

Service Specific Housing Enforcement Policy

DRAFT for approval – November 2021

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1. Introduction

- 1.1 The private rented sector is an important and valued part of our housing stock. Locally, it houses an estimated 17.7% of households. Demand in the sector is driven by a diverse range of tenants including key workers, people needing flexibility for their employment, students, households unable to access owner occupation or social housing, migrant workers, young people on low incomes and vulnerable households.
- 1.2 Landlord characteristics are also diverse, and includes temporary or accidental landlords, people owning property as part of pension planning, individuals with property portfolios, institutional investors, as well as hands-on landlords and managing agents.
- 1.3 Cheshire East Council shares the Government's aim to support good landlords and avoid unnecessary regulation for those landlords who provide safe, well maintained homes, but recognise that a small number of landlords knowingly rent out unsafe and substandard accommodation.
- 1.4 The aim of this Policy is to advise and inform businesses and individuals about the legislation and regulation available to the Council to bring about improvements in housing standards, and how and when those controls will be used.
- 1.5. The functions covered by this Policy are delivered by the Housing Standards service which forms part of the Housing service and include:
 - Housing conditions
 - Licensing of Houses in Multiple Occupation
 - Management of Houses in Multiple Occupation
 - Energy efficiency standards
 - Vacant dwellings

2. The standards that housing should achieve

- 2.1 The home should provide a safe and healthy environment for occupiers and visitors. It is reasonably expected that rented homes will:
 - Be adequately heated, insulated and ventilated
 - Be free from damp and mould
 - Be watertight
 - Be safe from fire, with adequate means of detection
 - Have adequate facilities for cooking, sleeping and maintaining hygiene
 - Be safe from carbon monoxide hazards
 - Comply with electrical safety regulations
 - Be free from other hazards that cause a significant risk to health and safety
- 2.2 There are specific requirements for Houses in Multiple Occupation. More

details are contained in Appendix B.

- 2.3 It is the landlord's responsibility to ensure that all minimum legal requirements are met.

3. How to request a service from Housing Standards

- 3.1 Where a tenant perceives that the standard is below that which would reasonably be expected, and they have taken steps to notify the landlord of the defects in writing and given them opportunity to rectify them, they can request support from the Housing Standards service.
- 3.2 Before making direct contact with the Housing Standards service, individuals and businesses are encouraged to visit the Cheshire East webpages for initial information and advice www.cheshireeast.gov.uk/housing.
- 3.3 For concerns about housing conditions, residents can complete the [Property Inspection Request online form](#).
- 3.4 Residents can tell us about a House in Multiple Occupation using the [Report a HMO online form](#).
- 3.5 Residents can tell us about an empty home using the [Report an Empty Home online form](#).
- 3.6 To apply for a licence for a House in Multiple Occupation, owners can complete the [Application to licence a HMO online form](#).
- 3.7 In all cases and for other matters, the Housing Standards service can be contacted on 0300 123 5017 (option 4) or by email at privatehousing@cheshireeast.gov.uk. Written communications can be sent to Housing Standards, Floor 1 Delamere House, c/o Municipal Buildings, Earle Street, Crewe, CW1 2BJ. Presentation at Council offices is only by pre-arranged appointment.

4. Service Standards

- 4.1 Subject to resources:
- We will respond to emails and telephone calls within 3 working days
 - We will acknowledge your request for a property inspection within 5 working days, and an officer will contact you within 25 working days
 - We will carry out an inspection in response to a report of an HMO or an empty home within 25 working days
 - We will carry out an initial assessment of a HMO licence application within 10 working days
 - We will process complete HMO licence applications within 15 working days. Details of what constitutes a complete HMO licence

application can be found in Appendix B.

- 4.2 The Housing Standards service aims to achieve an identified action in relation to alleged breaches of housing legislation within 6 weeks of receiving the service request. Identified actions are listed in Section 8. Officers will conduct any investigation efficiently and as quickly as possible. Due to the complexity of some work and the processes that we must follow, it is possible that some investigations and subsequent enforcement actions will take a considerable amount of time. Officers will provide progress updates to all parties taking into account data protection legislation and confidentiality principles.

5. Anonymous Complaints

- 5.1 There are circumstances where customer details are required to enable a full investigation to take place. Whilst officers will always ensure individuals' details and correspondence are kept confidential there are occasions when individuals wish to make an anonymous complaint; in these situations, officers will use professional judgement to determine if the service request or information can be actioned in the absence of this information.

6. Power of Entry

- 6.1 Where legislation grants authorised officers the power to enter premises to carry out specific function, this will be undertaken in accordance with the requirements of relevant legislation.
- 6.2 Where a warrant is required from the Magistrates' Court, an application will be made in accordance with the Council's procedures and the requirements set out by the Magistrates' Court.

7. Our approach to enforcement

- 7.1 The Council has various powers and duties to deal with breaches of legislation. Duties are things that we must do; powers are things that we have the discretion to do. Where this discretion is available then the Housing Standards service will consider a number of wider factors to determine its regulatory approach. Further information on these guiding principles can be found in Section 3.0 of the Corporate Enforcement Policy.
- 7.2 Appendix A details the legislation and regulation that is available to the Council to improve housing conditions at the time of publication of this Policy; this is not an exhaustive list and is subject to change by parliament. Appendix B provides more specific detail about enforcement relating to Houses in Multiple Occupation (HMOs).
- 7.3 In carrying out its powers and duties, the Housing Standards service will have due regard to all relevant statutory and non-statutory guidance and

codes of practice.

7.4 Enforcement action will not normally be considered as an initial remedy for breaches of legislation or regulation and where possible officers will take a stepped approach to enforcement, seeking to educate, engage and encourage in the first instance. However there are occasions when enforcement action will be the most appropriate first course of action.

7.5 When establishing whether to take enforcement action, we will consider the following factors:

- The severity of any risk to the occupier and/or visitors to the property
- The views of the occupier
- The tenure of the occupier
- Whether information and advice is sufficient to remedy the breach
- The initial response and actions of the landlord, together with previous history of resolving housing disrepair issues
- Whether it is reasonable and appropriate to intervene
- The duties and powers that are available to us

7.6 Tenure is an important consideration in our approach to enforcement:

7.6.1 **Private renting**

The private rented sector is our primary focus for regulating housing standards. Tenants have a responsibility to keep the home in good order during their tenancy, but do not have a responsibility to maintain the structure and services within the home. Landlords have a legal responsibility to provide a well-maintained home that is free from hazards and is compliant with relevant legislation.

7.6.2 **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.

Exceptional circumstances where we may use our enforcement powers to intervene include:

- People who are judged as not having the capacity to make informed decisions about their own welfare or the safety of others.
- Where the Council determines that intervention is needed to protect the welfare of a vulnerable person.
- A serious risk of life-threatening harm to the occupier, visitor, or others.

7.6.3 **Social renting**

Tenants of Registered Providers of social housing should report repairs to

their landlord in the first instance. If the landlord fails to make repairs, then tenants should utilise their landlord's complaints process. If the tenant is unhappy with the landlord's response to their complaint, the local Member of Parliament, local councillor, or Tenant Panel may then act as a designated person. The role of the designated person is to help resolve the complaint in one of two ways: try and resolve the complaint themselves in any way they see fit or refer the complaint straight to the Housing Ombudsman. Alternatively, the tenant may refer the complaint directly to the Housing Ombudsman at www.housing-ombudsman.org.uk once 8 weeks have passed from the date of the landlord's final response.

Where there is a significant hazard and the landlord is failing to take appropriate action, the Housing Standards service will assess whether enforcement action is warranted.

- 7.7 The statutory guidance 'Civil penalties under the Planning and Housing Act 2016: Guidance for Local Authorities' states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Appendix C sets out our decision-making protocol including how we will calculate the amount of any civil penalties.

8. Enforcement Actions

| Enforcement Action | Description |
|--|---|
| Promotion | This typically involves a push of information to landlords and managing agents about specific matters of legislation. This can be achieved by a variety of methods including direct correspondence, press releases, face to face contact and website information. |
| Compliance Advice, Guidance and Support | The Housing Standards service uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a Hazard Awareness Notice, to assist landlords to rectify breaches as quickly and efficiently as possible and avoiding the need for any formal enforcement action. Where a similar breach is identified in the future, this previous advice will be taken into account in considering the most appropriate enforcement action to take. |
| Formal Notices | A formal Notice may be issued to all parties including other owners and lenders, requiring compliance with specific legal requirements within a specified time period. A Notice will explain the legislation that has been breached, how to comply with the Notice, and the consequences of not complying with a Notice. Notices will be accompanied by the relevant appeal information. In general, failure to comply with a Notice makes the person or business named in the Notice liable for prosecution action or a financial |

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| | penalty. Formal Notices may appear on local land searches during the conveyancing process. |
| Works in Default | <p>Where a formal Notice has not been complied with and it is in the public interest to undertake the work to ensure that risks to health and safety are prevented, the Council can undertake the necessary works to achieve compliance. In some circumstances, the Council may decide to undertake the work in default and prosecute.</p> <p>The Council can recover its cost in undertaking Works in Default from the individual or business responsible for the breach of legislation.</p> |
| Civil Penalty (“Financial Penalty”) | Where legislation permits, the Council will consider whether to impose a financial penalty within the limits set by specific legislation. This would be an alternative to prosecution. |
| Prosecution | <p>The Council will consider commencing prosecution proceedings in the Courts against any person(s) who fails to comply with the requirements of a formal Notice.</p> <p>Before commencing legal proceedings, the Council will ensure that it is satisfied there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. The Council will use discretion in deciding whether to initiate a prosecution and may do so without prior warning taking place.</p> |
| Banning Orders | <p>We will have regard to the non-statutory guidance on Banning Order Offences.</p> <p>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. Government guidance is that banning orders should be used for the most serious offenders.</p> <p>Our policy on when to apply for a banning order can be found at Appendix D.</p> |
| Rent Repayment Orders | <p>We will have full regard to the statutory guidance on Rent Repayment Orders.</p> <p>A Rent Repayment Order can be applied for when the landlord has committed certain offences.</p> <p>Our policy on applying for a rent repayment order is to.</p> <ul style="list-style-type: none"> • Treat each case on its own merits. • Ensure that applying for a Rent Repayment Order would meet the enforcement objectives in this policy. • Consider the impact of the breach on the occupier or others affected by the offence committed. • Consider the likelihood of the application being |

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| | <p>successful.</p> <ul style="list-style-type: none"> • Assess the level of resources it will take to make a successful application. • Consider whether it is more appropriate for the tenant to apply for the order themselves. |
| <p>Management Orders</p> | <p>Interim and final management orders give local authorities the power to take over the management of a house in multiple occupation (HMO) where there is no fit and proper person available to manage it.</p> <p>Interim and final empty dwelling management orders can be used to take steps to secure occupation of a property.</p> <p>The Council will have regard to the legislation and regulations when establishing whether these powers are appropriate to use where other attempts to secure occupation or appropriate management of the property have failed and there is no reasonable prospect of achieving this.</p> <p>Each case will be considered on a case-by-case basis having full regard to the legislation as to whether to apply for an interim order and any subsequent final orders.</p> <p>When an interim or final management order is in force, the council will take any steps which are considered to be necessary for the purpose of protecting the health, safety or welfare of persons occupying the property, or persons occupying or having an estate or interest in any premises in the vicinity; and take such other steps as considered appropriate with a view to the proper management of the property.</p> |
| <p>Entry on the Rogue Landlord Database</p> | <p>We will have full regard to the statutory guidance on the database of rogue landlords.</p> <p>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.</p> <p>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.</p> |

9. Naming Offenders

Following the conclusion of an investigation and successful prosecution or civil penalty, we will consider whether it is in the public interest to publish the name and address of the offender with the purpose of deterring others from similar actions.

10. Appeals

There is a statutory right of appeal against the Council's decision to issue a formal Notice. The period for submission of the appeal is set by legislation and all Notices will contain information about the circumstances in which to make an appeal, and how to make an appeal.

11. Works in Default – Cost Recovery

The Council has the power to carry out works in default for certain notices and recover all of its reasonable costs from any person(s) responsible for a failure to comply with a Notice. It is not necessary for the Council to have exhausted all other avenues such as prosecution before a decision is taken to carry out works in default.

12. Verbal / Physical Abuse towards Officers

The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and, where appropriate, will take legal action in instances of abuse, harassment or assault towards officers. To obstruct an officer in carrying out their duty is an offence and legal action may be taken against any person(s) doing so.

Where an officer is subjected to verbal abuse either in person or on the telephone, they are entitled to terminate the meeting or telephone call.

13. Comments and Complaints

You should give the Housing Standards service an opportunity to resolve your concerns informally if you are unhappy with a service provided. You can do this by discussing your concerns with the staff involved or their supervisor.

You may feel it necessary to make a formal complaint if your informal discussions, or repeated service requests do not resolve your issues. Visit [Customer feedback, compliments and complaints \(cheshireeast.gov.uk\)](http://cheshireeast.gov.uk) for methods of making a formal complaint.

Legislation

Housing Act 2004

Covers the method by which housing standards must be assessed and the enforcement of housing standards; licensing of houses in multiple occupation and other privately rented accommodation; management orders and overcrowding.

Housing Act 1985

Covers clearance areas, demolition orders and overcrowding.

The Management of Houses in Multiple Occupation (England) Regulations 2006

Covers the requirement for houses in multiple occupation (HMOs) to have satisfactory management arrangements in place and imposes duties on the person managing the property in respect of repair, maintenance, cleanliness and good order.

Local Government (Miscellaneous Provisions) Act 1976

Covers the requirement for information to be provided about a person's interest in land or property.

Local Government (Miscellaneous Provisions) Act 1982

Covers the securing of properties to prevent unauthorised entry.

Environmental Protection Act 1990

Covers properties that are prejudicial to health or causing a statutory nuisance.

Town and Country Planning Act 1990

Section 215 covers poor and unsightly properties and/or land that are detrimental to the local amenity.

Prevention of Damage by Pest Act 1949

Covers the power to remove articles that harbour pests.

Public Health Act 1961

Covers blocked drains.

Public Health Act 1936

Covers defective water closets and cesspools.

Building Act 1984

Covers defective drainage, water closets, premises that are prejudicial to health or a nuisance, and ruinous or dilapidated buildings and neglected sites.

Protection from Eviction Act 1977

Covers the 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

Covers the landlord's duty to keep properties in good repair.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Covers the provision of working smoke alarms in private rented properties.

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

Covers the minimum energy performance rating that properties must achieve before being let to tenants.

Housing and Planning Act 2016

Covers civil penalties which are a financial penalty that can be used as an alternative to criminal prosecution.

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Covers the inspection, testing and safety of electrical installations in the domestic private rented sector.

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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.

Since 1 October 2018, any HMO with 5 or more occupants must have a valid licence.

The aim of licensing is to ensure that larger HMOs, which inherently present a higher risk, are managed properly 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 several options:

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

Applications for Licences

A first-time licence application will 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 3 months old;
- Tenancy and management agreements;
- The correct fee for a licence application;
- Any other documents that we may request

An application for a renewal of a licence will be a complete application when a completed, signed and dated application fee and the correct fee for a licence application is received by us. Applications must be received before the existing

licence expires. Applications for renewal that are received after the licence has expired must be treated as a first-time application.

Duration of Licences

The maximum duration of a licence is 5 years.

Licence Conditions

All HMO licences contain mandatory licence conditions which must be always complied with. The Council may also impose additional conditions tailored to the specific circumstances of each property.

Where a breach of a licence condition occurs, we will take proportionate and appropriate action in accordance with this Policy. A breach of a licence condition is an offence which is punishable through several options:

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

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 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 several 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.

Where a breach of the HMO management regulations occurs, we will take proportionate and appropriate action in accordance with this Policy.

A breach of HMO management regulations is an offence which is punishable through several 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 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, considering the following five factors:

1. Confidence in management;
2. Amenities;
3. Standard of fire safety management;
4. Structure;
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 if 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 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 may 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.

Amenities in HMOs

The legislation in relation to HMOs is complex, so we 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 [Amenities and Facilities Standards in Houses in Multiple Occupation \(HMOs\)](#).

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.

Civil Penalties (“Financial Penalties”)

We will have full regard to the [statutory guidance on civil penalties](#).

1. Deciding whether to issue a financial penalty

We will use Tables 1 and 2 to determine whether to issue a financial penalty or to pursue a criminal prosecution. For the most serious or severe offences we will consider whether a financial penalty at the maximum level will have greater punitive merit than prosecution.

Table 1: Failure to comply with an Improvement Notice (Section 30, Housing Act 2004)

| 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 |
| Has the landlord previously been served with a Notice under Part 1 of the Housing Act 2004 (other than Hazard Awareness Notice) at this or other properties within CE? | Yes | 10 (per notice) |
| | No | 0 |
| Has the landlord complied with previous Notices (other than Hazard Awareness Notice)? | Yes | 0 |
| | No | 10 (per notice) |
| Does the landlord have any unspent convictions / cautions for Housing Act offences? | Yes | 20 |
| | No | 0 |
| Within the last 5 years, has the landlord previously been issued with a financial penalty? | Yes | 20 |
| | No | 0 |

| Score | Course of Action |
|------------|----------------------------------|
| 0-30 | Financial penalty |
| 31 or more | Prosecution or financial penalty |

Table 2: Offences in relation to Houses in Multiple Occupation (sections 72, 95, 139 and 234, Housing Act 2004)

| 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 Financial 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 notice was served | | 1 (per offence) |
| 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 | Financial Penalty |
| 41 or more | Prosecution or financial penalty |

2. Factors to consider in setting the amount of the financial penalty

Statutory guidance states that we should consider the following factors to help ensure that a financial 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.

Table 3: Culpability

| | |
|------------------|---|
| 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 | Tenant obstruction, or 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 the failing was 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 financial 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 severity 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.

Table 4: Harm

| | |
|---------------|--|
| High | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> Existing adverse effect, or a risk of there being an adverse effect on an individual |

d) **Punishment of the offender.** A financial 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 financial 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 financial penalty. An important part of deterrence is the realisation that the local housing authority is proactive in levying financial 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, that is it should not be cheaper to offend than to ensure a property is well maintained and managed properly. The penalty amount should be considered against any quantifiable

economic benefit derived from the offence, including through avoided or reduced operating costs.

3. Calculating the Financial Penalty

The matrix in Table 5 will be used to calculate the financial penalty. The matrix provides a starting point to reach an appropriate level of financial 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.

Table 5: Financial Penalty Matrix

| | 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 |

The following aggravating and mitigating factors will be taken into account when setting the financial penalty within the band range:

Aggravating factors:

- 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 financial 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:

- No relevant unspent previous convictions
- No relevant cautions within the last two years
- No relevant financial penalties within the last two years
- Where the landlord has mental ill health or learning disability, as certified by a registered general practitioner
- Where the landlord has 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

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

4. Considering whether the landlord has the means to pay a financial penalty

In setting a financial penalty, we will presume that the landlord is able to pay any financial penalty imposed, unless the landlord has supplied suitable and sufficient information to the contrary. The onus is on the landlord to disclose relevant data to us about his financial position that 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 their financial means from the evidence that we hold and from the circumstances of the case. Factors that we will consider include income, outgoings, financing arrangements for the landlords' portfolio and available equity in the portfolio. If a landlord claims that they cannot afford to pay a financial penalty, consideration will be given to whether any of the properties can be sold or refinanced.

5. Financial penalties under The Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 (as amended)

We will have regard to the culpability and harm guidance detailed above when determining the level of financial penalty.

The maximum amount of financial penalty that can be imposed under these regulations varies dependent upon which and how many regulation breaches have been committed, although the total financial penalty must not exceed £5,000.

Table 6 will be used in determining the overall level of financial penalty to be imposed, based upon a percentage of the maximum financial penalty that can be imposed for each breach of the regulations, subject to a minimum penalty of £500 and the maximum financial penalty not being exceeded.

Table 6:

| | High Harm | Medium Harm | Low Harm |
|-----------------------|-----------|-------------|----------|
| Very high culpability | 100% | 100% | 80% |
| High culpability | 100% | 80% | 60% |
| Medium culpability | 80% | 60% | 40% |
| Low culpability | 60% | 40% | 20% |

6. Financial penalties under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Where the Local Housing Authority decide to impose a financial penalty under these regulations, officers will have regard to the culpability and harm guidance as provided above. Officers will use Table 3 (culpability), Table 4 (harm) and Table 5 (financial penalty matrix) set out above to determine the level of financial penalty.

The maximum amount of financial penalty (or more than one penalty in the event of a continuing failure) that can be imposed in respect of a breach under these regulations must not exceed £30,000.

7. New and amended legislation

In the event of civil penalties being expanded to incorporate other housing offences, the process set out above to determine and calculate financial penalties will be used.

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 will be determined by the First-Tier Tribunal; however the Council 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.

Banning order offences are listed under [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#) and in the non-statutory guidance.

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

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. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made.
- **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. A longer ban may 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 aware of their legal obligations.
- **The harm caused to the tenant.** The greater the harm or potential for harm, the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants and could therefore be considered more harmful than other offences (such as fraud).
- **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 from reoffending and help ensure they fully comply with all of their legal responsibilities in future. The length of the ban should prevent the most serious offenders from operating in the sector again and deter others from committing similar offences.

Each case will be considered against the above factors and it will be decided on a case-by-case basis as to whether applying for a banning order is a just and proportionate course of action to take.

If confirmed to proceed, 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 deciding 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

If 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.