August 2019

# Housing Standards Enforcement Policy

TORBAY COUNCIL

# Contents

## SECTION 1 - INTRODUCTION

This policy provides details of the council's approach to regulating housing standards and tenancy rights in Torbay. It sets out what owners, landlords, their agents and tenants of properties can expect from us and what we expect of them.

This policy is intended to provide guidance for officers, businesses (landlords, property managers and agents), consumers and the general public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

### 1.1 What we are looking to achieve?

Local Housing Authorities play a key role in protecting the health, wellbeing and consumer rights of residents. Our interventions improve the quality of homes and their management whilst protecting the rights of tenants. These actions improve the local environment, prevent illness and injury, improve quality of life for residents and reduce crime. The provision of good quality homes has far reaching benefits from facilitating educational attainment for children, preventing illness and reducing environmental impact through the provision of energy efficiency measures.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This document has been prepared having regard to the Regulator's Code Better Regulation Delivery Office (BRDO April 2014).

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.

### 1.2 Aim of the Policy

We aim to ensure that all enforcement activity we undertake is:

- **Targeted** at properties and people that pose the greatest risk. Risks may be to; health, safety, community confidence, finances, deprivation, the environment and or a regulatory risk. Targeted individuals may include owners and landlords who evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.
- **Proportionate,** reflecting the nature, scale and seriousness of any breach or non-compliance. This approach will ensure that the most serious risks (as described above) attract the highest sanctions. It also means that in particularly minor cases, we may take informal action only.
- **Fair and objective,** based on the individual circumstances of the case, taking all available facts into account.
- **Transparent,** our actions will be explained in plain language, with clear reasoning given for any enforcement action taken. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what is desirable).
- **Consistent,** taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as we will take into account many factors such as culpability, the level of risk, the history of compliance and the attitude and actions of those involved.
- **Accountable,** undertaken in a responsible manner that has a clear purpose. Where enforcement action is taken, we shall ensure the target is given information about their rights of appeal and otherwise how they might register a complaint.
- **Coordinated**, taking a shared approach where there are complementary responsibilities across different departments or agencies.

### 1.3 What is enforcement action?

In this document 'enforcement' means action carried out in the exercise of statutory enforcement powers. It includes not only formal enforcement action, such as prosecution or the service of a notice, but also the inspection of premises for the purpose of checking compliance with regulations and the provision of advice to aid compliance with statutory requirements.

### 1.4 Who might take action?

Authorised officers will undertake the actions set out in this policy. The Council will ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified and have relevant and adequate experience in the area of enforcement. The level of authorisation varies depending upon the particular action. The details are set out in the Council's Scheme of Delegations.

## SECTION 2 - OUR ENFORCEMENT POWERS AND OUR APPROACH

Torbay Council expects all landlords to have a good understanding of the standards that they are required to meet in terms of the condition and management of the homes they rent out and of the appropriate behaviour and conduct they are obliged to display in terms of tenancy rights and interactions. We also expect full voluntary compliance with the law.

We will help owners of housing to meet their legal obligations by providing clear and concise information about what they need to do to comply. This information will be available by engagement with our website, our social media provisions, by direct communication with officers and via forums and open meetings. We will engage with our landlord associations and promote appropriate training and accreditation schemes.

At the time of drafting this policy, the principle acts and regulations enforced by the council's Housing teams are;

- The Housing Act 1985
- The Housing Act 2004
- The Building Act 1984
- The Environmental Protection Act 1990 (as amended)
- The Public Health Act 1936 (as amended)
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Prevention of Damage by Pest Act 1949
- Protection from Eviction Act 1977
- Deregulation Act 2015
- The Housing and Planning Act 2016
- The Energy Efficiency (Private Rented Property (England & Wales) Regulations 2015
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- Any subsequent legislation coming into force where the policy is yet to be updated

In addition to our powers as a local housing authority there are further powers available to us as the local planning authority and through Trading Standards and the regulation of letting and managing agents.

- Enterprise and Regulatory Reform Act 2013
- Redress scheme for Letting Agency Work and Property Management Work (England) Order 2014
- Consumer Rights Act 2015
- Town and Country Planning Act 1990 (as amended)

The interventions we may take in relation to the above legislation are set out in more detail throughout this policy.

Much of the legislation that the Council enforces sets out what must be achieved, rather than how it must be done. Guidance on how an outcome might be achieved is often set out in codes of practice or guidance notes. Where there is advisory material available describing good practice, inspectors will have regard to this.

In some cases the legislation is highly prescriptive as to what must be done and in such circumstances the discretion of the Council as duty holder and the enforcer are limited.

## SECTION 3 - TARGETING ENFORCEMENT ACTION

**3.1** **Co-ordinated working -** Often a single housing matter may overlap the enforcement responsibilities of several services and agencies such as Devon and Somerset Fire and Rescue Service, Devon and Cornwall Police, Home Office or the Environmental Protection functions of the Council. Partnership working is at the core of what we do and we will take a comprehensive approach to enforcement by:

- Co-ordinating action between Council departments and other agencies;
- Ensuring the most effective action is taken and led by the most appropriate agency;
- Sharing information with other agencies.

**3.2** **Powers of entry -** Entry to a property is usually required to enable us to carry out our statutory functions.

Sections 239-241 of the Housing Act 2004 (HA2004) set out powers of entry associated with investigating the condition and/or management/use of a property.

When organising a visit to assess conditions using the Housing Health and Safety Rating Scheme (HHSRS) officers' will normally make an appointment to visit in the first instance and will give at least 24 hours' notice to both the occupants and owners of our intention to enter properties to inspect them. If landlords wish to attend the inspection they are obliged to make their own arrangements with the tenant.

Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take other people with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary.

In some cases, powers of entry will be used to carry out works.

We will exercise our statutory powers to gain entry without giving prior notice to investigate suspected non-compliance with housing related law or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers may include:

- To protect the health and safety of any person or to protect the environment without avoidable delay;
- To prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed HMO or has breached management regulations;
- Where we are working with other agencies such as the police, home office or fire service.

When undertaking enforcement activity associated with Illegal eviction or harassment it may not be necessary or appropriate to inform the property owner of an intention to enter.

We may apply to the Magistrates Court/Justice of the Peace for a Warrant to Enter Premises if;

- entry has been denied
- refusal is reasonably anticipated
- giving notice would defeat the purpose of the visit
- gaining entry will be problematic such as in the case of empty properties.

Before applying for a warrant we will consider all the circumstances of the case and ensure that obtaining a warrant is a proportionate and reasonable action.

A warrant under this section includes the power to enter by force, if necessary.

Any person who, without reasonable excuse, obstructs an authorised officer from carrying out their functions under Parts 1-4 of HA2004 (includes entering a premises, collating evidence etc.) commits a criminal offence. Where an officer is obstructed we will consider undertaking a prosecution. Where officers are assaulted the council will seek prosecution of any offenders.

**3.3 Requiring information**

Authorised officers have the power to require:

- Documents to be provided under s235 of the HA2004 to enable them to carry out their powers and duties;
- Electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation under s234 of the HA2004;
- Any person with an interest in a property to provide details about its ownership or occupation under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
- Specified information for the purpose of deciding whether to apply for a banning order against the person under Section 19 of the Housing and Planning Act 2016;
- Specified information for the purpose of deciding whether to make an entry in the database of rogue landlords and property agents or to complete an entry or keep it up-to-date under Section 35 of the Housing and Planning Act 2016.

Officers will routinely use these powers and it is an offence not to produce the required information as requested or to provide false or misleading information. Where requested information is not provided (or is false or misleading) we will consider taking the relevant formal action such as issuing a financial penalty or undertaking a prosecution.

For specific housing purposes the Authority also has the power to:

- Obtain and use Housing Benefit and Council Tax information under Section 237 of the HA2004;
- Request and use tenancy deposit information under Section 212A of the HA2004;
- Access and use information contained within the database of rogue landlords and property agents under Section 39 of the Housing and Planning Act 2016,

**3.4 Pro-active inspection -** The Council has a duty to review local housing conditions to identify any action that may be required.

We will seek to identify HMOs that require a mandatory licence, are poorly converted or poorly managed and properties where category 1 hazards exist. We will also proactively target empty privately owned properties to encourage owners to bring them back into use, and use enforcement powers where appropriate to achieve this.

We will target those landlords who deliberately or persistently break the law. Where poor conditions are identified in a privately rented property, we will seek to identify and inspect other properties owned or managed by the same individual or company.

Post Grenfell the requirements for local housing authorities to intervene in the fire safety of private residential blocks is still an area of developing government policy. Our actions in this regard will reflect any forthcoming government policy.

We may inspect property to contribute to an area approach such as consideration as to whether to support a discretionary HMO licensing scheme, a collaborative action with the fire service in a high risk area or to fulfil a Housing Strategy objective.

**3.5** **Re-active inspection –** The council has a duty to react to intelligence regarding local housing conditions and to identify any action that may be required.

We will respond in accordance with the HA2004 and associated regulations and guidance to enquiries by occupiers of rented property considered to be hazardous, partner agencies (internal and external) and elected members who have witnessed hazardous accommodation.

We will inspect property in response to a request such as an Immigration enquiry or where a licensing application has been made and we are obliged to consider suitability.

We will consider other enquiries on a case by case basis. This might be where the reporting person has not seen the condition of the property or perceives an impact on themselves rather than the occupier. In such cases it is not always appropriate to require an inspection and the issue may be dealt with more effectively by other methods.

**3.6** **Tenants of Registered Providers (Housing Associations)** - Tenants of Registered Providers (Housing Associations) have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner, including a complaints procedure and a final right of appeal to the Housing Ombudsman Service. Appendix 1 gives some further detail and useful links to facilitate appropriate action.

We will offer advice to the tenant in the first instance and seek to intervene where we determine that it is necessary and appropriate for us to do so. We will consider the HHSRS Enforcement Guidance in order to reach this determination.

**3.7** **Lettings and management agents –** There are specific requirements which must be met by lettings and management agents such as the requirement to belong to a redress scheme, banning of fees etc. Some of these requirements may be enforced by the Housing Standards team or by the appropriate Trading Standards team. Torbay Council will liaise with the Trading Standards team to help them perform their duties. We will also take direct action where we are authorised to do so and such action is justified.

## SECTION 4 - ASSESSING CONDITION

Part 1 of The HA2004 is concerned with assessing housing conditions and reducing health and safety hazards using the HHSRS. The HHSRS covers 29 potential hazards in the home. It is a risk assessment approach which looks firstly at the likelihood of someone becoming ill or injured and secondly, how badly harmed a person could be as a result. Any rated hazard is done so with the person (age) most vulnerable to the hazard.

The HHSRS applies to all residential premises regardless of tenure or whether a dwelling is occupied. The Council has a duty to inspect premises where there is a suspected hazard.

The Council is under a duty to take enforcement action in relation to the most dangerous health and safety hazards referred to as Category 1 Hazards (those which have a hazard rating within bands A, B or C).

The Council has the power to deal with less dangerous Category 2 Hazards (bands D to J). The Council may take enforcement action in relation to Category 2 hazards where it makes the judgement that it would be appropriate to the particular circumstances of the case. The following circumstances will be considered when deciding whether to take action in relation to Category 2 hazards:

- A Category 2 hazard exists in addition to one or more Category 1 hazards;
- Where the occupier is at a specific risk from the hazard due to illness, disability or vulnerability (age group);
- Where the cumulative effect from multiple Category 2 hazards creates a more serious situation;
- Where the benefits of carrying out the work outweigh the costs of their execution;

- Where specific local hazards have been identified and targeted for action.

When a Category 1 hazard or relevant Category 2 hazard (as described above) is identified, the Council will decide which of the available enforcement options is most appropriate to use as described in 'Statutory Notices' below. We will consider the HHSRS Enforcement Guidance in order to reach this determination.

Following the identification of a significant HHSRS hazard, the Council may, as far as practically possible and reasonable according to the circumstances of the case, seek the views of occupiers, owners and interested parties on the hazard(s) identified and work required. These views will be taken into account when deciding the most appropriate course of enforcement action. Where the Council is confident that action will be taken to address the hazard within a reasonable time scale, it is appropriate to the circumstances of the case and it would not obstruct an occupier's right to protection under another piece of legislation, an informal enforcement approach may be taken in the first instance.

## SECTION 5 - ENFORCEMENT OPTIONS

Enforcement action taken will reflect the severity of the offence or nature of the breach, the perceived harm whether actual or potential, the responsible person's culpability and their compliance history.

We will take all necessary action to adequately protect the occupants' interest and provide an appropriate deterrent to offenders.

The Council follows the principles set out in the Macrory Review, which sets out that sanctions should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- aim to deter future non-compliance.

There are several types of action that can be taken in relation to any given case, and different action may be necessary as a case progresses. Each case will be considered on its own merits.

When deciding whether to take enforcement action we will;

- comply with relevant legislation,
- be transparent, consistent and accountable
- have regard to the Regulators' Code,
- consider the views of occupiers, owners and other agencies such as the Fire Authority, the Police and other council services,
- adopt a positive and proactive approach to support and protect tenants,
- take a co-ordinated approach where there are shared or complementary enforcement actions,
- consider the severity of the offence or nature of the breach,
- consider the perceived harm to health, safety, community confidence, finances, deprivation, or the environment whether actual or potential,
- consider the responsible person's culpability in relation to the offence and their compliance history regarding similar offences irrespective of where such contraventions have occurred.
- as far as the law allows, we will take account of the circumstances of the case and the conduct of the owner or agent when determining action,
- have regard to various courses of remedial action and consider what is 'reasonably practicable'

Outlined below are the main enforcement options available to officers. We take the approach that offenders should pay the cost of enforcement work, and that they should not profit from poor or criminal behaviour.

**5.1 Interventions**

**5.1.1 No Action** - Where we are unable to identify any actionable problem we will take no action.

**5.1.2 Informal Action** – will be considered where:

- Torbay Council's history of dealing with the specific issue demonstrates informal action will achieve compliance in a timely and persistent fashion.

  or
- there is demonstrable confidence in the management by the individual (issue is out of character and unlikely to be repeated).

  and
- the consequences of non-compliance will not pose a risk to health, safety, community confidence, finances, deprivation, the environment and or regulation.

  and
- there is no legislative requirement to serve formal notice or order.

With specific regard to the HHSRS and Part 1 of The HA2004; Torbay Council may offer an interim opportunity for a Landlord to complete works informally before a notice is considered.

**5.1.3 Statutory Notices (including Orders)** - Statutory notices will be issued under any of the following circumstances:

- Where the council has a duty to serve notice.
- Where statutory requirements have been breached.
- Where there is a serious risk to residents or the public.
- Where immediate remedial action needs to be taken.
- Where there is a history of non-compliance
- Where there is a lack of confidence in the effectiveness of an informal approach.

Owners or agents may be contacted and given an opportunity to remedy any problems before a statutory notice is served. However in some circumstances the council has a legal duty to serve a Notice, for example where a statutory nuisance or a Category 1 hazard under the HHSRS exists.

Realistic time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served.

In cases where there is an imminent risk to public health, notices may require immediate compliance.

An extension of time limits will only be granted where there are legitimate reasons for doing so. For example, prolonged bad weather delaying external works. Requests for extensions should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

The time limits given on statutory notices not requiring works such as notices requiring information will generally be no more than the minimum statutory period allowed.

Having regard to the relevant statutory power, and where the law allows, a charge may apply when we issue a statutory notice. Further details are set out in 'Charges, fees and cost recovery' in Section 5.7 below.

Where a Notice is served, information relating to the appeals process will accompany the notice.

If the notice served is an improvement notice under Part 1 of the HA2004, then works can be completed 'by agreement' as described by Part 1 of Schedule 3 of the HA2004. A decision as to whether to undertake

works in agreement will be made on a case by case basis taking into account the financial implications to the Council.

Where the requirements of a notice are not complied with, further action will considered, including works in default, the imposition of a civil penalty (where available) or the instigation of prosecution proceedings.

The following options are available under the Housing Act 2004;

- **Serve a Hazard Awareness Notice (HAN) under section 28 or 29.**

  This type of notice may be used for minor low scoring hazards. It may also be used to notify owners about more serious hazards.

- **Serve an Improvement Notice under section 11 or 12**

  This action will be the normal action taken in most cases where repair or improvement is the most appropriate course of action and there are category 1 or significant category 2 hazards. Situations where there are significant category 2 hazards are described in Section 4 above - 'Assessing Conditions'. Where action in relation to the fire hazard involves an HMO or the common parts of flats the council will consult with the Fire Authority.

- **Serve a Suspended Improvement Notice under section 14**

  We may decide to suspend an improvement notice where it is appropriate to do so. We will consider the HHSRS Enforcement Guidance in order to reach this determination.

- **Make a Prohibition Order under sections 20 and 21.**

  This action will be taken to prohibit the occupation of all or part of a building for a specified use by a particular number or description of persons (such as a certain age group) or by a defined number of households. This action will be taken when the cost of remedying the defect is excessive or it is not reasonably practicable to carry out works due to a landlords circumstances or the nature of the works required.

- **Make a Suspended Prohibition Order under section 23**

  We may decide to suspend a prohibition order where it is appropriate to do so. We will consider the HHSRS Enforcement Guidance in order to reach this determination.

- **Take Emergency Remedial Action under section 40**

  This action will only be taken where there is an imminent risk of serious harm. The Council will arrange for the hazard to be mitigated at the earliest opportunity. The officer will attempt to contact the owner first before taking such action but if they are unable to act immediately or cannot be contacted, action will be taken at the owners cost. A decision as to whether to undertake emergency action will be made on a case by case basis.

- **Make an Emergency Prohibition Order (EPO) under section 43**

  This action will be taken where there is an imminent risk of serious harm and it is not practicable or too costly to carry out works. This action will have the effect of preventing the use of part or all of the premises and would require immediate vacation of the property by the occupiers. A decision as to whether to make an EPO will be made on a case by case basis.

- **Make Management Orders under multiple sections**

  Interim Management Orders (IMOs) can be made where there is no realistic prospect of a property licence being granted. By making an IMO the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses. Following an IMO the Council can apply for a Final Management Order (FMO) to be approved that can last for up to five years. The Council may allocate a private company to manage the property.

  Where the health, safety and welfare of occupants need to be protected (as described by section 104), the council may apply to the First-tier Tribunal for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme.

  The Council may also make an IMO for properties where a banning order has been made.

  A type of management order can also be made for empty dwellings (see Chapter 2 of HA2004 and 'Empty homes' below).

- **Making a Demolition Order under section 265 (Housing Act 1985 as amended by section 46 Housing Act 2004)**

  This action will be taken when it is considered to be the most appropriate course of action, usually when there are one or more serious category 1 hazards, the property is usually detached or there is a building line separating it from other properties, the adjacent properties will be stable and weatherproof or can readily be made so, it is in a potentially unsustainable area or it is causing severe problems to the amenity of the neighbourhood and repair would be very costly, it is not listed or of other historical interest.

- **Declaring a Clearance Area under section 289 (Housing Act 1985 as amended by section 47 Housing Act 2004)**

  This action will be considered where similar circumstances to those for determining if a demolition order exist but where it is necessary for the Council to acquire the land either for its own purposes or to sell on for either new build or other purposes.

The following options are available under various other pieces of legislation;

- **Ensuring that a dwelling is connected to services by utilising Section 33 of Local Government Miscellaneous Provisions Act 1976**

The Council has the power to ensure the re-connection (or to prevent the disconnection) of the gas, electricity or water supply, to lettings within a tenanted property. These powers will only be used where the tenants are not responsible for payment of the bill. In properties occupied by a single tenant it is expected that he/she will arrange for a supply in their own name and reconnection by the Council will not normally be considered appropriate.

The owner of the property will be charged the cost of re-connection and/or payment of the bill plus interest. This debt will be recovered either by way of rent from tenants or in the civil court. A decision as to whether to undertake reconnection works will be made on a case by case basis.

- **Ensuring that a dwelling has adequate provision for drainage by utilising section 45 Public Health Act 1936 or section 59 Building Act 1984**

  Public Health Act 1936 - This allows the LA to take action in respect of defective WCs capable of repair. There is a power of entry in relation to these activities. Enforcement is by way of formal notice. Failing to comply with a notice can lead to work in default and prosecution with ongoing fine.

  Building Act 1984 - This allows the Local Authority to take action in relation to certain drainage defects. Enforcement is by way of formal notice. Failing to comply with a notice can lead to work in default, cost recovery and prosecution with ongoing fine.

- **Serve an abatement notice under section 80 of Environmental Protection Act 1990**

  A notice will be served where conditions are determined to be prejudicial to health or causing a nuisance.

  With regard to 'causing a nuisance' this might be where defects or conditions in one property affect another property or the general public.

  Where conditions are 'prejudicial to health' of either the occupiers or others affected by the conditions of a residential premises, we may use this power in preference to the Housing Act 2004. Typical situations where this legislation is likely to be used are where there is not an imminent risk of serious harm but where a 28 day delay is considered too long (such as boiler breakdowns or nuisance to neighbouring properties).

  Enforcement for failing to comply with a notice may include the Council undertaking works and recovering the costs incurred and/or bringing a prosecution.

- **Ensuring the provision of appropriate alarms utilising the Smoke and Carbon Monoxide Alarms (England) regulations**

  Private sector landlords are required to ensure that smoke alarms and carbon monoxide alarms (if required) are installed and then checked at the start of any new tenancy. Where the council has reasonable grounds to believe a landlord is breach of these requirements there is a duty to serve a remedial notice.

Failure to comply with a remedial notice will lead to the issuing of a Civil Penalty. In order to determine the amount of the penalty the LA must have a Statement of Principles in place. This statement is presented as Appendix 2.

Licensable HMOs are subject to separate, and more stringent, regulations under the Housing Act 2004.

The interventions described above are those most readily used however Torbay Council will consider the use of any appropriate legislation which it is authorised to use.

**5.2 Non-compliance**

**5.2.1 Energy Efficiency Enforcement Notices** – The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018 and all tenancies from April 2020.

The current domestic regulations are based on a principle that landlords are expected to meet the costs of improving energy efficiency, subject to a cap. This is an area of enforcement policy we will keep under review.

Where a valid exemption applies, landlords are required to register this on the national PRS Exemptions Register.

Where properties do not meet the minimum level of energy efficiency we may issue a compliance notice requesting information. Where we are satisfied that a property has been let in breach of the regulations we may impose financial penalties.

**5.2.2 Illegal eviction and harassment –** The council has powers to investigate and prosecute offences of illegal eviction, harassment and offences committed by letting or management agents under the Protection from Eviction Act 1977.

An illegal eviction is where a landlord evicts a residential occupier without following the correct procedure.

Harassment is where a landlord tries to make a residential occupier decide to leave. This could be by an act or threat of violence or withdrawing services.

The Deregulation Act 2015 has introduced a number of requirements on landlords of private tenants, including the requirement to provide an energy performance certificate, Gas Safety certificate and a copy of the 'How to Rent' guide before a tenancy starts.

Where this information has failed to be given at the beginning of the tenancy or the tenant occupies a Licensable HMO without a license, the landlord will not be able to evict using a section 21 notice, the so called "no fault" eviction procedure.

The Deregulation Act 2015 also provides protection for tenants who make a legitimate complaint to their landlord about the condition of their property and in response, instead of making the repair, their landlord serves them with an eviction notice. This is referred to as retaliatory eviction.

We will take appropriate action to prevent homelessness where landlords have not followed the correct procedures or attempt a retaliatory eviction. If the occupier has been illegally evicted, we will explain their rights to re-enter the premises and may assist them to do so. We will also consider taking the relevant formal action such as undertaking a prosecution. Unlike other legislative provisions described

within this policy, a conviction under the Protection from Eviction Act 1977 may result in a custodial sentence.

Where a conviction has been secured relating to the use of violence to secure entry contrary to section 6(1) of the Criminal Law Act 1977 or unlawful eviction or harassment of occupiers contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977 we will seek a Rent Repayment Order as described below.

**5.2.3** **Redress Schemes for letting agency and property management work -** The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 makes it a legal requirement for all lettings agents and property managers in England to belong to a Government-approved redress scheme.

Torbay Council may seek to establish whether letting agents and property managers belong to an appropriate scheme on a case by basis or by pro-actively reviewing multiple businesses.

When enforcing this legislation we will have regard to Annex C of the guidance document produced by Department for Communities and Local Government titled Improving the private rented sector and tackling bad practice.

Where we are satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined one, we will impose a fine.

If there are no extenuating circumstances, the fine will normally be £5000. This fine may also be repeated if non-compliance continues.

**5.2.4** **Works in Default** – The Council will consider carrying out works in default or remedial action in the following circumstances;

- Emergency Remedial action under the Housing Act 2004 (as described above);
- Where actions have been required by a Notice and have not been completed within the agreed timescale, or, reasonable progress has not been made towards their completion.

In these circumstances, the Council may organise and carry out the work itself or appoint an agent to complete the work on its behalf and recover the cost of works plus all additional costs including agency fees, administration fees and any interest accrued where payment has not been received promptly. These costs will be charged to the property owner but can also be placed as a land charge on the property for payment when the property is sold or if money is raised against it. As part of the debt recovery process we may seek to enforce the sale of a property depending upon the circumstances.

A decision as to whether to undertake works in default will be made on a case by case basis.

The Council may also consider prosecution or a financial penalty in addition to carrying out works in default. Following the carrying out of works in default the Council may pursue enforced sale of a property where the legislation allows.

**5.2.5** **Simple Cautions -** The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence but the public interest does not require a prosecution. It may be used for cases involving first time, low-level offences. Decisions to issue Simple Cautions will be made in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders and the Director of Public Prosecutions' Guidance on Charging.

**5.2.6** **Prosecution** - Where there is a breach of a legal requirement and we consider that formal action is required we may seek to prosecute the offender. Prosecution will generally be reserved for the most serious cases or where the nature of the breach is obstructive to the investigation. These include failures to manage property effectively so as to protect occupiers, failure to provide documentation or

information required by notice or failure to comply with the requirements of an improvement, enforcement, or prohibition notice.

Any decision to prosecute will be taken in accordance with the Regulators Code, this policy and the Code for Crown Prosecutors.

The following factors will be taken into account in any such decision:

- The severity of the offence;
    - The length of time over which the offence has been committed
    - perceived harm to health, safety, community confidence, finances, deprivation, or the environment whether actual or potential
    - Vulnerability of those effected by the offence.
- The culpability of the offender;
- The previous compliance history of the offender;
- Whether the offence is likely to be repeated;
    - The attitude of the offender
    - The extent of their portfolio of property
    - Deterrent effect of a prosecution on the offender and others
- Whether an alternative intervention would be more appropriate or effective;
- Any evidence of the obstruction of the officers or threats made to them or others involved in the investigation; and
- The financial benefit obtained from the alleged offending.

These factors are not exhaustive and those that apply will depend on the particular circumstances of each case.

**5.2.7** **Civil penalties** - The council may as an alternative to prosecution, serve notices imposing Civil Penalties of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Offences relating to the licensing of Houses in Multiple Occupation (HMOs)
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order

The council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above. Examples of situations in which a decision to prosecute would normally be taken includes where the breach is considered particularly serious and /or the offender has committed similar offences in the past.

In circumstances where the council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty will be calculated in accordance with the details of Torbay Council's Civil Penalty Policy.

**5.2.8** **Rent Repayment Orders (RRO) -** A rent repayment order is an order made by the First-tier Tribunal (FtT) requiring a landlord to repay a specified amount of rent to either the tenant, the local authority or a share to both dependent upon who made payments. Where a conviction has been secured, the FtT, on application, must grant the RRO. Where a Civil Penalty has been secured, the FtT, on application, may decide to grant an RRO. The offences for which an application for an RRO can be made are:

- Using violence to secure entry contrary to section 6(1) of the Criminal Law Act 1977;
- Unlawful eviction or harassment of occupiers contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977;

- Failure to comply with an Improvement Notice issued under the Housing Act 2004;
- Failure to comply with a Prohibition Order issued under the Housing Act 2004;
- Operating a licensable property under the Housing Act 2004 without a licence;
- Breaching a banning order issued under the Housing and Planning Act 2016.

We will always apply for a RRO where a landlord has been convicted (or a Civil Penalty secured) of one of the above offences in our area.

The Council will also consider supporting a tenant's private application for a RRO. This support is likely to be in the form of confirmation of the outcome of any investigation we have undertaken and the supply of documents as evidence. A decision on how and if to provide support will be made on a case by case basis taking into account the vulnerability of the occupant, the likelihood of success and the financial implications to the Council. Please see 'Giving evidence in private court cases' in Section 5.5 below.

**5.2.9** **Banning orders** - In accordance with the Housing and Planning Act 2016, the Council may apply to the First-tier Tribunal for a banning order against a residential landlord or a property agent who has been convicted of a banning order offence.

A banning order bans a landlord or property agent from letting houses or engaging in letting agency or property management work in England for a defined period of time (minimum 12 months).

In deciding whether to apply for a banning order and how long to recommend the ban for, we will have regard to Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities.

If we decide to apply for a banning order, we will complete the procedure set out in Section 15 of the Housing and Planning Act 2016.

Breaching a banning order is an offence, subject to either prosecution in the magistrate's court or financial penalty. The Council will consider prosecuting or issuing a financial penalty to any landlord found to be breaching a banning order in its area.

**5.2.10** **Database of rogues landlords and property agents** - The database has been designed to help Local Housing Authorities keep track of rogue landlords and property agents operating across council boundaries.

The Council must place a person on the database if it has successfully made a banning order application. The landlord will remain on the database for the period that the banning order has effect.

Furthermore we will consider if it is appropriate to make an entry on to the database of rogue landlords and property agents when a landlord has been convicted of a banning order offence (even if no Banning Order is sought) or received 2 or more financial penalties over a 12 month period.

In deciding whether to make an entry on the database, and the period of time that a landlord or property agent should stay on the database, we will have regard to the Database of rogue landlords and property agents under the Housing and Planning Act 2016 - Statutory guidance for Local Housing Authorities.

**5.2.11** **Proceeds of Crime Act 2002 -** Where appropriate to the case, the Council, will consider taking proceedings under the Proceeds of Crime Act following a successful prosecution.

## SECTION 6 – FURTHER SERVICE INFORMATION

### 6.1 Owner occupiers and long leaseholders

Other than in exceptional cases, the council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves.

Leaseholders may be able to get advice about how to settle a dispute about repair problems from the:

Leasehold Advisory Service –

www.lease-advice.org

Telephone 020 7832 2500

Leaseholders will normally need to consult a solicitor specialising in leasehold law.

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. The Council will generally not take action where a more appropriate contractual remedy exists.

Where a HHSRS inspection identifies a significant hazard, the Council anticipates that a Hazard Awareness Notice may be the most appropriate course of action. However, all HA2004 Part 1 enforcement options are available to the Council and will be considered.

Enforcement options requiring action to be taken such as an Improvement Notice or Prohibition Order will be considered in cases involving:

- Vulnerable people who are not capable of making informed decisions about their own welfare or who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect other people e.g. other occupants, visitors (private or commercial/services);
- Serious risk of life-threatening harm e.g. electrical hazards.

Where the condition of one property is affecting the occupant of another property or the general public, such as a health and safety hazard or statutory nuisance, appropriate enforcement action will be considered regardless of property tenure.

### 6.2 Empty homes

Where an empty property presents a serious or imminent risk to health and safety or is causing a statutory nuisance, appropriate enforcement action will be considered depending on the circumstances of each case.

The Council will consider the full range of enforcement options including Compulsory Purchase Orders, Empty Dwelling Management Orders (EDMOs) and enforced sale where an owner does not co-operate and the empty property has not been brought back into use within a reasonable period.

### 6.3 Immigration visits

Torbay Council provides an inspection service for immigration/visa applicants who need to provide evidence that they have suitable housing accommodation within the United Kingdom. This evidence must show that the premises they intend to occupy doesn't have any Category One hazards under the HHSRS (e.g. unfit accommodation) and will not become overcrowded when they take up residence.

In situations where we are not satisfied that the accommodation is suitable we will confirm this to the person commissioning the inspection.

As the inspection will have been conducted using the HHSRS we will have a duty to consider whether any further action is required as described by ‘Assessing condition’ above. This is irrespective of tenure.

Where the property becomes suitable following remediation, a further inspection may be commissioned enabling supporting evidence to be submitted.

### 6.4 Fitness for human habitation legislation

The Homes (Fitness for Human Habitation) Act 2018 came into force on 20 March 2019 and requires all landlords (private and social) to ensure that their properties, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout.

Where qualifying tenants believe that their home does not meet the requirements set out in the above act and their landlord is responsible, they can take action against the landlord themselves.

The Ministry of Housing, Communities & Local Government have produced a guidance document for tenants; Guide for tenants: Homes (Fitness for Human Habitation) Act 2018 and for landlords; Guide for landlords: Homes (Fitness for Human Habitation) Act 2018 which are both available at **www.gov.uk**

It is not necessary for the local authority to be involved in action under this act however in certain circumstances we may decide to offer support.

This support is likely to be in the form of confirmation of the outcome of any investigation we have undertaken and the supply of documents as evidence. A decision on how and if to provide support will be made on a case by case basis taking into account the vulnerability of the occupant, the likelihood of success and the financial implications to the Council. Please see 'Giving evidence in private court cases' below.

### 6.5 Giving evidence in private court cases

Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. In order to prevent the appearance of the council taking sides in such disputes, officers will usually only attend court in response to a witness summons.

### 6.6 Situations where we may not provide a service

There may be occasions where an investigating officer cannot substantiate the complaint. When this arises, the council will not take any further action.

We may decide not to provide a service or to cease providing a service where;

- there is clear evidence that the tenant(s) are unreasonably refusing access to the landlord, managing agent or landlord's builder, attempting to comply with our instruction,
- there is clear evidence that the tenant(s) have, caused the damage to the property they are complaining about, and there are no other items of disrepair,
- a tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Torbay Council is to secure rehousing,
- the tenant(s) have failed to keep an appointment and not responded to a follow up letter or appointment card;
- the tenant unreasonably refuses to provide the council with relevant documentation, e.g. a tenancy agreement or notice seeking possession.
- the tenant(s) have been aggressive, threatening, verbally or physically abusive or shown inappropriate behaviour towards officers.

### 6.7 Charges, fees and cost recovery

- **Charging for services** - The Council has the power under the Housing Act 2004 to recover costs for serving notices. Charges are based on the full cost to the Council of taking the action including inspection, preparation and service of the notices.

  Charges for the above action will be registered as a local land charge. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

There are also charges associated with the licensing of Houses in Multiple Occupation.

These charges will be made in line with our published fees and charges.

- **Recovery of costs –** Where the council has incurred costs by undertaking works in default or by taking action to ensure vital services are maintained (reconnection works/payment of a bill) we will recover these costs in addition to any administration costs, agency fees, interest accrued or costs associated with the recovery.

  Costs associated with the above action will be registered as a local land charge. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

- **Unpaid debts and invoices -** We will pursue all debts owed as a result of enforcement charges, costs and charges associated with carrying out works, unpaid invoices or unpaid financial penalties.

  The Council may consider enforcing the sale of the property to recover costs or recovering the money owed in the relevant Court, including the County Court.

### 6.8 Publicising Offences

As a regulatory authority, the Council has a responsibility to protect the public from detrimental housing and environmental practice and undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter the commission of offences.

One such measure is the publication of convictions and information.

Media coverage will normally be sought in any of the following circumstances:

- Where an offence is widespread in the area and coverage will assist in securing compliance by others.
- The offence is serious and the council wishes to draw attention to their willingness to deal with contraventions and offenders.
- Where it is considered that publicity will have the desire effect by promoting compliance with enforcement standards generally.
- Details of successful prosecution cases and in some circumstances civil penalty notices will be entered onto relevant public databases.

### 6.9 Feedback

If you would like to give Torbay Council feedback on this policy or its services you may do so via our website **https://www.torbay.gov.uk/complaints-and-compliments/** by email; **infocompliance@torbay.gov.uk** or by writing to us at;

Information Compliance Team

Torbay Council

Town Hall

Castle Circus

Torquay

TQ1 3DR

### 6.10 Associated Documents

Civil Penalty Policy

HMO policy

Fees and Charges

## APPENDIX 1

**Complaints regarding Social Housing;**

Tenants of Registered Providers (Housing Associations) have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner, including a complaints procedure and a final right of appeal to the Housing Ombudsman Service. Further detail and useful links are set out below.

**Regulation of Social Housing;**

Social housing providers are overseen by the Regulator of Social Housing and since the Housing Act 1996, the Housing Ombudsman.

More information on the two regulators can be found here;
https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-regulator-of-social-housing-and-the-housing-ombudsman

**Housing complaints;**

Section 180 of the Localism Act 2011 amends the Housing Act 1996 confirming that complaints by occupiers of social housing are to be conducted in a particular way; by following the internal complaints procedure, by use of designated persons and then if necessary by use of Housing Ombudsman. The appropriate act is here;
http://www.legislation.gov.uk/ukpga/2011/20/part/7/chapter/6/enacted

**Designated persons;**

Designated persons were introduced under the Localism Act 2011 to improve the chances of complaints about housing being resolved directly between landlord and tenant (with designated person's assistance).

A designated person can be an MP, a local councillor, or a tenant panel.

If no resolution is achieved the designated person can refer the issue to the housing ombudsman.

https://www.housing-ombudsman.org.uk/useful-tools/fact-sheets/3123-2/

Designated persons role is to act as advisors and advocates. The process to be followed is set out here;
https://www.housing-ombudsman.org.uk/useful-tools/fact-sheets/advisors-and-advocates/

## APPENDIX 2

**Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

**Introduction**

This statement sets out the principles that the Torbay Council (the council) will apply in exercising its powers under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ("the Regulations").

**Purpose**

The council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge.

The council may revise its statement of principles at any time, but where it does so, it must publish the revised statement.

When deciding on the amount to be applied as a penalty charge, the council will have regard to the statement of principles in force at the time the breach occurred.

**The duties**

The regulations impose the following duties on certain landlords of a residential property of a specified tenancy, namely to ensure that:

- a smoke alarm is installed on each storey of the premises where there is living accommodation (for these purposes living accommodation includes bathrooms and lavatories)
- a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation and which contains a solid fuel burning combustion appliance.
- that at the start of any new tenancy, checks are made by the landlord, or someone acting on his behalf, that the alarm(s) serving the premises is/are in proper working order

Properties subject to Part 2 or Part 3 licensing under the Housing Act 2004 (i.e. as licensable Houses in Multiple Occupation) are exempt from the Regulations.

**The legal framework**

Where the council has reasonable grounds for believing that a landlord is in breach of one or more of the above duties, we have a duty to serve that person with a Remedial Notice within 21 days detailing the actions that must be taken to comply with the Regulations.

For the purposes of this provision, 'reasonable grounds' may include being informed by a tenant, letting agent or officer that the required alarms are not installed. The regulations do not require that the council enter the property or prove non-compliance in order to issue a remedial notice, however, the council will aim to visit such properties to confirm that the required works have not been undertaken.

Where the council is satisfied on the balance of probabilities that a landlord has not taken the remedial action specified in the Notice, within the timescale stipulated in that document, the council will:

- Arrange (where the occupier consents) to undertake the remedial action specified in the Notice within 28 days; and
- Require the landlord to pay a penalty charge of such amount as the authority may determine but which must not exceed £5000.

**The purpose of imposing a financial penalty**

- The primary purpose of the council exercising its regulatory power is to promote and protect the public interest.
- The primary aims of financial penalties are to:
    - lower the risk to tenants health and safety by ensuring that the property has a safe means of escape in the event of a fire
    - eliminate any financial gain or benefit from non-compliance with the regulation
    - reimburse the costs incurred by the council in enforcing the regulations
    - change the behaviour of the landlord and deter future non-compliance
    - penalise the landlord for not installing alarms in line with the Regulations and after being required to do so, under notice
    - proportionately address potential harm outcomes and the nature of the breach.

**Principles to be followed in determining the amount of a Penalty Charge**

Any penalty charge imposed should be proportionate to the risk posed by non-compliance, the nature of the breach in the individual case and set at such a level as to sufficiently deter the offender and others. It should also cover the costs incurred by the council in administering and implementing the legislation.

Fire and Carbon Monoxide poisoning are two of the 29 hazards prescribed by the Housing Health and Safety Rating System. These risks are real and substantial: A bulletin issued by the Home Office in 2017 (Fire Statistics: England April 2015 to March 2016) reports that: “Fires where a smoke alarm was not present accounted for 28 per cent of all dwelling fires and 33 per cent (76) of all dwelling fire-related fatalities in 2015/16” and that, “Fires where a smoke alarm was present but either did not operate or did not raise the alarm, accounted for 31 per cent of all dwelling fires….” Moreover, according to the Office for National Statistics, there were 53 deaths from accidental carbon monoxide poisoning in England and Wales in 2015.

The Department of Communities and Local Government conducted an impact assessment prior to the introduction of the Regulations. That assessment suggested that the cost of the requirements imposed on landlords (i.e. the purchase of smoke detectors and carbon monoxide alarms) was £25 and estimated that the provision of smoke alarms would, over ten years, prevent 231 deaths and 5860 injuries, accruing a saving of almost £607.7 million, and that the provision of Carbon Monoxide Alarms would, over the same period, prevent a total of six to nine deaths and 306 to 460 injuries, accruing a saving of almost £6.8 million.

The council considers that compliance with the Regulations do not place an excessive or unreasonable burden on a landlord. The cost of the alarms is low and in many cases can be self-installed without the need for a professional contractor. The risk and impact on occupiers resulting from a fire or carbon monoxide poisoning event far out-weighs the cost of compliance. While the imposition of the maximum potential fixed penalty charge of £5,000 may present an excessive financial burden on some landlords, this has to be balanced against the risk, the low cost of compliance, the fact that the offender will have been given all reasonable opportunity to comply prior to any penalty charge being levied and the offenders statutory rights of appeal.

For all of the above reasons, and so as to ensure that there is an effective incentive for landlord’s to comply with the Regulations, the council proposes to impose a penalty charge of £5,000 for non-compliance with a Remedial Notice, with a reduction of 10% where payment is received within 14 days of service of the penalty charge notice.

Notwithstanding the above, the council may, following a representation made by the landlord, exercise discretion and reduce the penalty charge further if it considers there to be extenuating circumstances.

This discretion will not however apply when:

1. The person served has obstructed the council in the carrying out of its duties; and/or

2. The person served has previously received a penalty charge under this legislation.

**Review and Appeals in relation to a penalty charge notice**

If a landlord disputes the issue of a penalty charge notice, they can make a request to the council for it to be reviewed. This request must be in writing and within the time period specified in the penalty charge notice. Any representation received will be considered on its individual merit. Any extenuating circumstances will be considered by the council in deciding whether to reduce the level of the penalty charge levied. Potential mitigating factors –

- No previous convictions / charges
- Self-reporting, high level of co-operation with the investigation – where this goes beyond what would normally be expected
- The age health and other vulnerabilities of the offender
- Voluntary steps taken to address issue

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if he can demonstrate that he has taken all reasonable steps to comply with the requirements of the remedial notice.

The council may, on consideration of any representation and evidence, chose to confirm, vary or withdraw a penalty charge notice and we are required to communicate that determination by issuing a decision notice on the landlord. If varied or confirmed, the decision notice must state that a further appeal can be made to a First Tier Tribunal on the following grounds:

1) the decision to confirm or vary the penalty charge notice was based on an error of fact;

2) the decision was wrong in law;

3) the amount of penalty charge is unreasonable; or

4) the decision was unreasonable for any other reason

Where a landlord raises an appeal to the Tribunal, the operation of the penalty charge notice is suspended pending its determination or its withdrawal. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

**Recovery of penalty charge**

The council may recover the penalty charge on the order of a court, as if payable under a court order however such proceedings may not be started before the end of the period by which a landlord may give written notice for the council to review the penalty charge notice and where a landlord subsequently appeals to the Tribunal, not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.