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Tower Hamlets Enforcement Guidance



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1. Purpose.

This guidance sits below the Corporate Enforcement Policy to further guide housing law enforcement decisions and ensure compliance with the principles set out in the Councils overall enforcement policy.

2. Scope.

These guidance notes relate to enforcement action taken by Officers in the Housing and Health Team. In general the work of the team includes;

- Inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards.
- Taking formal action to secure compliance with statutory requirements as necessary
- The administration and enforcement of property licensing schemes in the borough

3. Enforcement Options.

- No action
- Verbal advice or information
- Written advice or information
- A letter requesting that action is taken
- A legal notice advising that action is needed
- A legal notice requiring specific action within a set time limit
- An order that prohibits the occupation of all or part of a property
- A suspended notice or order that comes into force at a later date
- Emergency action to resolve a serious situation
- Work in default of a legal notice
- Suspending or revoking a licence
- Formal caution
- Financial penalty
- Entry on the rogue landlord database
- Rent Repayment Order
- Prosecution
- Banning Orders

For each situation the most appropriate legislation and enforcement option will be chosen.

4. Housing Act 2004 – Housing Health and Safety Rating System

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), a method of assessing and categorising hazards to health.

It is recognised that not all visits to a property will result in a full HHSRS inspection. However if, during a visit, a potential hazard is identified then a full HHSRS will be required. Details of how

this is undertaken is contained within the relevant operational guidance.¹

5. Non-compliance with a Statutory Notice

Where the recipient of a notice fails to comply within the specified timescales there are various options that can be considered;

- Extending the timescale if credible evidence has been given that the person responsible is making progress with the works but needs a short extension,
- Work in default, organising the work in default of the responsible person re-charging all the costs incurred,
- Instigating formal prosecution proceedings,
- Imposing a civil penalty for relevant Housing Act 2004 offences,
- Applying for a Rent Repayment Order for relevant offences,
- Applying for a Banning Order for relevant offences.
- Prosecution for non compliance with a Statutory Notice

6. Retaliatory Eviction and the Deregulation Act 2015 ²

On 1 October 2015 a number of provisions in the Deregulation Act 2015 will come into force. These provisions are designed to protect tenants against unfair eviction.

Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord and their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the 'no-fault' eviction procedure (a section 21 eviction).³

The service will support tenants subject to retaliatory eviction by providing the information they need to pursue their case in a timely manner.

This process does not offer protection from eviction under section 8 where a landlord can still serve notice due to rent arrears and/or breaking tenancy agreement.

7. HMO Management Orders

Part 4 of the Housing Act 2004 sets out the provisions for interim and final management orders. Section 102 places a duty on the council to make an interim management order if a licensable house in multiple occupation (HMO) is unlicensed, or the licence has been revoked, and there is no prospect of it becoming licensed and the order is necessary to protect the health, safety or welfare of the tenants.

¹ <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>

² <https://www.gov.uk/government/publications/retaliatory-eviction-and-the-deregulation-act-2015-guidance-note>

³ <https://www.gov.uk/evicting-tenants/section-21-and-section-8-notices>

The interim management order must be replaced with a final management order when it expires if the property continues to need a licence but one cannot be issued.

There are also discretionary powers for interim and final management orders which will be considered on a case by case basis, having regard to the relevant legislation and guidance available.

8. Costs Incurred by Taking Certain Enforcement Action

The Housing Act 2004, section 49 allows for the recovery of administrative and other expenses incurred in taking enforcement action. A charge will be made for the following actions.

- Serving an Improvement Notice,
- Serving a Prohibition Order or Emergency Prohibition Order,
- Emergency Remedial Action,
- A management notice for HMOs.

Charges will be reviewed annually to ensure they recover the costs to the Council of taking this form of action.

5. Powers of Entry

In most cases access is voluntarily given by the tenant or landlord. However there will be occasions where Officers will need to gain entry without the permission.

The Housing Act 2004 section 239⁴ requires that at least 24 hours notice of intention to enter is given to the owner (if known) and occupier of the premises prior to any enforcement.

The council will seek to obtain a warrant to enter premises where allowed within the legislation and when the circumstances justify this serious course of action, such circumstances may include;

- a house in multiple occupation where the owner is not allowing access and there is a reasonable suspicion that offences are being committed
- where entry with prior notification may allow vital evidence to be removed

9. Enforcement in Relation to Unlicensed Properties

9.1. Failure to pay the second instalment of the fee

If a landlord chooses to pay in two instalments they will be requested to pay the second part of the fee once the 14-day consultation period is over. Landlords will be contacted to ask them to make the second payment. Landlords will be sent one reminder with a 14 day response time. If no payments have been made in the time the Council will treat the property as unlicensed and a referral made to the Trigger Panel for consideration of formal

⁴ <http://www.legislation.gov.uk/ukpga/2004/34/section/239>

action.

9.2. Use of reduced term licenses

The maximum term of the licence of five years is set out in the Housing Act, however there is no minimum term.

A decision made in 2006 set the standard term of a Mandatory Licence in Tower Hamlets at 3 years. For Selective and Additional licensing schemes the maximum term is 5 years.

Tower Hamlets aims to ensure fairness and transparency when administering the landlord licensing scheme, and in particular seeks to ensure that co-operative and compliant landlords are not disadvantaged compared with landlords who do not co-operate, and/or operate unsafe or poorly managed properties. This is reflected in the fees system which allows for longer license periods for well managed properties and requiring licenses to be renewed more regularly for those that are poorly managed.

The decision to reduce the licence term will be made by a panel of senior officers

Term on Application	Justification
Maximum 5 years for Selective and Additional Licenses Maximum 3 Years for Mandatory HMOs	Licences will be granted for this period where landlords are compliant with licence conditions, maintain good property standards and demonstrate good management standards
2 years	If we have evidence to suggest that <ul style="list-style-type: none">• management arrangements or property conditions are not entirely satisfactory, or• where the council has taken and intervention against the landlord but is not so serious as to warrant refusal to grant a licence or• where concerns are raised by the Police or other statutory enforcement agency licences may be granted for the lesser period.
1 year	Where evidence of non-compliance such as the service of persistent multiple enforcement notices but the council has not issued a refusal to grant a licence or where concerns are raised by the Police or other statutory enforcement agency. Or Failure to complete and return a fully completed licence application form including temporary exemption applications

	(including enclosures and correct licence fee) Where council has sent 2 letters to obtain the application.
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9.3. Planning related issues

9.3.1. One year licenses

Where there are material breaches of planning legislation determined by a Planning Officer a one year licence will be considered.

9.3.2. Restricting occupancy

Where there are seven or more people living as 2 or more households and sharing facilities without planning permission the service will issue a licence which restricts occupancy to 6 after 6 months to give time to regularize planning issues. Once this period is over the occupancy will revert to a maximum of six.

10. Enforcement in Relation to Registered Social Landlord (RSL) Properties

Tenants would normally be expected to have exhausted internal complaints procedures before requesting the council intervenes in any repairs issues.

In cases where the tenant is able to show that the internal complaints process has been exhausted and there are potential health and safety risks to the occupier the service will investigate the complaint.

Where the complaint relates to the lack of the RSL to respond to a repair that is not an actionable hazard the tenant will be referred to The Housing Ombudsman Service – Housing Ombudsman Service, PO Box 152, Liverpool L33 7WQ

11. Risk Rated Inspections in Relation to Property Licensing

To identify properties where action is needed under part 1 sections 5 and 7 of the Housing Act 2004 we will inspect medium and high risk properties following a risk assessment using information on the application form and a review of any previous history of the applicant.

In general the following is a guide to determining the risk score with weighting given to fire safety, the number of storeys and number of occupants.

	Application form		Management Contact
L	Application completed correctly	L	Tenants provided with managers OOH contact details
M	Most information completed	M	Tenants have contact details for use in normal hours
H	Significant issues with the form	H	No contact details
	Occupation		Management ASB
L	1-4 occupants	L	Procedures in place

M	5 to 10 occupants	M	Some arrangements in place
H	over 10	H	No consideration of ASB
	Property		Previous complaints in the last 2 years
L	1/2 storeys	L	No complaints in the previous 2 years
M	3 to 5	M	Minor complaints from one complaint
H	over 5	H	Serious complaints from multiple complainants
	Building		Previous history formal action in the last 2 years
L	Purpose built block of flats and converted flats with building control approval.	L	No history of formal action
M	Dwelling above commercial premises	M	Notices served
H	257 HMO	H	Prosecuted
	Fire detection		Management records
L	Fully interlinked fire detection	L	All gas/electric/Fire detection records in place
M	Battery operated fire detection system	M	Some records missing
H	No fire detection	H	No records kept

Notes 1 = low risk, 2 = moderate risk 3 = high risk

High risk premises will be visited before the final licence is issued or as soon as possible afterwards. Medium risk properties will be visited at least once during the licence term. The service does not intend to visit those considered to be low risk unless concerns are raised or further intelligence is received that changes the risks to the occupants.

12. Rent Repayment Orders (RROs)

The Council will support tenants wishing to apply for a RRO by providing the information they request to support their application in a timely manner.

13. Decision Making

13.1. Trigger Panel

The purpose of the trigger panel is to give due consideration by experienced officers to decisions which may lead to formal action and to consider complex cases.

The following are examples of issues to be referred to the trigger panel;

- Where there are significant concerns about the application form,
- Where there is evidence of an offence,
- When considering refusing a licence or reducing the licence term,
- When considering applying non standard licence conditions,
- Complex licensing decisions which may have future implications,
- The decision to carry out work in default.

13.1.1. Panel Members

The panel consists of at least 2 Senior Officers

13.1.2. Process

The Officer arranges the trigger panel date and presents the case to panel members. When considering taking formal action the panel will consider whether the evidential and public interests tests are met and whether the course of action is in line with the Councils enforcement policy.

13.1.3. Possible panel meeting outcomes

- Issue a full licence
- Refuse a licence
- Modify licence conditions
- Modify licence term
- Refer to Legal for prosecution
- Offer a Simple Caution
- Issue a Financial Penalty
- Carry out work in default

Prosecution will be appropriate when;

- There has been a serious breach of or blatant disregard for the law,
- There is a refusal to achieve basic minimum legal requirements,
- There has been a previous prosecution,
- There has been a Simple Caution administered within the preceding 2 years,
- There has been a refusal to accept a Simple Caution,
- There has been a refusal to respond to previous warnings,
- A financial penalty has been given in the preceding 6 months or two penalties in the preceding 12 months.

13.2. Decision log

Decisions made by the trigger panel will be recorded on the database to provide a decision log.

14. Work in Default (WID)

In situations where a landlord fails to comply with a formal notice requiring remedial work, the Council may undertake the work in default of the owner and take steps to recover any costs incurred. This power may be exercised in addition to any prosecution proceedings taken for non-compliance with the notice.

In deciding whether to proceed with works in default, consideration must be given to the likelihood of the landlord carrying out the work and whether undue delay would put the occupier/s at risk.

Only work that removes the risk will be considered. The cost of the works must be fully assessed and cost benefit analysis undertaken including the costs of rehousing the occupants.

officer costs will also be recovered when the legislation allows.

15. Housing Specific Legislation

- The Housing Act 1985
- The Housing Act 2004
- The Building Act 1984
- The Environmental Protection Act 1990
- The Public Health Act 1936
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Housing and Planning Act 2016