Service Specific Housing Enforcement Policy

DRAFT for approval – June 2018

Working for a brighter future together

Cheshire East Council

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1. Introduction

The private rented sector is an important part of our housing market. We (Cheshire East Council) share the Government's aim to support good landlords and avoid unnecessary regulation for those landlords who provide decent well maintained homes, but recognise that a small number of landlords knowingly rent out unsafe and substandard accommodation.

The Council's overarching Enforcement Policy outlines the approach to enforcement across a wide range of activities and highlights that effective and well-targeted regulation is essential in promoting fairness and protection from harm.

This policy provides details of our approach to regulating housing standards in Cheshire East and confirms that:

- The Council will provide awareness, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations before embarking on the enforcement process.
- The Council is committed to carrying out its duties in a fair and consistent manner and ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements.
- The decision to use enforcement action will depend on the severity of the non-compliance.

The aim of this policy is to ensure that regulation and enforcement of housing standards is consistent, risk-based, targeted and proportionate and is carried out in line with the Council's Enforcement Policy and other relevant detailed guidance, such as the Housing Health and Safety Rating System (HHSRS) Enforcement Guidance and HHSRS Operating Guidance.

2. General principles and matters to be taken into account when regulating housing conditions

a) Is advice and guidance sufficient to resolve matters?

General information, advice and guidance will be provided in clear, concise and accessible language, using a range of appropriate formats and media.

We will organise and provide events specifically for landlords and letting agents to provide updates and information on good practice and legislative changes.

When offering advice we will distinguish between statutory requirements and discretionary good practice.

Detailed advice such as fire safety risk assessments, floor plans or schedules detailing the work that would be required to let a House in Multiple Occupation (HMO) are available as a chargeable service.

b) Establishing the risks

Suitably trained officers will use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions.

Following receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out and any follow up advice or action will depend on the outcome of this initial assessment.

c) Inspection of housing conditions

Inspections will take place in response to:

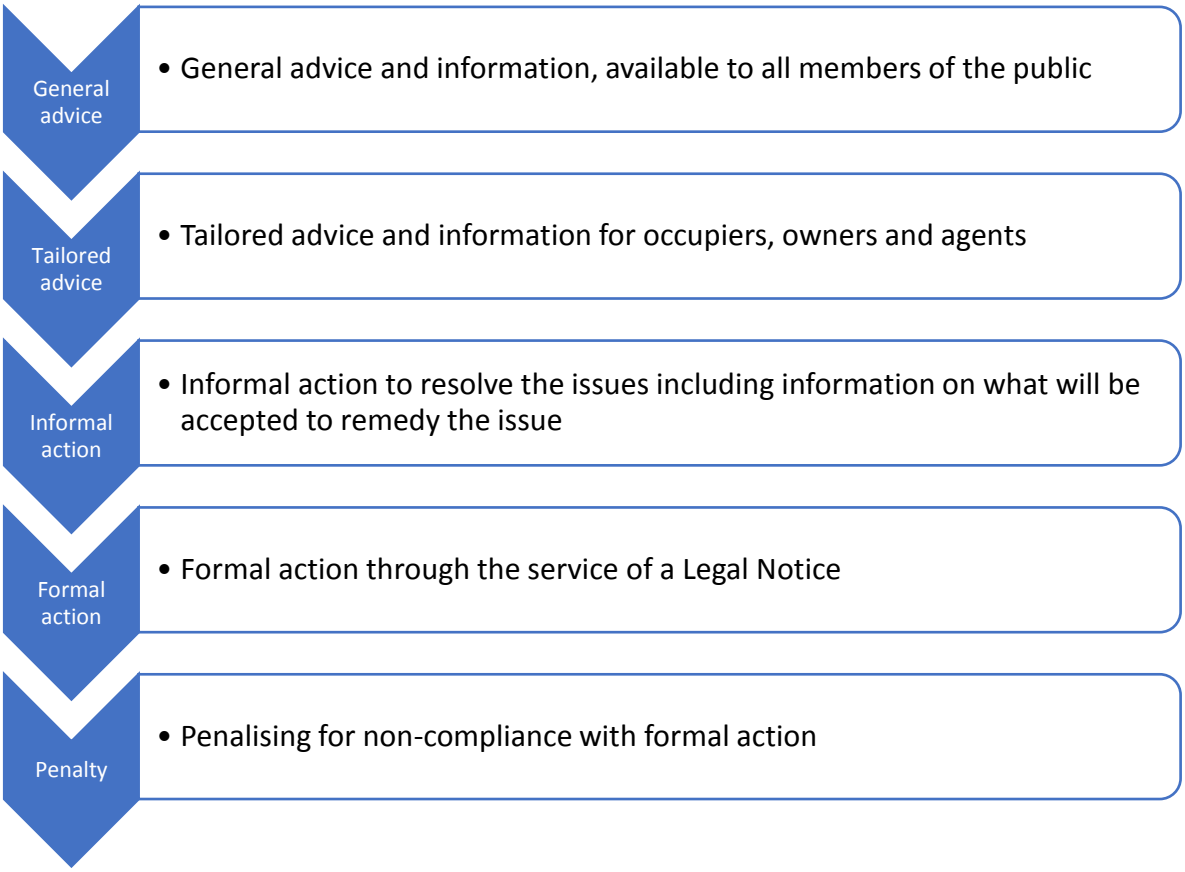
- A service request from a tenant or landlord;
- Where poor conditions have been brought to our attention by a third party;
- As a result of a risk based inspection programme; and/or
- In accordance with statutory inspection requirements.

Unless the visit is intended for advice purposes only, the landlord or their agent will be given the opportunity to accompany the investigating officer at the visit. Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices.

d) Compliance and enforcement actions

By taking a stepped approach to enforcement and working with landlords and their agents to bring about improvements to rented housing, we aim to achieve a good, safe standard of housing and reducing the need for remedial enforcement actions. Resources will be targeted at those that deliberately or persistently breach housing legislation.

For clarity, our stepped approach to enforcement is set out below; where each step is not successful, further action in the stepped approach will be considered on each of their merits:



This is a summary of our approach and will be tailored according to the powers set out in the applicable legislation and the merits of each case.

There will be occasions where the severity of the hazard or breach of legislation necessitates swifter action, such as an imminent risk to health and safety, and the stepped approach may commence at an advanced level. We will take all reasonable steps to discuss our actions with the landlord or their agent and seek to resolve this without our intervention.

We will ensure that clear reasons for, and any implications of, enforcement action are given and complaints and appeals procedures are explained at the same time.

If a notice is complied with, no further action will be taken. However if the notice is not complied with and there is no reasonable excuse for non-compliance, we will consider using one or more of the following options:

- Prosecution;
- Civil penalty (Appendix B);
- Carrying out the works in default and recovering costs;
- Cautioning the owner;
- Rent repayment order (Appendix C);
- Banning Order (Appendix D);
- Making an entry on the database of rogue landlords (Appendix E).

e) Partnership working

Partnership working with like-minded agencies and departments will lead to safe and healthy communities and will ensure consistent and targeted enforcement. We will ensure that partnership links are developed and maintained and will co-ordinate with other enforcement authorities operating in Cheshire East.

Matters concerning non-compliance may be shared with other enforcement agencies where it is appropriate and in the public interest to do so. All data sharing will be processed in line with data protection regulations and our safeguarding duties.

f) Consideration of tenure

All legislation set out in Section 3 below is available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Provider of social housing. However, we consider that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly, whereas tenants do not have the legal responsibility to maintain their home and are in a contractual relationship with a landlord whose duty it is to provide a well maintained home that is free from hazards.

For this reason the Council judges that it is appropriate for its powers to be used differently according to tenure, as follows:

Private Rented Sector

The private rented sector is our primary focus for regulating housing standards. There are many responsible private landlords that offer good management and accommodation standards. In some instances however, standards offered by landlords can fall below what is expected. As private landlords do not generally have access to in-house maintenance teams, they can have an ad-hoc approach to repairs and maintenance. Disappointingly, there is a small proportion of private landlords who either do not understand their legal responsibilities when providing housing, or deliberately ignore their duties. A high level risk analysis dictates that the private rented sector deserves more of our focus than other sectors, and we also apply that risk based approach further within the sector to target our resources to the worst conditions.

We will seek to ensure that the tenant has taken all necessary steps to inform the landlord of any disrepair before intervening, and will provide guidance to the tenant on what is expected from them.

Following an inspection, if we are satisfied with the landlord's proposals and timescales for work to be completed, and provided matters then proceed to a satisfactory conclusion, we will not normally need to take any further action.

We will proceed with formal action to remedy housing conditions if:

- There is no response from the landlord/agent;
- Their response is judged inadequate; or

- Accepted proposals are not fulfilled (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard).

Formal action will be initiated immediately if:

- The housing conditions pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or;
- The landlord / agent in question is known to have previously failed to take appropriate action in response to an informal approach.

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to us. The failure of an agent to respond to communication from us or any failure to take appropriate action may be treated as a failure by the landlord.

Owner-Occupiers

Other than in exceptional cases, we expect owner-occupiers, including long leaseholders, to take their own action to remedy problems of disrepair or nuisance. Financial support is provided for vulnerable homeowners through the Home Repairs and Adaptations for Vulnerable People: Financial Assistance Policy, and practical support is provided by our Care & Repair service.

Where legal intervention is needed, we anticipate that Hazard Awareness Notices served under the Housing Act 2004 will frequently be the appropriate course of action, together with assistance through the Care & Repair service. However, the use of formal action will be considered in cases involving:

- Vulnerable or elderly people who are judged as not having the capacity to make informed decisions about their own welfare or the safety of others;
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect persons other than the occupants; or
- Serious risk of life-threatening harm.

Social Rented Sector

Registered Providers typically provide a high standard of accommodation for their tenants, and their management is subject to regulation by other bodies.

We will not normally take formal action against a Registered Provider unless we are satisfied that the problem in question has been properly reported to the Registered Provider who has then failed to take appropriate action.

If we determine that it is appropriate to take action, we will notify the Registered Provider that a complaint has been received and/or a hazard identified and seek their comments and proposals. Where an unsatisfactory response is received, we may take further action in a stepped approach.

g) Consideration of the occupier's actions and views

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to carry out their obligations under the legislation, unless they have been made aware of the problem.

Before we consider taking any action in respect of a tenanted property, we expect that normally the tenant has contacted the landlord first, and given the landlord reasonable opportunity to remedy the problems.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will still try to contact their landlord, even if this is after they have contacted the Council.

In exceptional circumstances we will not insist on tenants contacting their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice;
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household;
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent; or
- Where the property is a licensable HMO.

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action we will take. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord / agent.

h) Consideration of whether it is reasonable and appropriate to intervene

Where any of the following situations arise, consideration will be given to whether it is reasonable and/or appropriate to intervene in the regulation of housing standards:

- Where the tenant unreasonably refuses access to the landlord, managing agent or contractor to arrange or carry out works;
- Where the tenant has, in our reasonable opinion, caused the damage to the property, and there are no other items of disrepair;
- Where the tenant repeatedly fails to keep an appointment and/or not responded to any follow up contact;
- Where the tenant has been aggressive, threatening, verbally or physically abusive towards officers;
- Where there is found to be no justification for the complaint regarding housing conditions; or
- Where the tenant unreasonably refuses to us with relevant documentation that is necessary for us to carry out our duties.

3. Housing Enforcement Legislation

Housing Act 2004

The Housing Act 2004 is the primary piece of legislation used in regulating housing standards. More detail is included at Appendix A.

The Housing Health and Safety Rating System (HHSRS) is the method for assessing, rating and categorising hazards (category 1 or category 2) found in dwellings, the service of statutory notices and the undertaking of emergency remedial action.

Mandatory licensing of Houses in Multiple Occupation (HMOs) is detailed in Part 2 of the Act.

Housing Act 1985

The Housing Act 1985 may be used to declare Clearance Areas or Demolition Orders. Part 10 of the Act is used to deal with overcrowding.

Local Government (Miscellaneous Provisions) Act 1976

A Requisition for Information Notice requires the recipient to disclose their interest in a particular property or land and that of any other person who they believe may have an interest.

Local Government (Miscellaneous Provisions) Act 1982

Section 29 provides us with the power to secure a property that is not effectively secure against unauthorised entry.

Environmental Protection Act 1990

Section 80 enables us to deal with properties that are injurious or prejudicial to health or causing a statutory nuisance.

Town and Country Planning Act 1990

Section 215 enables us to deal with the poor and unsightly condition of properties and/or land that are judged to be detrimental to the local amenity.

Prevention of Damage by Pest Act 1949

Enables us to remove article(s) that are considered putrescible or offering harbourage to pests, either within a premise or on the land around.

Public Health Act 1961

Sections 16-18 provides emergency powers for us to deal with blocked drains.

Public Health Act 1936

Section 45 provides for the service of a Notice to repair and/or cleanse a defective water closet that is in such condition as to be prejudicial to health or a nuisance;

Section 50 provides a power to deal with overflowing/leaking cesspools.

Building Act 1984

Section 59 provides powers to deal with defective drainage including gutters and down pipes.

Section 64 provides a duty to serve a Notice requiring the provision of water closets in a dwelling where insufficient facilities exist.

Section 63 covers water closets, drains and soil pipes improperly constructed or repaired and in such a state as to be prejudicial to health or a nuisance.

Section 76 covers dealing with premises that are prejudicial to health or a nuisance.

Section 79 covers ruinous or dilapidated buildings and neglected sites.

Protection from Eviction Act 1977

Section 1 provides powers to deal with landlords and/or their agent who unlawfully evict or harassment a tenant or a member of their household.

Landlord and Tenant Act 1985

Section 11 implies a covenant into all leases of less than seven years. Landlords must keep in repair the structure and exterior of the dwelling (including drains, gutters and external pipes) and keep in repair and in proper working order the installations in the house for the provision of water, heating, electricity, gas and sanitation (including basins, sinks, baths and sanitary conveniences).

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

From 1 October 2015, private sector landlords are required to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

From April 2018, private landlords must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. These requirements will then apply to all private rented properties– even where there has been no change in tenancy arrangements – from 1 April 2020 for domestic properties. More details can be found at Appendix F.

Housing and Planning Act 2016

A range of new powers have been introduced to strengthen enforcement in the private rented sector: Civil Penalties of up to £30,000 as an alternative to prosecution for certain housing offences (Appendix B)**;** the extension of Rent Repayment Orders to cover more housing offences (Appendix C); Banning Orders of at least twelve months preventing landlords from letting properties (Appendix D); and a national Database of Rogue Landlords (Appendix E).

4. Houses in Multiple Occupation

A house in multiple occupation (HMO) is defined as a dwelling that is occupied by 3 or more occupants forming at least 2 households, and has shared facilities such as a bathroom, wc or kitchen.

Where a HMO meets a prescribed definition, the Housing Act 2004 stipulates that the property must have a valid licence. Up to 30 September 2018 the prescribed definition is a HMO that is at least 3 storeys with 5 or more occupants. From 1 October 2018, the prescribed definition changes to any HMO with 5 or more occupants – bringing single storey and two storey properties within the prescribed definition.

The aim of licensing is to ensure that larger HMOs, which inherently present a higher risk, are properly managed and provide greater protection for the health, safety and welfare of the occupants and visitors.

We will take all reasonable steps to make landlords aware of their duty to apply for a licence, but the onus is on the person who has control of the HMO, and/or is managing the HMO, to apply to us for a licence. Operating a licensable HMO without a licence is an offence which is punishable through a number of options:

- a conviction and an unlimited fine;
- a civil penalty of up to £30,000 (Appendix B);
- Rent repayment order for any rent received for the property for up to a maximum of 12 months (Appendix C);
- Management order to take control of the property;
- Banning order (Appendix D);
- Entry on the database of rogue landlords (Appendix E).

Applications for Licences

A licence application will be considered to be a complete application when the following valid documents are received by us:

- Completed, signed and dated application form;
- Proof of identification and address for the proposed licence holder;
- Electrical installation condition report of no more than 5 years old;
- Portable Appliance Test certificate;
- Fire alarm test certificate or commissioning certificate of no more than 12 months old;
- Emergency lighting test certificate of no more than 12 months old (if relevant);
- Gas safety certificate (if relevant);
- Floor plan complete with room dimensions;
- Disclosure and barring certificate of no more than 12 months old;
- The correct fee for a licence application;
- Any other documents that we may deem to be relevant, which will be detailed on the Council's website.

All licence applications must be accompanied by the correct fee and documentation and will not be processed without these.

Duration of Licences

The maximum duration of a licence is 5 years. Where a licence is for a property that hasn't previously been licensed, or the licence holder has not previously held a licence in Cheshire East, the initial licence period will be for one year.

Any renewals would be for a period of up to 5 years, subject to satisfactory management arrangements and compliance with licence conditions during the initial licence period.

Licence Conditions

All HMO licences contain mandatory licence conditions which must be complied with at all times. The Council may also impose additional conditions tailored to the specific circumstances of each property. From 1 October 2018 additional mandatory conditions will apply, covering minimum sizes for rooms used for sleeping and requiring local housing authorities to stipulate the maximum number of occupants of a HMO.

We will operate in accordance with the stepped approach set out in Section 2(d) of this Policy to ensure compliance with licence conditions.

A breach of a licence condition is an offence which is punishable through a number of options:

- a conviction and an unlimited fine;
- a civil penalty of up to £30,000 (Appendix B);
- Rent repayment order for any rent received for the property for up to a maximum of 12 months (Appendix C);
- Management order to take control of the property;
- Banning order (Appendix D);
- Entry on the database of rogue landlords (Appendix E).

Temporary Exemption Notices

We have a discretionary power to serve a Temporary Exemption Notice (TEN) on managers or owners of HMOs which are capable of being licensed, who notify us of their intention to take particular steps to ensure that their HMO no longer requires a licence. We will issue a TEN for a three month period where we are satisfied with the landlord's proposals, and may only renew the TEN for a further three months in exceptional circumstances. No further extensions are permitted.

HMO Management Regulations

The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 place a number of requirements on the person having control of any HMO (whether it is a licensed or non-licensable HMO) in the areas of fire safety, property repair and maintenance, clean conditions, refuse storage and disposal, and also places an obligation on the tenants' conduct.

We will operate in accordance with the stepped approach set out in Section 2(d) of this Policy to ensure compliance with HMO Management Regulations.

A breach of HMO management regulations is an offence which is punishable through a number of options:

- a conviction and an unlimited fine;
- a civil penalty of up to £30,000 (Appendix B);
- Management order to take control of the property;
- Banning order (Appendix D);
- Entry on the database of rogue landlords (Appendix E).

Non-licensable HMOs

All HMOs, regardless of whether or not they require a licence to operate, must meet certain standards to ensure the health, safety and welfare of the occupants, and must be compliant with the HMO Management Regulations.

We will pro-actively seek out non-licensable HMOs and carry out inspections of these properties as we become aware of them. A risk based assessment will then be applied to determine the future inspection regime, taking into account the following five factors: 1. Confidence in management; 2. Amenities; 3. Standard of fire safety management; 4. Structure; and 5. Fire provisions. The frequency for re-inspection could be any time between 0 and 5 years based on our risk assessment.

Fire Safety in HMOs

Statistically, HMO type properties have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in the event that a fire should occur and adequate fire detection and alarm measures to provide early warning.

The LACORS Housing - Fire Safety guidance helps to manage the relationship between the Housing Act 2004, enforced by local housing authorities, and the Fire Safety Order 2005, enforced by fire authorities, with information and guiding principles on ways to make residential buildings safe from fire and compliant with legislation.

We will generally be the lead enforcing authority for fire safety in HMO type properties, however, where an HMO contains communal areas, the Fire Safety Order 2005 requires the responsible person for an HMO to carry out and provide a Fire Risk Assessment, and compliance will be enforced through partnership working with Cheshire Fire and Rescue Service.

The actual level of fire protection and detection that will be required to be provided within any HMO will be risk assessed, taking into account the property characteristics, the management practices in place, the written fire risk assessment and the recommendations contained within the LACORS guidance.

Overcrowding

Overcrowding in licensed HMOs will be dealt with through enforcement of the licence conditions.

Overcrowding notices can be used in non-licensable HMOs where the Council considers that there are too many people occupying the property. The notice will state the maximum number of persons that will be allowed to occupy a room as sleeping accommodation, and will specify which rooms will not be allowed to be used for sleeping accommodation.

We will operate in accordance with the stepped approach set out in Section 2(d) of this Policy to ensure compliance with licence conditions.

A breach of an overcrowding notice is an offence which is punishable through a number of options:

- a conviction and an unlimited fine;
- a civil penalty of up to £30,000 (Appendix B);
- Banning order (Appendix D);
- Entry on the database of rogue landlords (Appendix E).

Amenities in HMOs

The legislation in relation to HMOs is complex, so will provide clarity for owners and managing agents of HMOs about the property, amenity and management standards that are expected of them through written guidance. This guidance forms part of this Policy and can be found at Appendix H.

Interim and Final Management Orders

Management Orders allow us to intervene in particular circumstances by taking over the operation of a HMO to secure necessary improvements in the property and management standards. Interim orders are temporary measures designed to last for 12 months, whereas final orders can last for up to 5 years. We will consider the need to apply for a management order on the merits of each individual case, but will normally only consider this for the most serious circumstances.

Additional HMO Licensing

As well as the mandatory licensing for specified types of HMOs, local housing authorities are permitted to extend these licensing requirements to also include other types of HMOs as well, either within a specific part of its area or across all of its area. The Council has not made a designation for an additional licensing scheme, but the need for such a scheme will be kept under review.

Selective Licensing

This allows for all privately rented properties including non-licensable HMOs within a specific part or the whole of the local authority area to be subject to licensing criteria. The Council has not made a designation for a selective licensing scheme, but the need for such a scheme will be kept under review.

5. Empty Homes

Empty homes have the potential to cause blight to local communities, prevent investment and regeneration, devalue surrounding properties and attract anti-social behaviour. We are committed to identifying long term empty 'nuisance' properties and will strive to take steps to reduce the impact for our communities and ultimately bring them back into use.

Properties will become empty at some point as part of the normal operation of the housing market, usually during the rental or buying process. It is only when properties stay empty longer than six months without any obvious signs of renovation or rental that they become long term empty homes.

Our approach is to work with the owners of long term empty homes, to support and encourage voluntary action to bring these homes back into use. Where co-operation fails, we will use a scoring matrix to determine the extent the empty home impacts on its neighbours and the wider community, which shall in turn inform our decision whether to intervene using our enforcement powers.

Some of the criteria used in this scoring matrix includes: the condition of the property and state of the garden, any anti-social behaviour evident, any fly tipping evident, the number of complaints received, the owner's response to our contact, is the property open to access and length of time the property has been empty.

We will use its enforcement powers in line with the most appropriate of the following legislation:

- Town and Country Planning Act 1990
- Environmental Protection Act 1990
- Housing Act 2004 – Part 1 (HHSRS) and Part 4 (Empty Dwelling Management Orders)
- Prevention of Damage by Pests Act 1949
- Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1982
- Housing Act 1985
- Law of Property Act 1925

6. Harassment

Harassment is a criminal offence and occurs when landlords deliberately interfere with a tenant's quiet enjoyment of their residential home. Harassment can also be committed by the landlord's managing/letting agent, friend or family member.

The law protects tenants living in residential property against harassment and illegal eviction, making it an offence for the landlord or an agent of the landlord to;

a) interfere with the peace or comfort of an occupier or members of their household; or
b) persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;

and in either case has reasonable cause to believe this conduct is likely to cause the occupier to give up the occupation of either the whole or part of the premises.

Harassment will ultimately be interpreted by the courts but may include such things as: frequent visits by the landlord to demand rent or to inspect the condition of the property, verbal abuse, entering the property without the tenant's consent, failing to carry out essential repairs or disconnection or disruption of the electricity, gas or water supply without good cause.

Following any conviction for harassment, we will consider applying for a rent repayment order to recover rent received by the landlord for a period of up to 12 months.

7. Illegal Eviction

It is a criminal offence for a landlord or their managing/letting agent to evict a tenant without following the correct legal steps for eviction.

Actions that would typically be considered to constitute an illegal eviction by a landlord are:

- if a landlord forces a tenant to leave by threatening or harassing;
- a landlord physically throws a tenant out;
- a landlord prevents a tenant from using certain parts of their home;
- a landlord changes the locks whilst the tenant is out, if the correct procedure for eviction has not been followed.

If a private tenant has an assured shorthold tenancy or a pre-1989 'fair rent' or regulated tenancy, only a bailiff can lawfully evict them from their home.

Before the bailiffs can take action, a landlord must first:

1. give the tenant notice to leave;
2. go to a court for a possession order;
3. apply to a court for bailiffs to evict the tenant.

It is an illegal eviction if a landlord forces their tenant to leave before bailiffs arrive, even if the landlord has obtained a court order requiring the tenant to leave or has given the tenant written notice to leave.

Following any conviction for illegal eviction, we will consider applying for a rent repayment order to recover rent received by the landlord for a period of up to 12 months.

Housing Act 2004

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), described "as a means of identifying faults in dwellings and of evaluating the potential effect of any faults on the health and safety of the occupants or visitors". Faults contribute to and are categorised into 29 possible hazard profiles for which the legislation provides a range of actions for addressing identified hazards. It is a two stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence to give a numerical rating. This is repeated for each of the hazards present. The assessment is based on the risk to the group most vulnerable to that particular risk, rather than the actual occupier. Once scored, any action will take into account the effect of that risk upon the actual occupier.

The scores for each hazard present are banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as Category 1 hazards when considering action. Bands D to J are less severe and are known as Category 2 hazards.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

When a Category 1 hazard is identified, we have a duty to take appropriate action and must decide which of the available enforcement options is most appropriate to use (these are explained in more detail below).

When a Category 2 hazard is identified, we have a discretionary power to take action and will consider individual cases and circumstances when deciding whether any action should be taken.

Choice of appropriate enforcement action

When determining the most appropriate action we will have regard to the Housing Act 2004 Enforcement Guidance. Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, we will attempt to secure the required improvements informally and within a reasonable amount of time. We will notify the owner through the use of a Hazard Awareness Notice. There is no appeal process for these notices.

Where an informal approach fails we will determine our course of action by taking into account the facts and circumstances in each individual case.

When a Category 1 hazard is identified, the Council will take the most appropriate of the following courses of action:

- Serve an Improvement Notice (including a Suspended Improvement Notice);
- Make a Prohibition Order (including a Suspended Prohibition Order);
- Serve a Hazard Awareness Notice;
- Take Emergency Remedial Action;
- Make an Emergency Prohibition Order;
- Make a Demolition Order;
- Declare a Clearance Area.

When a Category 2 hazard is identified, the Council may take the most appropriate of the following courses of action:

- Serve an Improvement Notice (including a Suspended Improvement Notice);
- Make a Prohibition Order (including a Suspended Prohibition Order);
- Serve a Hazard Awareness Notice;
- In prescribed circumstances – make a Demolition Order;
- In prescribed circumstances – declare a Clearance Area.

Improvement Notices

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

Category 1 hazards

We will require works to be carried out that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard. We will require sufficient works to be carried out to abate the hazard for at least five years, to prevent temporary short term remedial works being carried out to abate the notice.

If the hazard can only be reduced to a Category 2 hazard rather than removed altogether, we will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Category 2 hazards

We will require works to be carried out that are sufficient either to remove the hazard or reduce the likelihood of harm to an appropriate degree.

Penalties for non-compliance

Failure to comply with an improvement notice is an offence which is punishable through a number of options:

- Carrying out works in default and recharging the costs to the landlord;
- a conviction and an unlimited fine;
- a civil penalty of up to £30,000 (Appendix B);
- a rent repayment order (Appendix C)
- a banning order (Appendix D);
- entry on the database of rogue landlords (Appendix E).

Works in default

In determining if work in default is appropriate, we will consider:

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned;
- The wishes of the tenant where the Notice has been served in respect of a rented property;
- The reason for the work not being carried out in the first place;
- Any other factors that are specific to individual properties;

We will seek to recover all of the costs associated with undertaking of work in default. Appendix G contains information about charging for enforcement activity and recovering costs.

Suspended Improvement Notice

We have the power to suspend the operation of an Improvement Notice, if considered reasonable to do so, until the occurrence of a specified time or event, which will be specified within the notice. The following are situations which we may consider appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken;
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided;
- Personal circumstances of occupants, for example, temporary ill-health, which suggests that works, ought to be deferred;

When deciding whether it is appropriate to suspend an Improvement Notice we will have regard to:

- The level of risk presented by the hazard(s);
- The turnover of tenants at the property;
- The response or otherwise of the landlord or owner;
- Any other relevant circumstances (e.g. whether the vulnerable age group is present);

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

Prohibition Orders

Prohibition Orders can be used where either a Category 1 and/or Category 2 hazard exists on a residential dwelling or HMO, or part of, where repair and/or improvement appears to be inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived).

Examples include:

- The use of a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided (cellar or attic);
- The use of specified dwelling units or of common parts within an HMO if the means-of-escape is unsatisfactory;
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms;
- Where a premise is lacking an appropriate number of washing, bathing or toileting facilities but of which are nonetheless suitable for a reduced number of occupants;

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific

uses. This option may be used to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants;
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants;

Failing to comply with a prohibition order is an offence which is punishable through a number of options:

- a conviction and an unlimited fine;
- a rent repayment order (Appendix C);
- a banning order (Appendix D);
- entry on the database of rogue landlords (Appendix E).

Suspended Prohibition Order

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it.

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

Hazard Awareness Notice

A Hazard Awareness Notice is used to advise the owner of the existence of a category 1 or 2 hazard on their residential premises. The use of such a notice allows for a warning to heeded and voluntary action taken or representations to be made, before alternative stricter enforcement action may be used.

Circumstances where we may use a Hazard Awareness Notice include:

- To notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy);
- It is judged appropriate to draw a landlord's attention to the desirability of remedial action;
- To notify a landlord about a hazard as part of a measured enforcement response.

Emergency Remedial Action & Emergency Prohibition Order

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are contained in sections 40 to 45 of the Housing Act 2004. Specifically, we must be satisfied that:

- A Category 1 hazard exists on the residential premises, and;
- The hazard involves an imminent risk of serious harm to any occupier; and;

- That no management order is in force in respect of the premises;

If these conditions are met we will take appropriate emergency action to remove or reduce any imminent risk of serious harm and will seek to recover its expenses incurred in having to do so.

Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises and lacking a safe means of escape in the event of fire because there is no independent access;
- Risk of electrocution, fire, gassing, explosion or building collapse;

Demolition Orders

The provisions within Section 265 of the Housing Act 1985 have been amended to align that legislation with the new method of hazard assessment and the enforcement provisions in Part 1 of the Housing Act 2004.

Where a category 1 hazard exists on any residential premises, the making of a demolition order, when considered to be the most appropriate enforcement action to take, is an option available to us. Where a category 2 hazard exists on any residential premises, only under prescribed circumstances will a demolition order be considered. In either event, in determining whether to issue a Demolition Order we will take account of Government guidance and will consider all the circumstances of the case.

Clearance Areas

We can declare an area to be a Clearance Area if we are satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health & safety of inhabitants as a result of bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area we will act only in accordance with section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

Power to Require Information

We have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004;
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004;

We also have powers under Section 237 of the Housing Act 2004 to use information obtained by the authority for Housing Benefit and Council Tax purposes to carry out its functions in relation to Parts 1-4 of the Act.

Revocation and Variation of Notices

Once an improvement notice has either been fully or partially complied with, the local housing authority will decide whether to revoke or vary the original improvement notice and will serve either a notice of revocation or variation to reflect the circumstances. Similarly, if the local housing authority decides not to revoke or vary an improvement notice then a notice of refusal to revoke or vary must be served. Either of these notices can be appealed against to the Residential Property Tribunal.

Civil Penalties

We will have full regard to the statutory guidance on civil penalties.

Civil penalties should not normally be used for the most serious or severe offences, where prosecution should be the preferred route, but a civil penalty at the maximum level would be a significant penalty, so should not be discounted. The following matrix will be used to determine the most appropriate course of action, i.e. works in default (if relevant), prosecution or a civil penalty.

Failure to comply with an Improvement Notice (Section 30)

Aggravating Factor	**Response**	**Points**
Is a member of the vulnerable group for the relevant hazard occupying the property?	Yes	5 (per vulnerable person)
	No	0
Have previous notices been served on this landlord at this or other properties under Part 1 of the Housing Act 2004?	Yes	10 (per notice)
	No	0
Has the landlord complied with previous notices?	Yes	0
	No	10 (per notice)
Does the landlord have previous convictions / cautions for Housing Act offences?	Yes	20
	No	0
Has the landlord previously been issued with a Civil Penalty?	Yes	20
	No	0

Score	**Course of Action**
0-10	Works in Default or Civil Penalty
11 – 30	Civil Penalty
30+	Prosecution

Offences in relation to Houses in Multiple Occupation (sections 72, 139 and 234)

Aggravating Factor	**Response**	**Points**
Is it a licensable HMO for which no licence has been granted?	Yes	10
	No	0
Have previous notices been served on this landlord at this or other properties under Part 1 of the Housing Act 2004?	Yes	10 (per notice)
	No	0
Has the landlord complied with previous notices?	Yes	0
	No	10 (per notice)
Has the landlord previously been issued with a Civil Penalty?	Yes	20
	No	0
Existing fire safety breaches at the property for which a notice was served		5 (per offence)
Historical fire safety breaches at the property for which a notice was served		5 (per offence)
Existing other breaches at the property for which a notice was served		1 (per offence)
Historical other breaches at the property for which a		1 (per offence)

notice was served		
Number of occupants in excess of the maximum permitted		5 (per person)
Number of occupants in a vulnerable group (disabled, child under 16, over 65)		5 (per person)

Score	**Course of Action**
0-40	Civil Penalty
41+	Prosecution

Once it is established that a Civil Penalty is an appropriate course of action, the level of penalty should be set. Statutory guidance states that we should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

a) **Severity of the offence**. The more serious the offence, the higher the penalty should be.

b) **Culpability and track record of the offender**. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

Very high	Where the offender intentionally breached, or flagrantly disregarded, the law
High	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken; and/or Serious and/or systematic failure by the person or organisation to comply with legal duties
Medium	Offence committed through an act or omission which a person exercising reasonable care would not commit; and/or Systems were in place to manage risk or comply with legal duties but these were not sufficiently adhered to or implemented.
Low	Offence committed with little fault, for example significant efforts were made to address the risk but were inadequate on this occasion, or there was no or little warning of risk / circumstances of the offence; and/or Failing were minor and occurred as an isolated incident

c) **The harm caused to the tenant**. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

Consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the specific offence being considered. This means that even if some harm has already come to an individual, consideration should still be given to whether there was the potential for even greater harm to have occurred.

When determining the seriousness of harm, consideration may be given to the guidance in relation to Class I, II, III and IV harm outcomes in the Housing Health and Safety Rating System – Operating Guidance.

High	• Existing serious adverse effect, or a risk of there being a medium adverse effect on an individual; and/or • Provides a serious market advantage over rivals; and/or • Harm to a vulnerable individual; and/or • Serious level of overcrowding.
Medium	• Existing medium adverse effect, or a risk of there being a medium adverse effect on an individual; and/or • The tenant has been misled or is disadvantaged by the failing
Low	• Existing adverse effect, or a risk of there being an adverse effect on an individual

d) **Punishment of the offender**. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence**. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) **Deter others from committing similar offences**. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that the local housing authority is proactive in levying civil penalties.

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence**. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed. The penalty amount should be considered against any quantifiable economic benefit derived from the offence, including through avoided or reduced operating costs.

Calculating the Penalty

The following matrix will be used to calculate the civil penalty to be applied. The matrix provides a starting point to reach an appropriate level of civil penalty within the range for that category of offence, and we will then consider further adjustment within the penalty band range for aggravating and mitigating features. It is important to note that the upper value of a penalty band range may be exceeded where it is necessary to ensure that there is no financial benefit to the offender.

	High Harm	Medium Harm	Low Harm
Very High Culpability			
Starting point	£26,000	£22,000	£16,500
Penalty band range	£24,000 - £30,000	£20,000 - £25,000	£15,000 - £20,000
High Culpability			
Starting point	£16,500	£12,000	£7,500
Penalty band range	£15,000 - £20,000	£10,500 - £15,000	£6,000 - £10,000
Medium Culpability			
Starting point	£12,000	£7,500	£4,500
Penalty band range	£10,500 - £15,000	£6,000 - £10,000	£3,750 - £6,000
Low Culpability			
Starting point	£4,500	£3,000	£1,500
Penalty band range	£3,750 - £6,000	£2,750 - £4,500	£1,000 - £3,000

Aggravating factors that will be taken into account when setting the civil penalty include:

- Relevant previous convictions having regard to (a) the nature of the offence to which the conviction relates and its relevance to the offence and (b) the time that has elapsed since the conviction
- Relevant previous cautions within the last two years
- Relevant previous civil penalties within the last two years
- The offence has been committed whilst the landlord is on bail or summons for other relevant proceedings at court
- Established evidence of wider community impact
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements
- Evidence of harassment of tenant and/or illegal eviction

Mitigating factors that will be taken into account include:

- No relevant unspent previous convictions
- No relevant cautions within the last two years
- No relevant civil penalties within the last two years
- Mental ill health or learning disability
- Serious medical conditions requiring urgent, intensive or long term treatment
- One off event, not commercially motivated
- Previous good record of maintaining property and management standards
- Tenants' behaviour is a contributing factor to the offence
- Steps taken voluntarily to remedy the problem
- High level of co-operation with the investigation
- Early admission of guilt for the offence

Totality Principle

When issuing civil penalties for more than one offence we will consider whether the total penalties are just and proportionate to the offending behaviour. We will take account of the definitive guideline on Offences Taken into Consideration and Totality.

Financial means to pay a civil penalty

In setting a financial penalty, we will conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient information to the contrary. It is for the offender to disclose to us such data relevant to his financial position as will enable us to assess what they can reasonably afford to pay. Where we are not satisfied that we have been given sufficient reliable information, we will be entitled to draw reasonable inferences as to the offender's financial means from the evidence that we hold and from the circumstances of the case. Factors that we will take into account include income, outgoings, financing arrangements for the landlords' portfolio and available equity in the portfolio. If an offender claims that they are unable to pay a financial penalty, consideration will be given to whether any of the properties can be sold or refinanced.

Rogue Landlord Database

We will have full regard to the statutory guidance on the database of rogue landlords and Appendix D.

The Rogue Landlord Database is a national initiative to improve the tracking of rogue landlords who have committed banning order offences operating across multiple local authority areas.

Where a person or organisation has received two or more civil penalties in respect of a banning order offence within a twelve month period, we may use our discretionary power to make an entry on the national database. We will have regard to Appendix D when considering whether this is an appropriate course of action.

Rent Repayment Orders

We will have full regard to the statutory guidance on Rent Repayment Orders.

New powers were introduced under the Housing and Planning Act 2016 regarding the use of Rent Repayment Orders where a landlord has committed certain offences under the Housing Act 2004, as follows:

- Landlord has failed to obtain a licence for a property that was required to be licensed (Sections 72 and 95);
- Landlord has failed to comply with an Improvement Notice (Section 30);
- Landlord has failed to comply with a Prohibition Order (Section 32);
- Landlord has breached a Banning Order (Section 21 of the Housing and Planning Act 2016);
- Landlord uses violence to secure entry to a property (Section 6 of the Criminal Law Act 1977);
- Landlord illegal evicts or harasses the occupiers of a property (Section 1 of the Protection from Eviction Act 1977).

The term landlord also includes property agents, letting agents and managing agents.

A Rent Repayment Order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed. A criminal standard of proof is required. This means that the First-Tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence or the landlord has been convicted in the courts of the offence for which the rent repayment order application is being made. A Rent Repayment Order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

Where a landlord has been convicted of an offence to which the Rent Repayment Order relates, the First-Tier Tribunal must order the maximum amount of rent to be repaid (capped at a maximum of 12 months). Where a landlord has not been convicted of an offence to which the rent repayment order relates, the Council will consider the following factors when considering how much rent to apply to recover:

a) **Punishment of the offender**. Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that we may consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;

b) **Deter the offender from repeating the offence**. The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;

c) **Dissuade others from committing similar offences**. Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be

in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

d) **Remove any financial benefit the offender may have obtained as a result of committing the offence**. This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

When seeking to recover rent through an application for a Rent Repayment Order, wewill always seek to recover the maximum amount to be repaid (capped at 12 months), except where the conduct or the financial circumstances of the landlord provide mitigating factors, in which case the Rent Repayment Order may be for a lesser amount.

The amount of any Rent Repayment Order can never be more than the rent that was actually paid over the previous 12 months. This applies regardless of whether rent was paid from the tenant's own resources or through Housing Benefit/Universal Credit.

We will offer advice, guidance and support to assist tenants to apply for a Rent Repayment Order if the tenant has paid the rent themselves.

Financial means to pay a rent repayment order

In determining the amount of rent repayment to apply for, we will conclude that the offender is able to pay the maximum amount of rent due, unless the offender has supplied suitable and sufficient information to the contrary. It is for the offender to disclose to us such data relevant to his financial position as will enable us to assess what they can reasonably afford to pay. Where we are not satisfied that we have been given sufficient reliable information, we will be entitled to draw reasonable inferences as to the offender's financial means from the evidence that we hold and from the circumstances of the case. Factors that we will take into account include income, outgoings, financing arrangements for the landlords' portfolio and available equity in the portfolio. If an offender claims that they are unable to pay a rent repayment order, consideration will be given to whether any of the properties can be sold or refinanced.

Banning Order Offences

We will have regard to the non-statutory guidance on Banning Order Offences.

A banning order bans a landlord from letting housing in England, and engaging in letting agency or property management work for a minimum period of 12 months, following certain housing, immigration and serious criminal offences. There is no statutory maximum period for a banning order; the length of the banning order is determined by the First-tier Tribunal, however we must make a recommendation on the term of the banning order. Government guidance is that banning orders should be used for the most serious offenders.

The 54 banning order offences are listed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017] and in the non-statutory guidance. The relevant offences for which the Council is the enforcing authority are:

Act	**Section**	**Offence**
Protection from Eviction Act 1977	Section (1)(2)(3)(3a)	Unlawful eviction and harassment of occupier
Housing Act 2004	Section 30(1)	Failing to comply with an improvement notice
	Section 32(1)	Failing to comply with a prohibition order
	Section 72(1)(2)(3)	Offences in relation to licensing of a HMO
	Section 95(1)(2)	Offences in relation to selective or additional licensing
	Section 139(7)	Contravention of an overcrowding notice
	Section 234(3)	Failing to comply with HMO management regulations
	Section 238(1)	False or misleading information
Anti social behaviour, Crime and Policing Act 2014	Section 48	Failure to comply with Community Protection Notice

The relevant offence must have been committed on or after 6 April 2018, and must not include spent convictions.

We are responsible for applying for a banning order regardless of who the enforcing authority is for a relevant offence, therefore it is imperative that through partnership working enforcement agencies share relevant information about any convictions that are secured.

When deciding whether to apply for a banning order and when making a recommendation for the length of the banning order, we will have regard to a range of factors:

- **The seriousness of the offence.** We will have regard to any sentence imposed by the Court; for example did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge.
- **Previous convictions / rogue landlord database.** We will check the rogue landlord database in order to establish whether a landlord has committed other banning order

offences in other areas, or has received any civil penalties in relation to banning order offences.

- **The harm caused to the tenant.** The greater the harm or potential for harm, the longer the ban should be.
- **Punishment of the offender.** The length of the banning order should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It should ensure that it has a real economic impact on the offender.
- **Deterrence.** The punishment should deter the offender and others from reoffending or committing similar offences.

Once we have considered all these factors, we will make a decision as to whether applying for a banning order is a just and proportionate course of action to take. A notice of intent will be served on the landlord, which must be served within six months of the landlord being convicted of the offence. We must give the landlord a minimum of 28 days from the date of the notice to make representations, and consider any representations made during the notice period before making a decision about whether to pursue an application for a banning order once the notice period has expired.

A banning order does not invalidate any tenancy agreement held by occupiers in the property. There may be circumstances where, following the banning order, it might be appropriate for the management of the property to be taken over by the Council or its agent. The decision about whether to apply for an interim management order and a subsequent management order will be based on the merits of each case.

Breach of a banning order

In the event that we establish that the action of a person or organisation constitutes a breach of a banning order, we can decide to pursue a prosecution or a civil penalty. The person or organisation may be subject to further civil penalties for every additional six months, or part of that period, that they continue to breach the banning order.

Rogue Landlord Database

We will have full regard to the statutory guidance on the database of rogue landlords.

The Rogue Landlord Database is a national initiative to improve the tracking of rogue landlords who have committed banning order offences operating across multiple local authority areas.

When a banning order has been made against a person or organisation, we have a statutory duty to make an entry on the national database.

Appendix E

Rogue Landlord Database

We will have full regard to the statutory guidance on the database of rogue landlords.

The Rogue Landlord Database is a national initiative to improve the tracking of rogue landlords who have committed banning order offences operating across multiple local authority areas.

When a banning order has been made against a person or organisation, we have a statutory duty to make an entry on the database.

Where a person or organisation is convicted of a banning order offence at a time when they were a residential landlord or property agent, but following full consideration of the circumstances we have decided not to apply for a banning order, we may utilise its discretionary power to make an entry on the national database.

Where a person or organisation has received two or more civil penalties in respect of a banning order offence within a twelve month period, again we may use our discretionary power to make an entry on the national database.

When deciding whether to make an entry on the national database, we will have regard to the severity of the offence, any mitigating factors, culpability and any patterns of serial offending, and deterrence from committing the same or similar offences.

When deciding the period of time that the entry will be maintained, we will have regard to the severity of the offence, any mitigating factors, culpability and any patterns of serial offending, whilst ensuring that the data is retained on the database for a reasonable period of time so that it is a genuine deterrent to further offences.

Before making an entry on the database, we must notify the landlord and/or property agent of our intention to do so. The decision notice will set out the right to appeal the decision; the appeal must be made to the First-tier Tribunal within 21 days of the decision notice.

Minimum Energy Efficiency Standards

We will have full regard to the Domestic Private Rented Property Minimum Standard Guidance issued by the Department for Business, Energy and Industrial Strategy.

The Energy Efficiency (Private Rented Property) Regulations 2015 are designed to tackle the least energy-efficient properties – those rated F or G on their Energy Performance Certificate (EPC). The Regulations set out the minimum level of energy efficiency. From 1 April 2018, a landlord cannot let a property which does not meet at least the minimum standard of Band E, making it an offence to let a Band F or G property on a new tenancy. From 1 April 2020 the prohibition will extend to Band F or G properties let on existing tenancies.

There are exclusions and exemptions from meeting the minimum energy efficiency standard:

- Where the property is not legally required to have an EPC
- Where all the relevant energy efficiency improvements have been made (or there are none that can be made) and the property remains sub-standard
- Where a recommended measure is not a relevant energy efficiency improvement because the cost of purchasing and installing it cannot be wholly financed at no cost to the landlord (note: this is subject to review by the Government)
- Where a recommended measure cannot be installed (wall insulation)
- Where third party consent cannot be obtained
- The property will be devalued, in the opinion of an independent surveyor, if energy efficiency improvements are made
- Six month temporary exemption due to recently becoming a landlord

Landlords are expected to make a self declaration on the PRS Exemptions Register for an exempted property.

An exemption cannot be transferred to a new owner; if a property is sold or transferred the exemption ceases to be effective and the new owner will need to either improve the property to the minimum standard at that point, or register an exemption themselves if they intend to continue to let the property.

Enforcement

If we believe that a landlord may be in breach of the prohibition on letting a sub-standard property, or has been in breach of the prohibition at any time in the past 12 months, we may serve a compliance notice on the landlord that requests information which will help us to establish whether the landlord has in fact breached the prohibition. We may also require a landlord to make a self-declaration on the PRS Exemptions Register as part of the compliance notice.

Failure to provide the documents or information requested in a compliance notice, or failure to make a self-declaration on the PRS Exemptions Register may result in a penalty notice being served, with a financial penalty imposed on the landlord of up to £2,000 and we may impose a publication penalty (where we publicise the details of the offence).

Where we are satisfied that the landlord has let a sub-standard property for a period of less than 3 months, we will impose a financial penalty of up to £2,000 and may impose a publication penalty.

Where we are satisfied that the landlord has let a sub-standard property for a period of 3 months or more, we will impose a financial penalty of up to £4,000 and we may impose the publication penalty.

Where we are satisfied that the landlord has registered false or misleading information on the PRS Exemptions Register, we will impose a financial penalty of up to £1,000 and we may impose the publication penalty.

Where penalties are imposed for more than one of the above paragraphs detailed above in respect of the same breach at the same property, the total penalty cannot exceed £5,000. If after having been fined up to £5,000 for letting a sub-standard property a landlord proceeds to let the same sub-standard property on a new tenancy, we will again levy financial penalties up to £5,000 in relation to that new tenancy.

Statement of Principles used in determining the recovery of costs

We have a statutory duty to keep housing conditions in its area under review, which may result in the need to address sub-standard housing conditions, utilising a wide range of powers and service of statutory notices under housing, building and public health related legislation.

Whilst officers will look to secure compliance chiefly through negotiation and co-operation, it will however occasionally be necessary to undertake formal enforcement proceedings.

Various pieces of legislation allow us to make a reasonable charge as a means of recovering expenses that have been directly incurred when undertaking enforcement activity. Certain legislation also allows for the expenses to then be recoverable through a charge on the property, and until these expenses are repaid, we may also levy interest on any outstanding sum.

Where a demand for payment becomes operative and interest becomes payable, interest will be applied on a daily basis from the date the demand becomes operative until all sums due under the demand are recovered. The Law Society's interest rate will be used for the purpose of calculating any due interest.

Interest payments will be applied to prevent those persons responsible for carrying out repairs to their property from benefiting from what would otherwise be an interest free loan from us, and profiteering from their poor management of the property.

Where legislation allows, we will seek full recovery of our administrative costs incurred in the service of any formal enforcement notice and also for any expenses properly incurred in carrying out any remedial works, when required in default of the person responsible.

The aim of levying a charge is to hopefully avoid the need to serve a notice in the first place. The levying of charges and interest is not simply a matter of recovering costs incurred by us, but will importantly also discourage bad management practice.

Any charge will be assessed by time recording the various activities involved, as appropriate to the Act's provisions. The relevant officer salaries will be used with an apportionment for on-costs.

When determining the costs to be levied having taken enforcement action, we will have consideration of some or all of the following:

- Travel and time involved in inspecting the premises;
- Collation of documentation and information;
- Analysis of the issues and decision to serve a notice;
- Obtaining specialist advice and reports;
- Drafting a notice and requisite schedules;
- Administration costs in serving the notice and securing payment;
- Preparation of schedules of work and organising contractor quotations;
- Inspecting completion of works carried out in default;

Generally, charges will be levied where the responsible person for taking action fails to co-operate with us, resulting in the service of a statutory enforcement notice. Additionally, charges will generally be levied where there is a continued lack of co-operation and results in the need to review a notice.

Under certain circumstances it may be necessary to serve a statutory notice on an owner occupier. This notice would normally be a Hazard Awareness Notice that would not incur a charge, but occasionally it may be necessary to serve another type of statutory notice for which a charge will be levied. In these cases, consideration of their financial position will be considered when deciding whether to charge.

We will not charge for officers' time in circumstances that were not in the owner or landlord's control, such as when a tenant or builder does not turn up or make themselves available.

In all cases the action to be taken must be appropriate to the nature of the problem. It would be contrary to the principles of enforcement to use specific powers solely because a fee can be charged. Other powers may be appropriate, and all options should be considered on their merits.

The most appropriate notice will be used in all cases. In some situations it may be necessary to serve more than one notice on a property; however, there will be good reason for this, either because of statutory requirements or due to the specific circumstances of the case.

There will be discretion to waive a charge when it is not reasonable to expect a person to pay for the enforcement action taken i.e. where the reason for the charge was outside of the control of the person charged or persons acting on their behalf. There may also be circumstances where it is considered inappropriate to charge or appropriate to delay, waive or demand a lesser charge in certain situations.

Amenities Guide for HMOs

See separate document:

Amenities and Facilities Standards in HMOs: Guidance for Landlords and Agents