

Appendix B - overview of enforcement

HMO complaints - What we do now

Stage 1 – Complaint received

The department can receive service requests in various ways including telephone calls, callers to reception, email, web notifications, referrals from other departments or organisations, and letters from tenants, residents or neighbours.

If the nature of the complaint is from a tenant, ask them if they have spoken to their landlord/managing agent regarding the issue, when they spoke to them and what the response was.

If they have not contacted their landlord/managing agent, advise them to do so. If they are reluctant to do so, you can provide advice over the phone where appropriate or alternatively arrange an inspection. The tenant will need to provide their landlords name and contact address which can usually be found in their tenancy agreement.

If the contact is from a member of the public (community, neighbours, family members) depending on the nature of the complaint, we will carry out a desktop investigation to identify the owner and if appropriate will go door knocking to speak with occupants about the concerns raised.

Once we have all the relevant information, we will then arrange a formal inspection of the property.

Stage 2 – Property Inspection

For property defects the property will be inspected under the Housing Health and Safety Rating System. The deficiencies in the property will be recorded and an HHSRS assessment will be carried out to establish if Category 1 or 2 hazards exist.

For HMO management regulation concerns, an inspection will be carried out under section 239 powers of entry.

Stage 3 - Action

The enforcement action taken will be in line with the Private Sector Housing Enforcement Policy.

Best practice requires the first approach to be informal unless the risk [of serious harm](#) is imminent.

All actions will be followed up to ensure compliance; non compliance will result in further action or prosecution.

Informal Action

Informal action usually involves officers undertaking one or more of the following actions:

- No action where complaints or allegations of breaches in housing legislation are unsubstantiated or formal action is inappropriate in the circumstances;
- Verbal advice;
- Verbal request for action;
- Written request for action;
- Written warning of formal action if faults are not corrected.

Circumstances in which informal action is likely to be appropriate include situations where:

- The landlord is willing to undertake the required remedial action;
- The act or omission is not serious enough to warrant formal action;
- The individual or company's past history suggests informal action will achieve compliance;
- The Officers confidence in the management of the property or premises is high;
- Standards are generally good suggesting a high level of awareness of statutory responsibilities; and

- The consequences of non-compliance with standards are acceptable e.g. minor matters, or the time period allowed to seek compliance does not present a significant risk to public health.

A re-visit may be carried out where informal action has been agreed to confirm that identified faults have been corrected.

Formal Action

The use of formal enforcement action will at all times be consistent with the principles set out in the Government's Regulators Compliance Code. Formal action usually consists of one or more of the following:

- Service of appropriate statutory notices;
- Undertaking emergency remedial works;
- Undertaking works in default of a statutory notice;
- Issuing formal cautions;
- Prosecution or issuing of civil penalties

In coming to a decision Officers will in every case have regard to;

- i. The seriousness of the hazard;
- ii. Whether the Council has a duty or a discretionary power to take action;
- iii. The individual's or company's past history in terms of compliance;
- iv. The Officers confidence in the management of the property or premises;
- v. The consequences of non-compliance in terms of risk to people, property or the environment;
- vi. The likely effectiveness of the various enforcement options; and
- vii. The risk to public health or the health and safety of the occupant(s).

Enforcement actions available to the PSH team

Statutory notices/orders

Appropriate statutory notices/orders that may be served include;

- Hazard awareness notices
- Improvement notices
- Prohibition orders
- Emergency prohibition orders
- Demolition orders

Power to Take Action without Agreement

Where the Council considers that reasonable progress is not being made for completion of an action specified in an improvement notice, the Council may consider serving a notice before entering the premises for the purpose of taking remedial action in relation to the hazard.

The Council will take action to recover expenses in all cases where action is required in default of a statutory notice.

Simple Caution where an offence is admitted

The use of a simple caution offers an alternative to prosecution and will be considered during any decision to prosecute. Before issuing a caution, the following conditions must be satisfied:

- There must be evidence of guilt sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution
- The offender must understand the significance of the simple caution and consent to it

- The offender must admit the alleged offence by signing a simple caution form.

A simple caution is a serious matter, which will influence any future decision should the company or individual offend again. Where the offer of a simple caution is refused, a prosecution will generally be pursued.

Civil Penalties

Under s249A of the Housing Act 2004 the Council may decide to impose a financial penalty as alternative to prosecution for the following offences under the Housing Act 2004 (as amended):

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences of contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234)
- Breaching a Banning Order (Housing and Planning Act, section 23)

The amount of a financial penalty is determined by the Council but it must not be more than £30,000 for each offence.

Prosecution

Consideration to prosecute for breach of any offence will be based on the Code for Crown Prosecution Guidance and in particular regard will be given to the following:

- There is sufficient and reliable evidence that an offence has been committed;
- Recklessness, obstruction or assault involved;
- There is a realistic prospect of conviction;
- There are public interest factors.
- Consideration of personal circumstances of the offender;
- The likelihood of a significant sentence;
- The need to deter.

Revocation of HMO licence

The Council may revoke a licence (bringing it to an end before it expires by passage of time) in the following circumstances:

- With the agreement of the licence holder;
- There has been serious or repeated breaches of a licence condition;
- The licence holder is no longer a fit and proper person to hold the licence;
- The management of the property is no longer being carried out by persons who are fit and proper persons to be involved in its management;
- The property ceases to fall within the mandatory HMO licensing remit, for example: The property is now occupied by a single family or the number of occupiers is less than five.
- The property is to be sold and the licence holder is no longer the relevant person to hold the licence.

Implication of HMO licence Revocation

Revocation of a licence does not result in the property ceasing to be an HMO. In the event of a revocation, the property would continue to operate as an HMO and a new licence holder would be required.

Where an HMO is identified as needing to be licensed following revocation, there is provision under Part 4 of the Housing Act to make management orders, which also apply where the owner refuses to make an application, where an owner is repeatedly found to be in breach of licensing conditions or where there is no fit and proper person available to manage it.

There are two types of orders:

- Interim Management Orders (IMOs) and Final Management Orders (FMOs).

Interim and Final Management Orders allow the local authority to take over the management of an HMO. An IMO transfers the management of a residential property to the local housing authority (LHA) for a period of up to twelve months. A FMO transfers the management of the house to the LHA for the duration of the order.

A local authority may make an Interim Management Order (IMO) to ensure that immediate steps are taken to protect the health, safety or welfare of occupiers and adjoining occupiers/owners and any other steps are taken to ensure the proper management of the house pending further action.

A local authority must make an IMO where the property is an HMO that should be licensed but is not or the licence has been revoked but the revocation is not yet in force, and once revocation is in force there is no foreseeable prospect of a licence being granted, and there is no reasonable prospect of it being licensed or in the event the health and safety condition is satisfied.

Health and safety condition

The health and safety condition is that the making of an IMO is necessary to protect the health, safety or welfare of occupiers or adjoining occupiers/owners. If there is a threat to evict persons occupying the house in order to avoid the house being required to be licensed, this may constitute a threat to the occupiers' welfare.

The health and safety condition is not satisfied where there is a category 1 hazard requiring the local authority to take enforcement action and where such action would adequately protect the health, safety and welfare of the people in question.

Effect of an IMO

A local authority can appoint another body (for example, registered social landlord or managing agent) to carry out the management functions under an IMO on its behalf.

Under an IMO the local authority (or agent appointed by it) takes possession, collects the rents, deals with arrears, and makes repairs as a landlord might. The local authority can do anything that a person who has an estate or interest in the house could do, were it not for the order.

The local authority can only create a new tenancy with the written permission of the landlord. The landlord is not entitled to receive any rents and may not exercise any management functions, nor create any lease or licence to occupy the property. The owner is permitted to sell the property.

The local authority may use rents received to meet relevant expenditure (for example repairs or insurance), and may deduct its administrative costs and any compensation payable to third parties. It must pay any surplus to the landlord. Where the rent received is less than expenditure, the authority can recover the difference from the landlord. The local authority must keep accounts of relevant expenditure and income.

Final Management Orders

FMOs follow IMOs, where necessary. A local authority must make an FMO if the property should be licensed by the date of expiry of the IMO, but the authority consider that a licence cannot be granted by that date. An authority may make an FMO for a house not subject to licensing where the IMO is ending and the authority considers it necessary.

The effect of an FMO is largely the same as an IMO, except that under an FMO the local authority does not require the landlord's consent to grant occupation rights, although the terms of any occupation cannot extend beyond the expiry of the order.

All FMOs must contain a management scheme, setting out how the local authority plans to manage the property under the order. The management scheme comes into force once the appeal period has expired or the terms are agreed.

Schemes have two parts:

- Part 1 deals with income and expenditure, proposed works, and compensation
- Part 2 describes how the authority intends to address the matters that caused it to make the FMO

Non-compliance with HMO Management Regulations

Breaching HMO management regulations constitutes an offence, punishable by a civil penalty of up to £30,000 or an unlimited fine on conviction. In the event of management regulation breaches, in line with our enforcement policy landlords are notified and provided an opportunity to address and rectify any breaches. If the breach continues formal action will follow.

Non Compliance with Licence Conditions

Breaching any condition of a licence is an offence, punishable by a civil penalty of up to £30,000 or an unlimited fine on conviction. Any breach of licence conditions will initially be dealt with informally, but if the breach continues legal proceedings will be started.

PSH HMO Complaint & Enforcement statistics

Table 1: Service requests received

	All complaints	*HMO complaints
23/24	63	18
22/23	66	18
21/22	58	19
20/21	22	2
19/20	51	13

**Includes both licensed and non-licensed HMO's*

Table 2: Formal enforcement actions

All notices	19/20	20/21	21/22	22/23	23/24
Hazard Awareness	3	2	1	6	6
Improvement Notice	6	2	12	11	8
Prohibition Order	1	0	1	2	1
Civil Penalty Notices	0	1	2	0	1
Prosecutions initiated	0	0	0	0	1
Non- HMO					
Hazard Awareness	3	2	0	3	4
Improvement Notice	4	2	8	6	6
Prohibition Order	1	0	1	0	0
Civil Penalty Notices	0	0	0	0	0
Prosecutions initiated	0	0	0	0	0
HMO's					
Hazard Awareness	0	0	1	3	2
Improvement Notice	2	0	4	5	2
Prohibition Order	0	0	0	2	1
Civil Penalty Notices	0	1	2	0	1
Prosecutions initiated	0	0	0	0	1

Table 3: - Complaints by third parties about issues relating to HMO's

	2019	2020	2021	2022	2023
No. of complaints	5	0	0	4	30

Table 4: - type of complaint

	No. Of complaints
Overcrowding	2
Waste Issues	31
Gardens	25
Parking	1
Damaged fence	1
Damaged wall	1

Table 5 – Complaints from tenants/residents

Number of complainants*	Contact Made	Percentage
12	Once	70.6%
3	Twice	17.6%
1	Eight Times	5.9%
1	Twenty Two Times	5.9%

*Excludes complaints from officers & councillors