector Housing Team's enforcement activity will be:

**Targeted** – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

**Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.

**Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.

**Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.

**Consistent** – Enforcement action will be undertaken and monitored within the council to ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and to share and develop good practice.

**Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the council will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

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## 3.0 The Housing Health and Safety Rating System (HHSRS)

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3.1 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause a hazard to the health of the occupants. There are two categories of possible hazards:

3.2 **Category 1 hazards** represent a serious danger to health and the Council has a duty to take appropriate action to eliminate the risk of harm from a hazard or reduce the risk to an acceptable level.

3.3 **Category 2 hazards** represent a lesser danger and, although it has no duty to take action, the Council has power to reduce category 2 hazards through appropriate action.

3.4 Much of this enforcement policy relates to our enforcement work under the Housing Act 2004. The council uses other legislation as appropriate and most of these are listed later in this document.

3.5 Charges will be made for any formal enforcement action that the council takes (see Appendix A of this Policy).

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## 4.0 Inspection

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4.1 Dwellings are inspected both reactively (in response to a request or complaint) and proactively based on risk and intelligence. Where there is reason to believe a hazard may exist, but access is denied, or prior warning would defeat the purpose of the inspection, the council can apply to the Magistrates Court to obtain a warrant to enter a property without prior notice and using force if necessary.

4.2 The inspection may be limited to that part of the property where the officer has reason to believe there may be a problem but may extend to the whole of the property, common parts and any gardens, garages and yards.

4.3 Once a property has been inspected and assessed, officers will calculate the level of likely harm from the hazards found and consider what action to take. The actions can be broken down into 'informal' and 'formal' action (see below).

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## 5.0 Tenanted dwellings

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5.1 Before considering any action in respect of a tenanted property, the tenant/s will normally be expected to have first contacted their landlord or managing agent about the problem in writing. This applies to both private and social housing tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property.

This is because landlords can only carry out their obligations under the legislation once they have been made aware of a problem. Copies of correspondence between landlord and tenant, unless confidential, may be required by the council before any action is taken.

5.2 There are some circumstances in which this prior contact may not be appropriate, for example:

- Where the matter appears to present an imminent risk to the health and safety of the occupants;
- Where there is a history of harassment, threatened eviction or poor management.

- Where the tenant is old and frail or otherwise vulnerable;
- Where the tenant's first language is not English, and this is likely to cause difficulty in communicating with the landlord;
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent.

5.3 In these (or other similar) situations, Council officers may proceed directly with enforcement action.

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## 6.0 Shared enforcement responsibilities

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6.1 In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

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## 7.0 Informal action

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7.1 Where the council is made aware that hazards exist at a premises, the team will attempt to resolve this informally where possible. Informal action will include verbal advice and advisory letters given by Officers.

7.2 The council will usually attempt to contact the person(s) responsible for remedying actionable defects before taking formal action. The extent and significance of a defect will be explained, as will the remedy the council considers appropriate. If suitable alternative remedies are proposed, they will be considered. Every effort will be made to mutually agree a way forward.

7.3 The council will aim to write to the owner, managing agent or landlord within 10 days of the inspection outlining the nature of the problem/s identified and requesting confirmation of the remedial action to be taken to remedy the hazard or defect and when this will happen.

7.4 Action taken by the owner or landlord will be monitored and if necessary follow up letters, emails and telephone calls will be used in an effort to ensure the remedial works are carried out informally.

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## 8.0 Formal action

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8.1 It is not always possible to adopt an informal approach, especially where legislation requires formal action to be taken straight away or the owner, agent or

other person/s responsible are not co-operating with the council informally. There will be times when officers consider that the risk to the occupant is high enough to warrant formal action without an informal stage. Factors include whether the current occupants are vulnerable or where the property poses an imminent risk to health or safety.

## Statutory Notices

8.2 Formal action will usually involve the serving of statutory notices. Most notices served require the recipient to commence and complete remedial works within specified time limits. In deciding whether to move into formal action involving the service of statutory notices, the property will be assessed for formal action according to:

- the number and type of category 1 and 2 hazards
- the vulnerability and personal circumstances of the current occupiers
- In the case of HMOs, whether they are licensable or not, the number of households in residence, any overcrowding or any concerns about poor management and/or risk from fire.

8.3 Formal action will always be taken in housing disrepair cases where a Category 1, housing health and safety hazard has been identified by a the PSH (see 3.2 above).

8.4 Under the Housing Act 2004, the following enforcement actions are available to the council when considering the most appropriate course of action:

- Serve an Improvement Notice or Suspended Improvement Notice
- Make a Prohibition Order or Suspended Prohibition Order;
- Serve a Hazard Awareness Notice; • Make a Demolition Order;
- Declare a Clearance Area;
- Make an Interim or Final Empty Dwelling Management Order
- Serve a **Notice of Emergency Remedial Action** (Category 1 Hazards only);
- Make an **Emergency Prohibition Order**; (Category 1 Hazards only);
- Serve an **Overcrowding Notice**.

8.5 Officers will use the Housing Health and Safety Rating System Enforcement Guidance (published by the ODPM, February 2006) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7853/safetyratingsystem.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf)) or any proceeding documents in determining the most appropriate course of action from the above list and will adhere to the relevant consultation requirements set out on the legislation for taking into account the views of occupiers and owners and other stakeholders.

8.6 Housing Act 2004 notices and orders come complete with a 'Statement of Reasons' explaining why one type of enforcement action was taken rather than

another. Officers will be willing to discuss the works specified in the notice, the reason for serving the notice and any alternative remedy the recipient may propose.

8.7 Certain notices can be suspended, such that a specified time period elapses or specified events occur (or do *not* occur) before the suspended notice comes into operation.

8.8 Not more than one course of action can be taken at a time for the same hazard (unless it is an emergency action) but alternative action can follow if one of the actions taken has proved unsuccessful. Emergency procedures cannot be used for category 2 hazards.

8.9 Where a notice is served and there is a change in ownership of the property, the notice can be enforced on the new owner or recipient. However, any outstanding liabilities such as fines or costs remain with the original owner or recipient of the notice.

8.10 There are statutory rights of appeal against notices, orders and associated decisions made by the council. Appeals against enforcement action are made to the First Tier Tribunal (FTT). The FTT may confirm, quash or vary a notice, order or decision. Details of these rights and information on making an appeal are contained in the notices/ orders.

8.11 Charges will be made for certain formal enforcement action that the council takes (see Appendix A at the end of this document).

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## 9.0 Emergency measures

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9.1 Where the council is satisfied that a category one hazard poses an imminent risk of serious harm to the health or safety of occupants or visitors of a premises, emergency measures can be taken. Emergency measures include serving a Notice of Emergency Remedial Action or an Emergency Prohibition Order.

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## 10.0 Sanctions for non-compliance with notices

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10.1 If a notice or order is complied with or amendments are required to the notice as a result of new information, a 'Revocation Notice' will be served confirming that the original notice or order has been withdrawn. However, if the notice is not complied with, the following sanctions will usually be considered:

- issuing a financial penalty
- Rent Repayment Order
- prosecution

- injunctions
- formal caution
- carrying out the works in default;
- carry out works in default *and* issue a civil penalty, prosecution or formal caution

A Sanctions Panel will usually be convened at the request of the Private Sector Housing Manager to decide on the most appropriate action. The Panel will include the investigating officer/s for the case, the Private Sector Housing Manager, the Head of Housing Services and a representative of the Council's Legal Services Team.

## Financial Penalties

10.2 Since 6 April 2017, local housing authorities have had the power to impose civil (financial) penalties of up to £30,000 on individuals and organisations as an alternative to prosecution, to use robustly as a way of clamping down on rogue landlords.

10.3 The government recommends that the actual amount of financial penalty imposed should reflect the severity of the offence and consider the landlord's previous record of offending. Fundamentally, civil penalties will be set such that it costs less to comply with the legislation and standards than the cost of not complying.

10.4 The government recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

- a. The severity of the offence
- b. The culpability and track record of the offender
- c. The harm caused to the tenant
- d. The punishment of the offender
- e. Whether it will deter the offender from repeating the offence
- f. Whether it will deter others from committing the offence
- g. Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

10.5 The factors used by the Sanctions Panel in determining a penalty are outlined in Appendix B of this policy.

10.6 The Housing and Planning Act 2016 section 126 and Schedule 9 enables the council to impose a civil penalty as an alternative to prosecution for certain housing offences under the Housing Act 2004:

- a. **Section 30** – Failure to comply with an Improvement Notice
- b. **Section 72** – Offences in relation to licensing of HMOs
- c. **Section 95** – Offences in relation to selective and additional licensing of houses under Part 3 of the Act
- d. **Section 139** – Offences of contravention of an overcrowding notice

e. **Section 234** – Failure to comply with HMO Management Regulations

10.7 A civil penalty notice may be served as an alternative to prosecution for the offences listed in section 10.6. However, the council cannot use both enforcement actions simultaneously for the same offence.

10.8 Where the Council is able to prosecute a letting agent and landlord for failing to obtain a licence for a licensable HMO, it has the option of imposing a (civil) financial penalty on the letting agent and the landlord as an alternative to prosecution. Where the letting/managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both at different levels, depending on the circumstances of the case. Appendix B shows how the level of a penalty is determined.

10.9 If the council believes that it has a reasonable prospect of a conviction in a particular case, **it will always consider a civil penalty in the first instance** and only by exception will it seek alternative measures such as prosecution or formal cautions.

10.10 Where a civil penalty is imposed, and an appeal is subsequently made to the First-tier Tribunal, the council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

10.11 As the council can retain the income it receives from civil penalties. This course of action will also provide the council with the opportunity to increase its housing enforcement activity within the borough.

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## 11.0 Rent repayment orders

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11.1 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent, capped at 12 months.

11.2 An application for rent repayment order must be made within 12 months of the conviction or acceptance of a civil penalty notice.

11.3 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs.

11.4 Rent repayment orders have since been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below.

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

- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016 (from April 2018)
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

11.5 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, the rent would be repaid in equivalent proportions.

11.6 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

11.7 The council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

11.8 The council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

### Homes (fitness for habitation) act 2018

11.9 The council recognises that there are alternative enforcement actions which can be taken by tenants under the Homes (Fitness for Human Habitation) Act 2018, to improve their rented accommodation. The purpose of the act is to improve standards in the private and social rented sectors by putting an obligation on landlords to keep their property in good condition.

The legislation provides an implied covenant in the lease that all landlords must ensure that their property is fit for human habitation at the beginning of the tenancy and throughout. They should do this by ensuring that the property is free from hazards from which a risk of harm may arise to the health of the tenant or another occupier of the property during the tenancy of the property.

Where their landlord fails to do so the tenant has a right to take to legal action for breach of contract (covenant) on the grounds that the property is unfit for human habitation.

The remedies available to the tenant includes;

- a court order requiring the landlord to act to reduce or remove the harm caused allowing the property to be not being fit for human habitation.
- and/or damages to compensate them for the harm caused due to the property to be not being fit for human habitation

## Prosecution

11.10 The decision to take a prosecution is one that is not taken lightly. Officers recognise that their decision is significant and could have far reaching consequences on the alleged offender and others.

11.11 Each case that the council deals with is unique and must be considered on its own facts. However, there are general principles that apply to the way in which Officers decide whether prosecution should be applied. The decision will be made in consultation with the Private Sector Housing Manager, Head of Housing Services and council 's Legal Services.

11.12 In deciding to proceed with a prosecution, regard is given to the Code for Crown Prosecutors.

11.13 There are two overarching tests used in determining whether to prosecute. These are the evidential test and the public interest test.

### The Evidential Test

11.14 PSH officers in consultation with the council 's Legal Services must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This is an objective test and means that a court is more likely than not to convict the offender to the charge alleged.

11.15 In deciding whether there is a realistic prospect of conviction, consideration is given to matters such as:

- Is the evidence admissible in court? There are certain legal rules that might mean that evidence that seems relevant might not be used at a hearing;
- Is the evidence reliable? Officers must consider whether there is evidence that may detract or support any admission by the offender. Equally, Officers must consider the witness they may use and whether there are any concerns about their accuracy or credibility.

### The Public Interest Test

11.16 If the evidential requirements are met, Officers must then consider whether the public interest requires a prosecution. It is not the case that Officers will simply prosecute because an offence has been committed. There should generally be a public interest in bringing such an offence to Court.

11.17 The following are examples of factors considered when determining public interest. The list is not exhaustive:

- **The seriousness of the offence.** In housing terms, this will mean Officers looking at the effect of not complying with the Notice for example; • Whether there was violence used in the commission of the offence;
- The vulnerability of the victim of the offence.
- Whether the offence was motivated by discrimination.
- **The history of the offender.** In particular, officers will have regard to whether Notices have been served in the past, the response to those Notices and any previous housing-based convictions;
- **The likely penalty.** Consideration will be given to whether the offence is such that it would only attract a nominal penalty from the Courts;
- **Reason for the offence occurring.** Although there may be, on the fact of it, a breach of the law, there may be a statutory defence available in housing offences.

### Injunctive Actions

11.18 In certain circumstances, injunctive actions may be used to deal with repeat offenders and dangerous situations, or to prevent harassment or illegal evictions.

### Formal Actions

11.19 Where someone has committed an offence or offences and fully accepts responsibility for the offence/s, officers may offer a formal caution where the circumstances suit a Formal caution rather than a Court case.

11.20 Formal Cautions may be considered where:

- The defendant has admitted their guilt;
- The defendant is aged 18 or over;
- The defendant must understand the significance of the caution and agrees to be given a Formal Caution, and
- Civil penalties are not appropriate or cannot be applied.

11.21 In deciding to proceed with a caution regard is given to Home Office Circular 18/1994 – Cautioning of Offenders.

11.22 If the defendant agrees to receive a formal caution, the council will seek to recover the costs of the investigation as part of the formal caution process. If they do not agree to receive a formal caution, they will usually be alternative sanction.

### Works in Default

11.23 The council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works by formal Notice or Order but has failed to either start works or make

adequate progress.

11.24 In determining if work in default is appropriate, officers will consider the following:

- the effects of not carrying out the work on the health, safety and wellbeing of the occupant/s of the property concerned;
- the wishes of the occupier/s
- the reason/s for the work not being carried out in the first place
- the costs and complexity of carrying out the works in default.

11.25 The decision to execute works in default up to the value of £30,000 will be made by the Head of Housing Services following recommendation by the Private Sector Housing Manager. In most circumstances, a person will be given notice of the council's intention to carry out works in default. As soon as the council has commenced the works, it is an offence for any person to obstruct the council or any of its contractors or agents employed to carry out the works.

11.26 Approval to proceed with works in default over £30,000 will be required by the cabinet or a director depending on the estimated costs of the necessary works expenditure and the likelihood of full recovery of the council's costs.

11.27 Works in Default costs will be fully recoverable, including the council's full administrative costs. Interest may be chargeable until the amount is repaid.

11.28 The charges levied for the works and the associated costs will become a legal charge on the property until it is paid in full. In some cases, interest is also charged on the unpaid charges. The debt will be pursued. An enforced sale of the property may be considered should this be deemed appropriate.

11.29 In some cases, it may be appropriate to impose two sanctions for example, carrying out work in default and issuing a civil penalty or prosecuting the offender.

### Proceeds of Crime

11.30 Powers under the Proceeds of Crime Act 2002 will be considered in appropriate cases in consultation with the Council's Legal Services team.

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## 12.0 Charges for enforcement action

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12.1 Local authorities have the power to make a reasonable charge as a means of recovering expenses incurred in serving of Statutory Notices under the Housing Act 2004.

12.2 It is the council's policy to charge for the time spent by officers where a Notice

or Order is to be served. The cost will be based on the Officer-hours spent in investigating, consulting, drafting and serving the Notice or Order. This is intended to cover the reasonable expenses of the council in visiting the premises, assessing the hazards, drafting and issuing the formal Notice or Order.

12.3 The fees and charges levied by Elmbridge Borough Council for enforcement action are shown in Appendix A to this Policy.

12.4 In exceptional cases, this charge can be varied or withdrawn at the discretion of the Private Sector Housing Manager where the circumstances of the recipient would result in the payment of the charge causing exceptional hardship.

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## 13.0 Empty dwellings

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13.1 Empty and derelict properties can blight an area, encourage crime, drug use, vermin and vandalism and may cause a nuisance. Such properties are unacceptable in an area of high housing demand such as Elmbridge.

13.2 Council officers regularly review and monitor dwellings in the Borough which have been empty for a long period of time (usually more than 6 months). Officers will seek to identify the owner of the empty property and will attempt to contact the owner to establish plans to bring the property back into use and where necessary, to encourage the owner to take such action. Wherever possible and practicable, assistance and encouragement will be provided to assist an owner to return the property back to use.

13.3 In cases where a long-term empty property is not being brought back into use despite informal action, formal enforcement action may be considered including;

- Service of a section 11 or section 12 Housing Act 2004 Improvement Notice
- Service of Empty Dwelling Management Orders allowing the council to take over Management of the Property to facilitate it being brought back into use
- Service of a section 215 Town and Country Planning Act 1990 notice to require proper maintenance of land.
- Service of section 79 Building Act 1984 notice to remedy a building or structure which is seriously detrimental to the amenities of the neighbourhood.
- Service of a section 77 or section 78 notice under the Building Act 1984 where a building is dangerous, dilapidated or emergency works are required (section 78).
- Service of a section 29 notice under the Local Government (Miscellaneous Provisions) Act 1982 to require works to prevent unauthorised entry.
- Service of a section 80 notice under the Environmental Protection Act 1990 to abate or prevent a statutory nuisance.
- Declaration of a Demolition Order under section 265 of the Housing Act 1985 or declaration of a Clearance Area under section 289 of the same Act.

- In some cases, other action can be considered including Compulsory Purchase Orders (CPO) and enforced sale to recover charges owed to the council.

13.4 CPOs are considered the final sanction available to the council to improve substandard private sector housing where persuasion or statutory notices have failed. CPOs can be used to return long-term empty properties, often causing blight on the environment, to residential use.

13.5 Where we use our housing powers to compulsorily purchase empty properties, we will ensure that the stock of affordable housing in the borough will increase by entering into longer-term lease arrangements with the partners who subsequently purchase the property. Registered (housing) Providers and ‘preferred landlords’ will assist the council with the provision of additional affordable housing units through this process.

13.6 Decisions on taking formal enforcement in relation to empty dwellings will be considered by Sanctions Panel initially.

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## 14.0 Houses in Multiple Occupation

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14.1 As HMOs are higher risk than single family homes, the conditions, facilities and management are more closely regulated. Some HMOs are subject to mandatory HMO licensing.

14.2 Under the Housing and Planning Act 2016, HMO licences are required for all HMOs that are occupied by 5 or more persons forming more than one household who are sharing facilities from October 2018. Until this date, mandatory licences have only been required for HMOs meeting the above criteria *and* being of three or more storeys.

14.3 Inspections are usually undertaken as part of the application process but may happen at any time during the lifetime of the licence. Licences are issued by the local authority and conditions may be attached to the licence (including the maximum permitted number of occupants and households that can occupy the property). Works may be required to meet minimum standards prior to the licence being issued. Licences are issued for a five-year period and a new licence must be applied for before the end of that period.

14.4 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

14.5 The council charges for HMO Licences are set out in Appendix A. The council does not consider an application “duly made” until fees are paid, otherwise the license will not be issued.

14.6 It is a criminal offence if a person controlling or managing an HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence under section 72 of the Housing Act 2004. In cases where a licensable HMO property is found to be operating without a licence or licence conditions are not met, sanctions will be considered by the Sanctions Panel.

14.7 Where a non-licensable HMO is being badly managed and/or is in a poor state of repair, the Council will prioritise it for action, based on an assessment of risk.

14.8 The Council aims to identify all types of HMO dwellings in the Borough and to record information on these dwellings on its property database. Officers routinely assess and prioritise these dwellings according to levels of health and safety based on information available, in order to establish a programme of regular inspections.

14.9 The council aims to actively enforce the guidelines in the Housing Act 2004 relating to HMO dwellings (and relevant associated Management Guidelines for HMO dwellings) in conjunction with Surrey Fire and Rescue who may be consulted should enforcement action be considered.

### Management Regulations

14.10 All identified hazards and breaches of the relevant HMO Management Regulations in any HMO, whether licensable or not, will be dealt with in accordance with the enforcement approach set out in the main body of this policy.

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## 15.0 The redress scheme

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15.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc) (England) Order 2014 introduced a requirement for letting agents and property managers to belong to an approved redress scheme. The redress scheme must be approved by Government or designated as a government administered redress scheme.

15.2 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.

15.3 The expectation in government guidance is that a monetary penalty of £5,000 should be considered the norm and the penalty must not exceed this amount. A lower penalty should only be charged if the council is satisfied there are extenuating circumstances.

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

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## 16.0 Other legislation enforced by Private Sector Housing

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### Environmental Protection Act 1990

16.1 The Environmental Protection Act 1990 defines statutory nuisance and gives the council power to serve an Abatement Notice requiring the owner to remedy a building that is so far defective as to be prejudicial to the health of its occupier or a nuisance.

Examples of such nuisances could include rainwater penetration through defective roof or windows, rising or penetrating dampness and condensation, defective (rotten) timber flooring, elements exhibiting structural failure e.g. ceilings, and dangerous fixtures and fittings.

### Public Health Act 1936

16.2 Though much of this Act has been repealed or its provisions resurrected in other legislation, it still provides the council with power to require by notice the repair of defective sanitary facilities and the clearance, cleansing and, if necessary, fumigation of premises that are filthy and verminous. It also extends statutory nuisance provisions, (now in the Environmental Protection Act) to tents, vans, sheds (agricultural/migrant worker type accommodation) or canal boats used as dwellings.

### Public Health Act 1961

16.3 This Act still provides the council with power to require by notice the unblocking of stopped-up drains or minor repairs to private drains. At the request of an owner, the council may undertake the repair of a private drain and recover its costs from the owner.

### Local Government (Miscellaneous Provisions) Act 1976

16.4 This Act gives the council powers to require details of the ownership of buildings and land, to intervene to bring about the restoration of disconnected services (electricity, gas, or water), and secure the unblocking of stopped up private drains in shared use.

### Local Government (Miscellaneous Provisions) Act 1982

16.5 This act gives the council power to require the making secure, by boarding up or otherwise, of empty buildings (including houses) to prevent unauthorised entry and/or where the building is likely to become a danger to the public.

### Local Government (Miscellaneous Provisions) Act 1982

16.6 Although primarily concerned with ensuring the safety of new buildings

through the application of Building Regulations, the Building Act 1984 includes powers for the Council to adopt an accelerated procedure for dealing with defects in buildings that amount to statutory nuisances (see EPA 1990 above), to require major repairs to drainage systems and to deal with ruinous or dilapidated buildings including empty homes.

### Town and Country Planning Act 1990

16.7 This Act enables the council to require the parts of a property visible to the public to be in good condition and not 'detrimental to the amenity of the area'. As with many of the other powers used by PSH, there are powers to arrange the works if the owner does not complete them themselves and for the council to charge for the works and their time.

### Prevention of Damage by Pests Act 1949

16.8 The council can serve Notice where steps should be taken for the destruction of rats or mice on the land or to keep the land free from rats and mice. The team may serve notice on the owner or occupier of the land or property requiring works to clear, proof or treat the land from existing or likely pest infestations.

### Protection from Eviction Act 1977

16.9 Under S1 (2) Protection from Eviction Act 1977 it is an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy. The law makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her, or
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home.

16.10 It is an offence to do either of the things described above, intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from them unlawfully.

### Protection from Harassment Act 1997

16.11 This Act creates four criminal offences, harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction. The council will enforce the provisions of the Act alongside the Housing Options team and Legal Services.

### Caravan Sites and Control of Development Act 1960

16.12 This Act enables the council to prevent land being used as a caravan site

without a license and to ensure the conditions and amenities on any site are provided and maintained in good condition.

### Mobile Homes Act 2013

16.13 This Act enables the council to set and enforce site license conditions and take action to protect tenants against eviction and harassment.

### Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 Part 3 (minimum level of energy efficiency, MEES)

16.14 These regulations place obligations on landlords to improve the energy efficiency of certain private rented properties. It prescribes a minimum level of energy efficiency for private rented properties: that is, is an energy performance indicator (evidenced on the energy performance certificate for the property) of band E. The council has powers to take enforcement action to ensure compliance.

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## 17.0 Complaints

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17.1 Statutory appeal rights exist where notices are served, or charges levied and these are set out in the legislation. In addition to this owners, landlords and tenants who may be dissatisfied with any aspect of the service provided by the Council including enforcement activities can lodge a complaint directly with the Private Sector Housing Manager. A full copy of the Council's Complaints Policy is available on request.

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## 18.0 Monitoring

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18.1 The Enforcement Activities of the council are monitored by the Private Sector Housing Manager and the Head of Housing Services.

18.2 We will not depart from this policy unless there are exceptional circumstances, and only then with the written authority of the Head of Housing, Private Sector Housing Manager or nominated cover.

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## Appendix A – Fees and Charges

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### Service of Housing Act 2004 Notices:

Hourly rate of Officers including on-costs, in arranging and carrying out the property inspection, calculating hazards using the HHSRS, drafting and serving the formal Notice/ Order.

### Works In Default charges:

The cost of works and associated fees, including VAT as applicable, will be charged to the recipient/s of the original Notice together with the Council 's costs in administering the works. These administrative costs will include Officers' time to specify and tender for the works, managing and signing off works on site charged at the respective Officer's hourly rate including on-costs.

### Mandatory Houses in Multiple Occupation (HMO) licenses:

HMO licensing fees are now split into two stages. Stage one is payable on application and covers the costs of administering the application process. Stage two is payable on award of the license and covers the costs of running the scheme.

Stage one new license application: £300

Stage two new license application: £300

Total fee: £600

Stage one License renewal application: £400

Stage two license renewal: £150

Discount if Landlord is a member of a relevant organisation or recognised accreditation scheme: £50

A late or incomplete License application may be liable to a civil penalty.

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## Appendix B – Factors considered when deciding the level of civil penalty

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The financial penalty for each case will be agreed by a Sanctions Panel including the investigating officer/s for the case, the Private Sector Housing Manager and the Head of Housing Services or other senior manager. A representative of the council's Legal Services team may also attend.

In order to ensure that the civil penalty is set at an appropriate level, the panel will consider the following factors the Government has identified in its statutory guidance as being pertinent:

- a. The severity of the offence
- b. The culpability/ responsibility and track record of the offender
- c. The harm caused to the tenant
- d. The punishment of the offender
- e. Whether it will deter the offender from repeating the offence
- f. Whether it will deter others from committing the offence

g. Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

The final factor is the overarching one and, after all the other factors have been considered and applied, the council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.

When setting a civil penalty, the panel will also consider the cost of investigating the offence/s and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal.

### The costs of investigating, determining and applying a civil penalty

In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

Cases that result in the council issuing civil penalties clearly entail investigative and preparation costs and may involve costs in defending an appeal. These costs, comprising resources and officer time, will be built into the civil penalty charge.

The final civil penalty amount is made up of two main financial elements – the investigative charge and the punitive charge. There will be a third financial element imposed if the council successfully defends an appeal to the First-tier Tribunal.

### Investigative charges

Investigative costs will be calculated for each of the offences that are covered by civil penalties by considering the number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs.

If an investigation leads to more than one civil penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each civil penalty. There will only be one set of investigatory charges for each investigation/ operation undertaken by the council.

### Punitive charges

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

In order to ensure that the punitive charge is set at an appropriate level, the council will complete its investigation and consider all its findings against the factors identified in the statutory guidance.

The council has created a table of punitive charges (based on Culpability and Harm) that the Sanctions Panel will refer to when determining the level of civil penalty that should be imposed, (see table 3).

Government guidance recommends that 'the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord's previous record of offending'.

Aggravating factors in the case will increase the initial amount and, equally, any mitigating factors will reduce the initial amount.

### Defence charges

A person who has been issued with a civil penalty has a right of appeal to the First-tier Tribunal and this will involve a re-hearing of the council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the council has issued.

The council intends to defend its decision to issue civil penalties rigorously and this may involve both Officer time and additional legal support.

The council will robustly seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal. Therefore, each civil penalty notice that is unsuccessfully appealed will have the penalty increased appropriately for each person who has incurred the civil penalty.

### Financial means to pay a financial penalty

In setting a financial penalty, the panel may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

It is for the offender to disclose to the council such data relevant to their financial position as will enable the council to assess what s/he can reasonably afford to pay.

Where the council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

As some landlords will own more than one property, it is likely they will have assets they can sell or borrow against. After taking account of any mortgages on the property, the council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.

### Determining the Level of Civil Penalties

To set the level of the penalty that appears in the Notices, we will take the following steps;

#### Step 1 - Assessment of offence charges

We will assess the culpability, (see Table 1) and track record of an offender and the level of harm, or potential harm, to the occupiers (see table two). We will use the results of the culpability and levels of harm or potential harm to determine the level of civil penalty imposed (see table 3).

Table 1 - Levels of culpability

<b>CULPABILITY</b>			
<b>Low</b>	<b>Medium</b>	<b>High</b>	<b>Very High</b>
Significant effort made to address breached or offence but inadequate on this occasion. Reasonable defence why they were unaware of breach or offence. Deficiencies were minor and occurred as an isolated incident	Systems were in place to comply with legal duties but not sufficiently adhered to or implemented.	Failure to comply with legal requirements. Serious systematic failure by person or organisation to comply with legal duties	Deliberate or flagrant disregard for the law

Table 2: Levels of harm outcome or potential harm, to the occupiers based on the Housing Health and Safety System (HHSRS)

<b>Very high</b>	The seriousness of harm has been assessed as very high using the HHSRS - Class I harm outcome
<b>High</b>	The seriousness of harm has been assessed as high using the HHSRS - Class II harm outcome
<b>Medium</b>	The seriousness of harm has been assessed as serious using the HHSRS - Class III harm outcome
<b>Low</b>	The seriousness of harm has been assessed as moderate using the HHSRS - Class IV harm outcome

### Levels of harm

Table 3: Determining the level of civil penalty imposed

<b>Levels of harm outcome or potential harm, to the occupiers</b>	<b>CULPABILITY</b>			
	Low	Medium	High	Very High
Low	£2,000	£3,000	£4,000	£5,000
Medium	£3,000	£6,000	£8,000	£10,000
High	£4,000	£8,000	£12,000	£18,000
Very High	£5,000	£10,000	£18,000	£27,000

## Step 2 – Adjustments to seriousness of offence

We will then make adjustments taking into account any aggravating or mitigating circumstances to make sure the level is fair and proportionate. In all instances the objective of the civil penalty notice is to; act as punishment, a deterrent and remove any benefit of the offence.

These lists are not intended to be an exhaustive list of matters to take into account, when considering the level of culpability and other factors may be taken into account.

Aggravating factors that may increase the seriousness of the offence include;

- Any previous convictions of a similar nature to the offence committed
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of adverse impact to wider community
- Obstruction of justice
- Record of providing substandard accommodation
- Refusal of free advice or training
- A member of a Landlord Accreditation scheme

Mitigating factors that may decrease the seriousness of the offence include;

- No previous relevant convictions
- Actions taken voluntarily to resolve problem
- High level of cooperation with investigation
- Good record of property maintained
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Sole or primary carer for dependent relatives

## Step 3 - Review of penalty charges

We will then review of the penalty and consider any factors which indicate a reduction in the penalty, having regard the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- The impact of the financial penalty on offender's ability to comply with the law or make restitution to victims.
- The impact of the financial penalty on employment of staff, service users, customers and local economy.
- Admission of guilt- The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount. For example, where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

### Additional actions

In all cases the council will consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.