Rushcliffe Borough Council

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Housing Enforcement Policy 2024 - 2029

Adopted 9th July 2024

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Introduction

Improved housing conditions can save lives, prevent disease, increase quality of life, reduce poverty, and help mitigate climate change. Housing is becoming increasingly important to health in light of urban growth, ageing populations and climate change. (WHO,2018).

Quality of life and the environment are key priorities for Rushcliffe Borough Council as stated in its Corporate Strategy 2024-27.

The Council has Statutory obligations to ensure that all properties let as residential properties throughout the Borough, and those in private ownership, are safe, of good quality, free from major dis-repair and are well managed.

This Policy sits underneath the Council's Corporate Enforcement Policy and its Housing Delivery Plan 2022-27. It sets out the way in which the Council intends to secure effective compliance with the relevant legislation whilst minimising the burden to the Council, individuals, organisations, and business, including:

- Housing conditions in Private Sector properties (rented and owner-occupied)
- Housing Conditions in Registered Provider owned properties (Social Housing)
- Landlord's obligations in the Private Rented Sector
- Houses in Multiple Occupation (HMOs)
- Mobile Home Sites

The aim of this Policy is to govern the way in which enforcement is undertaken to achieve the following objectives:

- Good quality, healthy housing for all households renting and to prioritise action to those which present the greatest risks to the health and safety of the occupants or their visitors

- Houses in Multiple Occupation (HMOs) are safe and well managed, and all relevant Management Regulations are adhered to

- All licensable Houses in Multiple Occupation are licensed, and all licensing conditions are met

- All Mobile Homes sites are safe and well managed in accordance with licence conditions

Enforcement Principles

The Council recognises that each case is unique and will be considered on its own merits. When deciding on the appropriate action, Officers will consider the Law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence.

When deciding on appropriate action, Officers will have regards to the Council's Corporate Enforcement Policy. The Council supports the Principles of Good Regulations, as specified under Part 2 of the Legislative and Regulatory Reform Act 2006, and will exercise enforcement activities in a way which reflects these, as outlined below:

Proportionate

Any enforcement action taken will be proportionate to the risks and the seriousness of the breach. This will ensure that the most serious risks are targeted first.

Accountable

Enforcement activities will be open to Public Scrutiny, with clear and accessible policies and a fair and efficient complaints procedure.

Consistent

Enforcement duties will be carried out in a fair and consistent manner. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case. However, the Council will have regards to current procedures, best practice and advice provided by Regulatory Delivery, other Agencies (such as Nottinghamshire Fire and Rescue, the Police, Trading Standards and the Health and Safety Executive) and other relevant professional bodies.

Transparent

We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

Targeted

Enforcement will be primarily directed towards those activities that are likely to give rise to the greatest risks and most serious breaches of legislation, reflecting local need, and national and corporate priorities.

Tenure Groups

The Environmental Health Team have investigation and enforcement powers relating to all Housing regardless of tenure; however, the approach taken will vary depending on the tenure of the household.

Private Tenants

Tenants within rented accommodation are reliant on their landlord, or their landlord's Agent, to maintain their homes in accordance with legal requirements. Where Landlords or Landlord's Agents are putting the Health or Safety of their Tenants or those occupying a neighbouring property at risk, or are failing to meet their statutory obligations, the Council will take formal action as required.

Owner Occupiers

Owner occupiers are responsible for the maintenance and safety issues of their own home. Therefore, formal enforcement action against Owner Occupiers will be limited, except for situations where neighbouring properties are being affected in some way, for example a defect leading to water penetration into a neighbouring property or where there is an 'Imminent Risk' to the Occupier or any visitors to their property.

Registered Providers

Registered Providers (RPs) are regulated by the Regulator of Social Housing (RSH). RPs have their own procedures in place for reporting problems and making complaints and usually have clear response times for addressing any issues. The Environmental Health Team will not normally act against an RP unless the problem in question has been properly reported to the RP who has then failed to take appropriate action. The Council will consider enforcement action against an RP where there are significant risks to the Health and Safety of Tenants and or the wider Public.

Types of action available

We will respond to enquiries about substandard, unsafe, and problematic housing and adopt a graduated approach to enforcement.

Before considering any action in respect of a tenanted property, where it is appropriate, the Tenant(s) will be encouraged to contact their landlord about the problems to give the Landlord an opportunity to respond.

In some cases where the Tenant is considered vulnerable or the nature of the concern requires immediate investigation, this will not be appropriate.

Deciding on the Course of Action

The course of action will be decided having regard to the circumstances of each case, including:

- Amount and nature of disrepair
- Vulnerability of the Occupant, if any (e.g., elderly Occupants, young children).
- Effect the problem has on the Occupants, neighbours, or the surrounding area.
- Relevant legislation
- Relevant history of the Owners, Neighbours or Tenant, particularly the Owner's history of carrying out repairs at a pre-formal stage or following service of notice.

No Action

In the case of occupied homes, in some circumstances, it may be appropriate to take no action, for example:

- When the Health and Safety risk is sufficiently low, or when action would be disproportionate, or inappropriate in the circumstances of the case
- Having taken the tenant's views into account and the Council is not under a statutory duty to do so
- The allegations or complaints are unsubstantiated.

In such cases, occupiers may be directed to other sources of advice and support, for example the Citizens Advice Bureau. In some cases, the Council will cease to provide a service, for example, where the Tenant unreasonably refuses access to the property owner or a contractor to carry out works; or where a Tenant continually fails to engage with Council Officers.

Advice and Guidance

Council Officers will offer the following:

- Advice as to how the complainant can request repairs or improvements without the need for intervention from the Council
- A letter or telephone call to the property owner (without a visit), advising them of the information that the Council has received and allowing them a reasonable period to address the issues.

Pre-formal Action

Pre-formal action involves:

- A visit to the property to further investigate the complaint
- Once completed, the Council will write to the property owner identifying the hazards and advise on the repair or improvements that are required

When taking pre-formal action of any nature, Officers will clearly differentiate between what is legally required and what is recommended as good practice.

Where it is deemed appropriate to deal with issues through pre-formal action, the Council will work with the property owner to help them comply with their regulatory requirements. Clear and concise information will be provided along with the Council's contact details.

In cases where the property owner refuses or fails to carry out satisfactory works during the pre-formal stage, the case will usually progress to formal action.

Formal Action

Examples of circumstances in which formal action would be taken include where:

- Pre-formal action has had no effect
- There is a lack of confidence, due to a history of non-compliance from the property owner
- The risk to Health, Safety and Wellbeing is such that immediate formal action is necessary

Notice of Entry

Where a complaint of housing disrepair has been received and an inspection is required, a Notice of Entry is to be served under Section 239 of the Housing Act 2004. This informs all relevant parties of the Council's intended inspection.

Complaints of an urgent nature and/or the Council exercising its emergency powers negate the need for the service of a Section 239 Notice.

Where the Council are unable to gain access using a Notice of Entry or where such Notice will defeat the object of entry, the Council are able to make an application to the Magistrates Court for a Warrant to enter.

Serving of a Statutory Notice

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Such statutory notices are likely to require repairs or improvements to be completed within a specified timescale or requiring a specific action. These include notices served under the Housing Act 2004:

Improvement Notices

Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, work will be required to either remove the hazard entirely or reduce its effect so that it ceases to be a Category 1 hazard. Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works considered sufficient either to remove the hazard or reduce it to an appropriate degree.

Suspended Improvement Notices will be considered where it is reasonable, for example when the deferring of the work required is of benefit to the personal circumstances of the occupants.

Prohibition Orders

Can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used if repair or improvement appear inappropriate, due to practicality or excessive cost.

This option may be employed to prevent occupation by a particular description of persons, for example premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants, or premises with open staircase risers that make them particularly unsuitable for infants.

Hazard Awareness Notices

May be served to notify owner-occupiers of the existence of hazards, where the risk from the hazard is mitigated by the longstanding nature of the occupancy, or where it is judged appropriate to draw a landlord’s attention to the desirability of remedial action as part of a measured enforcement response.

Failure to comply with the Notice or Order may result in works being carried out in default, a Civil Penalty or a Prosecution.

Details of the Notice will be recorded on the Council's Local Land Register against the property to which it relates until the Notice is withdrawn or complied with.
This Register is available to the Public and anyone may search for entries upon payment of a fee. Potential purchasers of a property will normally search this Register.

Emergency Remedial Action and Emergency Prohibition Orders

Where a Category 1 Hazard exists, which poses an imminent risk of serious harm to the occupiers or others and immediate action is required to mitigate or remove the risk, appropriate emergency action will be taken.

Examples may include risk of electrocution, fire, noxious gases, explosion, or structural collapse.

Where emergency remedial action is taken, further action will be taken to recover the full costs incurred by the Council.

Works in Default

Where the property owner has failed to undertake legally required works within the permitted time, the Council may carry out the Works in Default. This will only be considered to remove serious hazards.

Once the Council has started works, it is an offence to obstruct Council Officers, or any contractors carrying out the works.

The cost of the Works and all other associated relevant costs will be recovered in accordance with the relevant Statutory Provisions. All outstanding debts will be registered as a Local Land Charge against the property and where interest can be charged, this will be added to the debt. The Council may consider using the Enforced Sale Procedures to recover the charges owed, where appropriate.

Carrying out Works in Default is a Discretionary Power, and the Council reserves the right not to do so where the costs of the Works is likely to be high, or there may be difficulties recovering the costs.

A Simple Caution

The Council has the power to issue informal cautions as an alternative to prosecution, where a person admits an offence and consents to the informal caution. Where an informal caution is offered and declined, the Council is likely to consider a prosecution.

An informal caution will be kept on the Council's Register of Cautions. It is likely to influence how the Council deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence.

Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has enough evidence to provide a realistic prospect of conviction against the defendant(s). Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the public interest test.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence.

Civil Penalties

The power to impose a Civil Penalty as an alternative to prosecution was introduced under the Housing and Planning Act 2016. See separate appendix.

Banning Orders

Where a Property Owner has been successfully prosecuted for certain offences, the Council can apply for a Banning Order. See separate Appendix.

Rent Repayment Orders

Where Housing Benefit has been paid to a Landlord and the Council are satisfied that the Landlord has committed one or more specific offences, the Council, or in some cases the Tenant, can apply for a Rent Repayment Order. See separate Appendix.

Who Decides What Enforcement is Taken

For less serious infringements of the law, decisions about the most appropriate course of action are usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines and the scheme of delegation and authorisation adopted by the Council.

For more serious offences, where the nature of the offence points towards a Civil Penalty or Prosecution, any decision will initially be considered at a case conference attended by the Investigating Officers, an Environmental Health Manager, a representative from Legal Services.

Publicity

Where appropriate, publicity will be actively sought for any enforcement action taken which could draw attention to the need to comply with the law or deter anyone else from non-compliance. Information about enforcement actions will be made available on request subject to the restrictions placed on the authority by the Data Protection Act 2018, Freedom of information Act 2000, and General Data Protection Regulations (GDPR).

Houses in Multiple Occupation

The Environmental Health Service is responsible for ensuring that all Houses in Multiple Occupation (HMOs) comply with necessary Management Regulations and Mandatory Licensing Schemes.

House in Multiple Occupation (HMO) - Definition

The definition of an HMO is given in the Housing Act 2004. Premises classed as HMOs are:

- a building or flat in which, three or more tenants make up two or more households and share basic amenities such as bathroom, toilet or cooking facilities.
- a building that has been converted and does not entirely comprise of self-contained flats.
- a building that is declared an HMO by the local authority
- a converted block of flats where the standard of the conversion does not meet the relevant building standards and fewer than two-thirds of the flats are owner-occupied: this is known as a section 257 HMO.

A household is generally taken to mean a single person, cohabiting partners, or people living together who are members of the same family. There are circumstances where people will be regarded as a single family where they are not related, for example where accommodation is provided for a carer, au pair, or nanny etc.

To be classed as an HMO the property must be used as the tenants only or main residence. Properties let to students and migrant workers will be treated as being their only or main residence, as would properties used as domestic refuges and hostels.

Schedule 14 of the Housing Act 2004 exempts certain buildings from the HMO definition.

Mandatory HMO Licensing

The Housing Act 2004 requires mandatory licensing of certain houses in multiple occupation (HMOs).

Mandatory licensing is required where the HMO is occupied by five or more persons living in two or more separate households. Children of any age contribute to the number of occupants.

Licensing Offences

Where the Council considers that a property needs to be entered to ascertain whether an offence has been committed, an Authorised Officer may enter the property at any reasonable time without giving prior Notice. For example, if the Council receives a report of a property being used as an unlicensed HMO, a visit may be arranged without giving prior notice.

It is an offence to be a person having control of or managing a licensable house in multiple occupation (HMO) without a licence.

Such a person may have a defence if they have applied for temporary exemption from the requirement to have a licence. No offence will have been committed once an application for a licence or for a temporary exemption notice has been submitted. Licence holders or persons in control may have committed an offence if they:

- knowingly permit another person to occupy and this results in more persons or households occupying than authorised by a license, or
- breach any condition of a license.

The Council will investigate all cases of HMOs that are found to be operating without a licence. This is a criminal offence, and if the Council is satisfied that it has enough evidence to provide a realistic prospect of conviction, consideration will be given to the issuing of a civil financial penalty or to prosecution, which could lead to an unlimited fine. The same approach will be taken in instances of an HMO being occupied by more persons than a licence allows.

In the case of breaches of HMO licence conditions, the same approach will be taken, and consideration will be given the issuing of a civil financial penalty, or to prosecution, which could lead to a fine of up to £5,000 per offence.

In addition to the above actions for licensing related offences, the Council will consider seeking a Rent Repayment Order after a person is the subject of a successful Civil Penalty or Prosecution.

Refusal of a Licence

An HMO licence will generally run for 5 years, but we may issue a licence for a shorter period in some circumstances. For example:

- if we have concerns over the management arrangements
- if there has been the need for previous intervention by the Council
- if there has been a history of non-compliance, or
- if planning permission is needed for the building but has not been obtained, a shorter licence period can be issued.

In more serious cases, or where we consider the applicant is not a 'fit and proper person' to hold a licence the Council may refuse to grant one (See separate Appendix). This will normally only be the case if the Council are of the view that there are serious difficulties with the management of the property, the fitness of the applicant to be involved in its management, or if the applicant is subject to a Banning Order. In such cases alternative licensing and management arrangements will need to be put in place. If arrangements for the satisfactory management of an HMO cannot be put in place and there is no prospect of the HMO being licensed within a reasonable time the Council may make an Interim Management Order.

The order can last for up to a year until suitable permanent arrangements can be put in place. If the order expires and the issue has not been resolved the Council can then make a Final Management Order which can last for up to five years and can be renewed.

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

The Regulations apply to all HMOs, except for section 257 HMOs who have their own broadly similar management regulations, which impose duties on a person managing an HMO.
Where compliance with the Management Regulations has not been achieved, then enforcement will be considered based on the impact of the breaches, thereby providing tenants and neighbours confidence that the Council are addressing any issues relating to all HMOs. The enforcement options that will be considered by the Council are a civil financial penalty (see separate Appendix) or a prosecution, which could result in an unlimited fine.

Mobile Homes

Local Authorities are responsible for safeguarding the interests of Mobile Home Residents living on Residential Mobile Home sites through the Licensing regime under the Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013.

Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013

All site Owners are required to obtain a Site Licence before any land may be used as a Caravan Site. The Council has powers to attach Licence Conditions to a Site Licence that are necessary or desirable for the interests of people living on the site or the Public at large, for example the number of units, the size of the units, the positioning of the units, sanitary provisions etc.

In formulating Site Licence Conditions, the Council must have regard to the Model Standards 2008 for Caravan Sites in England: Caravan Sites and Control of Development Act 1960 Section 5. Section 8 of the 1960 Act allows the Council to change Licence Conditions at any time following consultation with the site owner.

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (“the Regulations) require the manager of a relevant protected site to be a Fit and Proper Person. See separate Appendix.

Enforcement

Section 9A of the Caravan Sites and Control of Development Act 1960 allows the Council to serve Compliance Notices on the Site Owner, where a Breach of a Site Licence Condition has occurred.

Where possible, an informal approach will be taken in the first instance, working to an agreed schedule of works provided to the site owner in writing.

A Compliance Notice can only be used in relation to Breaches of the Site Licence Conditions.

Failure to comply with a Compliance Notice within the given timescale is an offence which on conviction carries a fine. Where the Site Owner is convicted of an offence the Council may carry out Works in Default. Where the Licence Holder has been convicted on 2 or more previous occasions for failing to comply with a Compliance Notice, the Council may apply to the Court for revocation of the Site Licence.
The Council will take emergency action where the Site Owner has failed or is failing to comply with a Site Licence Condition and where, because of such failure, there is an imminent risk of serious harm to the Health or Safety of any person who is or may be on the land.

Appendix 1: Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to improve the least energy efficient properties those with Energy Efficiency Performance Certificates (EPC) rated F or G.

Unless an exemption applies, a domestic Private Rented Sector property must not be let unless it has a minimum Energy Performance Certificate (EPC) rating of E.

Exclusions and exemptions are detailed in Regulations and the Domestic Private Rented Property Minimum Standard Guidance (or any subsequent Government Guidance), and include:

- Where all 'relevant Energy Efficiency Improvements' for the property 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
- The relevant Energy Efficiency Improvement is wall insulation, and it cannot or should not be installed on the property in question, where the Landlord has obtained written expert advice which indicates that the measure is not appropriate for the property due to its potential negative impact
- The relevant Energy Efficiency Improvements require third party consent, e.g., planning permission and consent has not been given
- The relevant Energy Efficiency Improvements would devalue the market value of the property by more than 5%
- Where the Landlord is exempt due to recently becoming a landlord.

All exclusions and exemptions must be registered by the Landlord on the National Private Rented Sector Exemptions Register and will last for 5 years.

Landlords of a domestic property for which an EPC is not a legal requirement (for example a property which has Listed Building status) are not bound by the prohibition on letting sub-standard property.

- The Council will check for different forms of non-compliance with the Regulations including:
- For any property that is sub-standard (rated F or G); and does not have a registered exemption

- Where the Landlord has registered any false or misleading information on the Private Rented Sector Exemptions Register or has failed to comply with a compliance Notice

Buildings that are not legally required to have an EPC are not required to provide an entry on the Exemptions Register.

The Council will serve a Compliance Notice requiring information from the Landlord to help them decide whether the Landlord has breached the Regulations, this may be served up to 12 months after the suspected Breach. The information requested can include:

- The EPC that was valid for the time when the property was let
- The current tenancy agreement used for letting the property
- Information on energy efficiency improvements made
- Any Energy Advice Report in relation to the property
- Any other relevant document that the enforcement authority requires to carry out its compliance and enforcement functions.

Infringements and Penalties

Infringements which may result in a Penalty Notice:

- Failure to comply with a Compliance Notice
- The letting of a non-compliant property in breach of the Regulations or
- The uploading of false or misleading information to the Exemptions Register.

If the Council confirms that a property is (or has been) let in breach of the Regulations, a Penalty Notice may be served relating to a financial Penalty, a publication Penalty, or both and may be served on a landlord (a person or entity that lets, or proposes to let, a domestic Private rented property) up to 18 months after the Breach.

The financial Penalty amounts will be applied per property and per infringement, up to a maximum of £5,000.

Infringement	Penalty (less than 3 months breach)	Penalty (3 months or more in breach)
Renting out a non-compliant property	£2,000 And/or a Publication Penalty	£4,000 And/or a Publication Penalty
Providing false or misleading information on the Private Rented Sector Exemptions Register	£1,000 And/or a Publication Penalty	
Failing to comply with a compliance Notice	£ 2,000 And/or Publication Penalty	

A Publication Penalty will include the publishing of:

- The Landlords name (except where the Landlord is an individual)
- Details of the Infringement
- The address of the property in relation to which the infringement occurred
- The amount of the financial penalty imposed

The details will be published on a publicly accessible part of the Private Rented Sector Exemptions Register which will be available for view by the Public through the 'gov.uk' website. The Council recognises that each case is unique and will be considered on its own merits.

When deciding on the appropriate action, Officers will consider the Law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence.

Right of Appeal

A Landlord has the right to ask the Council to review its decision to serve a Penalty Notice. This request must be in writing and the Council will consider everything detailed in the request in deciding whether to withdraw the Penalty Notice. Details of the right to make a request and the associated timescales will be included with the Notice.

A Landlord has 28 days to submit an appeal in respect of a Penalty Notice to the General Regulatory Chamber (GRC) of the First-Tier Tribunal. A Landlord may appeal if a request to review the Council's decision results in the Penalty Notice being upheld.

Appendix 2: Electrical Safety Standard Regulations

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require Landlords of privately rented accommodation to:

- Ensure national standards for electrical safety are met. These are set out in the appropriate 'wiring regulations', which are published as British Standard 7671
- Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every five years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local housing authority with a copy of this report within seven days of receiving a written request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works.

Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days with a written request from the Council for a copy of the report and must supply the Council with confirmation of any remedial or further investigative works required by a report.

The Council may wish to request reports following inspections of properties to ascertain the condition of the electrical installation and confirm the landlord is complying with the Regulations. Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the relevant edition of the Wiring Regulations:

- Code 1 (C1): Danger present. Risk of injury.
- Code 2 (C2): Potentially dangerous.
- Further Investigation (FI): Further investigation required without delay.
- Code 3 (C3): Improvement recommended. Further remedial work is not required for the report to be deemed satisfactory.

If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.

The C3 classification code does not indicate remedial work is required, only that improvement is recommended.

A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. The notice must be served within 21 days of the decision that the landlord has not complied with their duties.

If the Council has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is required, it may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.

Otherwise, a remedial notice will be served requiring the landlord to take remedial action within 28 days. Should a landlord not comply with the notice, the Council may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Landlords have the rights to make written representation and appeal against remedial action. The Council can recover the costs of taking the action from the landlord.

Under regulation 11 of the Regulations where the Council is satisfied, beyond a reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

A financial penalty may be of such amount as the authority imposing it determines but must not exceed £30,000.

In determining the Civil Penalty amount, the Council will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and to the Council's Civil Penalty Matrix.

When determining the appropriate sanction, the Council should satisfy itself that if the case were to be prosecuted there would be a 'realistic prospect of a conviction'.

The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence.

Appendix 3: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1st October 2015, followed by the Smoke and Carbon Monoxide Alarm (amendment) Regulations 2022 which came into force on 1st October 2022.

The regulations require private sector landlords to:

- Ensure at least one smoke alarm is installed on every storey of their properties where there is a room used for living accommodation.
- Ensure a carbon monoxide alarm is installed in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers).
- Make sure the alarms are in working order at the start of each new tenancy, and that they are repaired or replaced once informed and found to be faulty.

Where it is found that a rented home does not comply with these regulations, the Council has a duty to serve a remedial notice.

Landlords who fail to comply with a remedial notice can face a fine of up to £5,000
In determining the value of a penalty charge the Council takes into account the following principles:

- No penalty charge shall be issued above the statutory maximum of £5,000
- No penalty charge shall be less than 20% of the starting value after all aggravating and mitigating factors are considered.
- Mitigating factors will be considered based on evidence submitted by the landlord or their agent to the Environmental Health Team including any information provided following inspection and any representations that the landlord provides following service of a Notice of Intent to issue a Financial Penalty.
- In recovering the value of any financial penalty, The Council will consider the incomes, savings and assets of the perpetrator and where appropriate a payment plan considered.

Starting value of penalty charge (note 1)	£
1st offence	1,000
2nd subsequent offence by same person/company	2,500
Subsequent offences by same person/company	4,000
Aggravating factors (use all that apply) (note 2)	
Acts or omissions demonstrating high culpability. (note 4)	500
Large housing portfolio (note 5)	500
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 6)	500
Mitigating Factors (use all that apply) (note 3)	
Evidence of Low culpability (note 7)	-500

Notes to accompany charging table

Notes 1-3 set out the overall process for determining the value of a given financial penalty. Notes 4-7 give detail on specific other issues.

Note 1 -Determining the starting value of a financial penalty

The starting point for a financial penalty is based on the number of:

- Previous Final Notices of a Financial Penalty issued under these regulations issued to the same person or corporate entity for the same type of offence in the previous four years. The Council will take into account any such financial penalties irrespective of the locality to which the offence relates.

Note 2 – Aggravating factors

After the starting point as per note 1 has been determined any relevant aggravating factors are considered and where appropriate to do so, the given value is added to the starting point to provide the maximum level of financial penalty.

At this stage it is possible for the notional penalty to be above the statutory maximum, but once mitigation and income are considered, if the value is still above the statutory maximum, it will be capped as per the “general principles”.

Note 3 - Mitigating factors

After aggravating factors are considered and applied where appropriate, mitigating factors are considered and where there is sufficient and compelling evidence the relevant value will be discounted from the Financial Penalty.

In considering whether it is appropriate to include a mitigating factor, evidence shall be considered that has been gathered by the inspecting officer in the course of the investigation into the offence as well as any representations that have been provided following a Notice of Intent.

Note 4 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Notes 5 – Large housing portfolio

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation. For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 6 – Vulnerable persons

This note applies where the occupant is considered vulnerable to harm or where significant harm has occurred as result of failure to comply with regulations.

- Vulnerable occupant and/or significant harm occurred as result of the failure to comply with the Regulations.

For the purposes of this factor a vulnerable person is defined as:

A person who suffers, or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering due to age, disability or severe financial insecurity”
This factor applies where an occupant is vulnerable and, due to the underlying failure to comply with the relevant legislation is placed at additional risk or harm compared with a non-vulnerable resident.

For purposes of this factor, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm as recorded in Housing Act 2004 Section 9 Operating Guidance for the Housing Health and Safety Rating System.

Note 7 – Low culpability

This factor will apply where the perpetrator provides sufficient evidence that they only marginally fell short of their legal obligations, for instance:

- significant efforts were made to address the risk, breaches or offences, although they were inadequate to mitigate the underlying cause to issue the penalty;
- they have offered a reasonable defence for why they were unaware of the risk, breach or offence.
- failings were minor and occurred as an isolated incident.

It will not be sufficient to claim not to have known of the legal requirement or deficiency that forms the underlying reason for the financial penalty in order to benefit from this factor.

It will also not apply where the underlying failure was due to the inaction of the perpetrator in properly managing rented properties, responding to complaints of poor standards, carrying out routine visits, instruct others to assist where necessary etc.

Appendix 4: Civil Penalties

Civil Penalties may be used as an alternative to Prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice – Section 30
- Offences in relation to Licensing of HMOs - Section 72
- Offences in relation to Licensing of houses - Section 95
- Failure to comply with an overcrowding Notice – Section 139
- Breach of Management Regulations in respect of an HMO – Section 234

In addition, a Civil Penalty can be imposed for a breach of a Banning Order, or under regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, where the Council is satisfied, beyond a reasonable doubt, that a private landlord has breached a duty under Regulation 3. See Appendix 5 Electrical Safety Standard Regulations.

The Decision to Prosecute or Issue a Civil Penalty

Where the Council considers that an offence detailed above has been committed, it will decide whether to Prosecute or to issue a Civil Penalty.

Any decision to Prosecute or to issue a Civil Penalty will initially be considered by the Investigating Officers, the Manager, and a representative from Legal Services.
When making the decision, the Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Evidential Test:

The Council will consider whether there is sufficient evidence to provide a realistic prospect of a conviction for each offence (considering any potential defence). This will not require that the evidence is overwhelming, but that an objective, impartial and reasonable court, properly directed and following the law, is more likely than not to convict the defendant. The Council will review and assess the evidence as part of this test.

If the evidential test is satisfied, the Council will proceed to the second test.

The Public Interest Test:

The Council must be satisfied that it is in the public interest to pursue a legal sanction and determine which sanction is appropriate. The public interest factors that will be considered include:

- The seriousness or severity of the offence
- The compliance history of the offender(s)
- The level of culpability of the offender

- Any harm suffered by the tenant, including consideration of the vulnerability of the tenant(s)
- The potential deterrent effect that instigating any action would have on the offender and other potential offenders within the local area
- Any financial benefit resulting from the offence.

At the conclusion of the decision-making process, the Council may determine that one of the following outcomes is appropriate:

- Pursue a prosecution for the offence(s)
- Impose a civil penalty
- Gather additional evidence so that it can be further considered
- Utilise alternative enforcement options
- Utilise informal methods
- Take no further action.

If the Council believes that is has a reasonable prospect of conviction in a particular case, it will always consider a Civil Penalty in the first instance.
The following factors, whilst not exhaustive, are examples of where it may be appropriate to consider the issuing of a Civil Penalty rather than Prosecuting:

- No evidence of previous non-compliance with appropriate legislation
- No previous convictions recorded
- Not in the Public Interest to Prosecute
- Positive interaction with Strategic Housing
- The offence was committed because of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- A Civil Penalty is likely to have a deterrent effect
- Prosecution is likely to have a serious adverse effect upon an individual's well-being e.g., a Landlord's physical or mental health (these factors must be balanced against the seriousness of the offence).

Determining the Level of a Civil Penalty

In accordance with Government recommendations, to ensure that the Civil Penalty is set at an appropriate level, the Council will consider the following factors:

- The seriousness of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender for the offence
- Deterrent value to prevent the offender from repeating the offence and to prevent others from committing the offence
- Removing any financial benefit obtained from the committing the offence.

The Harm Caused

In determining the level of harm, the Council will have regard to the:

- Person i.e., physical injury, damage to health and psychological distress
- Community i.e., economic loss, harm to the Public
- Other types of harm, i.e., public concerns with regards to the impact of poor housing conditions on the local neighbourhood

The nature of the harm depends on the personal characteristics and circumstances of the victim. Where no actual harm has resulted from the offence, the Council will consider the relative danger that persons have been exposed to because of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- Serious or psychological effect on the victim
- Victim is particularly vulnerable.

Culpability

The Council will have regard to 4 levels of culpability, where the offender:

- Has the intention to cause harm: the highest culpability where an offence is planned
- Is reckless as to whether harm is caused: i.e., the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people
- Has knowledge of the specific risks associated with the actions: even though harm is not intended
- Is negligent in their actions

Civil Penalty Amount

The table below sets out the interrelation between harm and culpability as a starting point in the determination of the Civil Penalty which Officers will use on a case-by-case basis:

	Low Harm	Medium Harm	High Harm	Very High Harm
Low Culpability	£1,000	£3,000	£4,000	£5,000
Medium Culpability	£3,000	£6,000	£8,000	£10,000
High Culpability	£4,000	£8,000	£12,000	£18,000
Very High Culpability	£5,000	£10,000	£18,000	£27,000

Aggravating and Mitigating Factors

Aggravating factors in the case will be considered and may increase the initial amount by 3% (for each aggravating factor), up to a maximum of 15% (or £30,000 whichever is the lesser) and equally, any mitigating factors will be considered and will reduce the initial amount by 3% (for each mitigating factor), to a maximum of 15% of the initial penalty level.

Examples of Aggravating Factors include:

- Previous convictions having regard to the offence to which it applies, and the time elapsed since the offence.
- Motivated by financial gain.
- Lack of co-operation/communication or obstruction of the investigation.
- Deliberate concealment of the activity/evidence.
- Offending over an extended period i.e., more than 6 months
- Number of items of non-compliance – the greater the number, the greater the potential aggravating factor.
- A history of non-compliance.
- A history of poor management.
- Lack of a tenancy agreement.
- Already a member of an accreditation scheme or letting standard

Examples of Mitigating Factors include:

- Co-operation with the investigation.
- Voluntary steps taken to address issues e.g., submit a licence application.
- Willingness to undertake training.
- Willingness to join the DASH Landlord Accreditation Scheme.
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns.
- No previous convictions.
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.
- Good character and/or exemplary conduct.
- Early admission of guilt i.e., within 1 month.

Actions and Process

The Council will give Notice of its proposal (Notice of Intent) to impose a financial Penalty within 6 months where there is sufficient evidence of the conduct to which the Penalty relates, or at any time when the conduct is continuing.

At the end of the period for representations, the Council will decide whether to impose a Civil Penalty and if so, the amount.

Where a decision is made to impose a Civil Penalty, the Council will give Notice (Final Notice) requiring the amount to be paid within 28 days. The Council may withdraw or reduce the amount specified at any time.

Financial Means to Pay a Civil Penalty

An Offender will be assumed to be able to pay a Civil Penalty up to the maximum amount unless they can demonstrate otherwise. It is for the Offender to disclose to the Council such information relevant to his or her financial position that will enable the Council to assess what he or she can reasonably afford to pay.

The Council will decide whether a Civil Penalty is affordable for the Offender based on all evidence available to them. This will include any equity that could be released from properties owned by the offender if refinanced. Consideration will be given to whether any of the properties can be sold.

Income received from Civil Penalties will be retained by the Council and used for further enforcement work covering the Private Rented Sector.

Right of Appeal

A person issued with a Civil Penalty has a Right of Appeal to the First-Tier Tribunal. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the Civil Penalty issued. The First-Tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

Recovery

If the final notice remains unpaid, the Council may apply for an order for payment from the county court, then employ bailiffs to collect unpaid penalties if necessary

Appendix 5: Rent Repayment Orders

A Rent Repayment Order (RRO) is an Order made by the First-Tier Tribunal requiring a landlord to repay a specified amount of rent.

- Rent Repayment Orders cover a wide range of offences, as detailed below:
- Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order – Section 32 of the Housing Act 2004
- Breach of a Banning Order - Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property – Section 6 of the Criminal Law Act 1977
- Illegal Eviction or Harassment of the Occupiers of a property – Section 1 of the
- Protection from Eviction Act 1977
- Offences in relation to Licensing of HMOs - Section 72(1)
- Offences in relation to Licensing under Part 3 of the Act - Section 95(1)

Rent Repayment Orders require repayment, of rent, or Housing Benefit, or of the housing costs element of Universal Credit paid in respect of a tenancy or licence, by a landlord/agent who has committed one of the offences listed. The RRO can be granted to either the Tenant or the Council. If the Tenant paid their rent themselves (or a proportion) then the rent (or equivalent proportion) must be repaid to the Tenant. If the rent (or a proportion) was paid through Housing Benefit or through the housing element of Universal Credit, then the rent (or equivalent proportion) must be repaid to the Council. The maximum amount of rent that can be recovered is capped at 12 months.

A Rent Repayment Order can be applied for by the tenant, or the Council, when the Landlord has committed an offence, whether a landlord has been convicted. Where an application for Rent Repayment Order is made and the Landlord has not been convicted of the offence for which the Rent Repayment Order application is being made, the First-Tier Tribunal will need to be satisfied beyond reasonable doubt that the Landlord has committed the offence.

The Council will consider applying for a Rent Repayment Order after a person is the subject of a successful Prosecution, or Civil Penalty for the following offences:

- Failure to comply with an Improvement Notice - Section 30
- Failure to comply with a Prohibition Order – Section 32 of the Housing Act 2004
- Breach of a Banning Order - Section 21 of the Housing and Planning Act 2016
- Offences in relation to Licensing of HMOs - Section 72(1)
- Offences in relation to Licensing under Part 3 of the Act - Section 95(1)

In most cases the Council will make an application for a Rent Repayment Order to recover monies paid through Housing Benefit, or through the housing element of Universal Credit and will offer advice and guidance to assist Tenants to apply for a Rent Repayment Order in cases where the Tenant paid the rent themselves.

Appendix 6: Redress schemes for lettings agency and property management work

All letting agents and property managers must belong to one of the Government approved redress schemes.

These schemes include:

- The Property Ombudsman
- The Property Redress Scheme

This means that tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received. This makes it easier for tenants and landlords to complain about bad service and prevent disputes escalating. The Council will act where is it satisfied that, on the balance of probability, someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

Because this requirement has now been in place for a number of years and to reflect the fact that all Lettings and Managing Agents are expected to be aware of their obligations, the applicable penalty will be £5,000. A penalty fine will only be charged if the Council is satisfied that there are extenuating circumstances. It is up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.

The Council may impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed.

There is no limit to the number of penalties that may be imposed on an individual letting's agent or property manager and further penalties may be applied if they continue to be in breach of the legislation.

Appendix 7: Fit and Proper Person Determination and Satisfactory Management Arrangements

The aim of this policy is to ensure that all licensable houses in multiple occupation (HMO's) have appropriate arrangements in place to ensure that they are satisfactorily managed by fit and proper persons in accordance with the Housing Act 2004.

Duties of a person managing an HMO

Under the provisions of The Management of Houses in Multiple Occupation (England) Regulations 2006, any person managing an HMO of any size has a duty of care in respect of providing information to occupiers, taking safety measures, maintaining water supply and drainage, maintaining gas and electricity supplies, maintaining common parts and living accommodation and providing waste disposal facilities. In addition to these requirements, any person applying for an HMO licence must be able to prove to the council that they are a fit and proper person.

The decision to issue an HMO licence

In deciding whether to issue a licence, the council must be satisfied that there are acceptable management arrangements in place or that such satisfactory arrangements can be put in place by the imposition of conditions in the licence.

In considering whether the management arrangements are satisfactory, the council must have regard to the following:

- The suitability of the proposed licence holder and manager (if different) and any other person involved in the management of the property; that is to say that they are in each case a "fit and proper person"
- The competence of the proposed licence holder/manager to manage the building
- The suitability of management structures
- The adequacy of financial arrangements

This document considers the meaning of fit and proper person, the council's approach to deciding whether a person is fit and proper and the factors that the council will take into account when making such decisions. This protocol relates to applications for new licences, as well as to existing licences and applications for their renewal.

What is a fit and proper person test?

Before issuing an HMO licence, the Housing Act 2004 states that the council must be satisfied that the proposed licence holder and manager of the property are a fit and proper person. If not, the licence must be refused unless other satisfactory arrangements can be agreed.

The test is designed to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

A licence may be revoked where the council no longer considers the licence holder to be a fit and proper person and/or that the management of the house is no longer being carried out by persons who are in each case fit and proper to be involved in its management.

What is meant by “involved in the management”?

The council must consider licence holders, managers and others involved in the management of the property.

A person involved in the management, is a person who is able to comply with any licence conditions and deal with the day-to-day issues that arise within an HMO as well as being able to deal with longer term management issues. Typically, but not exclusively, these will include such matters as:

- Emergency repairs and other issues
- Routine repairs and maintenance of the property and its grounds
- Cyclical maintenance
- The management and the provision of services to the building and its grounds
- The management of tenancies or occupants, including dealing with rent matters and tenants’ enquiries
- The management of the behaviour of tenants, occupants and their visitors to the property
- Neighbourhood issues (including disputes)
- Engagement with the local authority, Police and other agencies, where appropriate.

The licence holder and the manager can be two different people. Where this is the case, a decision will be made for each of them about whether they are a fit and proper person.

How will the council decide if I am fit and proper?

Each licensing application must be accompanied by a basic disclosure certificate from the Disclosure Barring Service for each licence holder and all persons involved in the management of the licensable property.

A basic disclosure allows the council to confirm whether a licence applicant has a current criminal conviction or not. The information is taken directly from the Police National Computer and printed on an official disclosure certificate from the Disclosure Barring Service.

The licence holder and manager (if different), and any other person involved in the management of the HMO must also sign the official declaration on the HMO licensing application form.

The council may consult with other councils and with council departments and may use any information contained within the database of rogue landlords and property agents under chapter 3 of the Housing and Planning Act 2016.

The council will consider a person to be “fit and proper” if satisfied that they:

- have not committed an offence involving fraud or other dishonesty, or violence of drugs, or any offence listed under schedule 3 to the Sexual Offences Act 2003 (section 66(2)(a) of the Housing Act 2004).
- have not practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in or in connection with the carrying on of any business (section 66(2)(b) of the Housing Act 2004).
- have not contravened any provision of the law relating to housing or landlord and tenant law (section 66(2)(c) of the Housing Act 2004).
- have not acted otherwise than in accordance with a code of practice under section 233 of the act (regarding management of HMOs) (section 66(2)(d) of the Housing Act 2004).
- are not subject to a banning order under section 16 of the Housing and Planning Act 2016

In addition to the above, the council will consider any contravention of legislation relevant to housing. This may include where the council has served a statutory notice, carried out works in default of a notice, taken a prosecution or issued a civil penalty.

The nature of the contravention and its relevance to the management of an HMO and the potential harm associated with the contravention will be taken into consideration.

In relation to any contravention of a provision of the law relating to housing, the council will consider whether a proposed licence holder or manager:

- Has had a licence revoked, refused or has been convicted of breaching the conditions of a licence under parts 2 or 3 of the Housing Act 2004 or is / has operated an HMO without an appropriate licence in place.
- Owns or manages or has owned or managed an HMO or house which has been the subject of a control order under section 379 of the Housing Act 1985 in the five years preceding the date of the application; or any appropriate enforcement actions described in section 5(2) of the Housing Act 2004 (in relation to category 1 hazards).
- Owns or has previously owned a property that has been the subject of an interim or final management order whilst in their ownership, or a special interim management order under the Housing Act 2004.
- Is subject to a banning order under section 16 of the Housing and Planning Act 2016.
- Owns or has previously owned a property for which the council has taken action as described in section 5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order, Hazard Awareness Notice, Demolition Order or Emergency Remedial Action.

Each case will be decided on its own merits, taking into consideration the circumstances surrounding the contravention, where there has been more than one contravention, repeating nature of contraventions and of any evidence demonstrating good character since the contravention(s).

How will the council make their decision?

Where there is evidence of a relevant offence, unlawful discrimination, contravention, banning order or breach of the code of practice, the council may decide that the person is not fit and proper. Each case will be decided on its own merits and such evidence will not necessarily lead to a conclusion that a person is not a fit and proper person. The council will act reasonably, proportionately, and consistently in its approach to making a decision. It will consider those factors relevant to a person's fitness to hold a licence and/or manage an HMO and disregard those which it considers are not relevant.

Consideration of "persons associated or formerly associated" with the proposed licence holder or manager

Where there is evidence that a person associated, or formerly associated with a proposed licence holder or manager has committed any offence specified in section 66(2) of the Housing Act 2004, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness. The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a front for someone else, who would be considered to be unfit to be the manager or licence holder.

Duration

If someone is determined by the council to fail the fit and proper person test, this will usually remain the case for a period of 5 years. However, the council may consider it appropriate (in the event of lesser offences) to apply a condition to the licence to allow the licence to operate for a reduced term, e.g., 12 months. The conduct of the licence holder can then be monitored, and this taken into consideration in subsequent licensing applications. The council will, in doing so, have regard to this document and the applicant will need to provide sufficient evidence that they are now a fit and proper person.

If the licence holder or manager is found to not be fit and proper, the council will notify them in writing.

What happens if the licence holder fails the fit and proper test during the duration of licence?

Should the council become aware that a licence holder or manager of an HMO commits an offence or breach which would result in the failure of the fit and proper test during the duration of the licence, the council may revoke the licence. At all times the council will consider all evidence available and make decisions in accordance with this protocol.

Should the licence holder be subject to a banning order under section 16 of the Housing and Planning Act 2016 during the duration of an existing licence, the licence holder will fail the fit and proper test and the council must revoke the licence.

What to do if you feel you have been treated unfairly

If you feel you have unfairly been refused an HMO licence you may appeal to the Council, explaining exactly why you believe you should have been granted a licence. The Council will review your case and respond to you within a reasonable timespan.

Residential Property Tribunal

If you are still unhappy with the response, you may appeal to the Residential Property Tribunal. This application must be made within 28 days of the notification of the Council's decision.

Extent of any determination

Where any person involved in the management of a licensable property is deemed not to be a fit and proper person then that determination will apply not only to the licence application under consideration but to all licences to which that person is a party. This information may also be shared with other council's which may have an involvement with the persons assessed.

Data sharing

Information obtained and used for the purpose of determining whether a licence holder or manager is a fit and proper person may be shared with other councils, council department or statutory bodies. Licence applicants agree to this when they sign the application form.

Appendix 8: Decision to Apply for a Banning Order

This policy explains how the Council will use its powers under the Housing and Planning Act 2016 to ban non-compliant landlords and managing agents from renting out properties within the private rented sector.

This policy should be read in conjunction with the council's Corporate Enforcement Policy.

Introduction

The Council is committed to improving standards in private sector housing, with the aim of ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable. Whilst the Council acknowledges that compliant landlords do operate their business responsibly, there will be a number of irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard, or unsafe.

Part 2, Chapter 2 of the Housing and Planning Act 2016 enabled Local Authorities to apply to the First-Ter Tribunal (FTT) to impose a banning order on a landlord following conviction for a banning order offence. A banning order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.

To utilise the banning order powers, it is best practice to have in place its own policy as to when to pursue a banning order, and to decide the most appropriate course of action on a case-by-case basis in line with that policy.

This policy gives due regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government, which sets an expectation that banning orders should be aimed at the most serious offenders.

Factors in decision making

The following factors will be considered by the local authority in deciding whether to apply for a banning order, and when recommending the length of a banning order:

- the seriousness of the offence
- previous convictions/rogue landlord database
- harm caused to the tenant

- punishment of the offender
- deterrence to the offender from repeating the offence
- deterrence to others from committing similar offences
- Upper Tribunal Decisions

The Seriousness of the Offence

All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself.

Previous convictions/rogue landlord database

A local authority should check the rogue landlord database to establish whether a landlord has committed other banning order offences 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.

The Council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order and will consider the following:

The harm caused to the tenant

This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), 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

A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Deterring the offender from repeating the offence

The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.

Deterring others from committing similar offences

An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

Decision

Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Head of Service who will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a banning order, including the recommended duration of the ban.

Publicity following a banning order

Where a successful banning order has been made, details of all banning order offences will be published and held on a national register.

Subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/any business (managing or lettings agency), having reference to the DLUHC guidance and guidance provided by the Ministry of Justice.

Information on banned landlords will be made available to tenants where it is in the public interest to do so or at the request of the tenant.

Appendix 9: Mobile Home Site Manager – Fit and Proper Person Determination

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (hereafter 'the Regulations') prohibit the use of land as a residential mobile home site unless the Local Authority is satisfied that the owner or manager of the site is a fit and proper person to manage the site. The purpose of the fit and proper person test is to improve the standards of park (mobile) home site management.

When conducting the fit and proper person assessment, the Council will consider the following points relevant to the application:

1. Is the individual able to conduct effective management of the site.

This includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site. The Council must have regard to:

- Whether the person has a sufficient level of competence to manage the site. I.e., it is a non-commercial, family occupied site under Regulation.
- The management structure and funding arrangements for the site, or the proposed management structure and funding arrangements.

Competence to manage the site

This includes reviewing the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

The management structure and funding arrangements for the site

The Council must consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The applicant is expected to have a robust management plan, which should address following:

- the pitch fee payment,
- proximity of the manager to the site,
- manager's contact details for residents (including out of office and emergency contact details),
- the complaints procedure,
- maintenance, refuse/recycling removal.
- staffing.

It is advisable that the site is managed by an applicant based in the UK and that a management structure would be unlikely to be considered suitable if the applicant is an individual, or a company (including its directors), which does not reside or have a permanent UK address. This is because there may complex issues because of this, such as needing the court's permission to serve a claim in a foreign country.

The applicant's interest in the land will have an important impact, as would their financial standing, management structures and competence, all of which could contribute to the overall assessment of their suitability to manage to effectively manage the site.

The proposed management structure and funding arrangements in place for managing the site The Council must consider whether the applicant has sufficient funds (or has access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

2. Personal information relating to the applicant concerned.

This would include a criminal record check and should include evidence that the applicant:

- has not committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (Offences attracting notification requirements)
- has not contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning, or environmental health or of landlord and tenant law
- has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business
- has not harassed any person in, or in connection with, the carrying on of any business
- is not or has not been within the past 10 years, personally insolvent
- is not or has not been within the past 10 years, disqualified from acting as a company director
- has the right to work in the UK
- is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site (when this is in place)

The Council has a duty to investigate any conduct which could amount to harassment and any evidence obtained will be reviewed to determine whether it is sufficient to be used to prosecute a site owner. Local authorities may rely on convictions by the courts as evidence of harassing behaviour.
The Council may have records of previous harassment complaints made against a site owner, or their manager and even if no action was taken on these complaints, they will still be taken

into consideration in the fit and proper person determination. These complaints may identify further potential risks and can provide an indication of potential underlying problems with the management of the site, or the site owner's lack of experience/skills in dealing with customers.

The Council may address any underlying issues by attaching conditions to the individual's entry on the register.

3. Rejection of an application by other local authorities.

Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

4. Other Factors

The Regulations are drafted widely giving the opportunity for local authorities to take into consideration other relevant matters. The Council is mindful that poor management practices do not necessarily affect a person's conduct unless they are a breach of the criminal or civil law. A person cannot be deemed unfit due to conduct, simply because of poor management, although this is highly relevant to determining any question of suitability or competence. All conduct is relevant in relation to the person's fitness to hold a licence and/or manage the mobile home site.

The Council can decide the specific matters they deem relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the mobile home site, or any other mobile home site owned or managed by the site owner, or site manager, in another local authority area. Additionally, the site owner's conduct regarding other business, outside of the mobile homes sector, can have implications on the financial and management arrangements of the site in question. Any matters which the Council believe to be of relevance to the application should primarily focus on the relevant person's conduct, competence, and their suitability to manage the site.

The Council aim to obtain evidence to support any additional matters that they require to be taken into consideration for each application. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions. It is not anticipated that allegations which have not been investigated or documented will be used as evidence to support a decision.

Appendix 10: Enforced Sale Policy

This section should be read in conjunction with our published Enforced Sale Protocol and Procedure for Long Term Problematic Empty Homes, last published in 2019.

This part of the policy confirms when we will consider using the power of enforced sale.

Criteria for an Enforced Sale of a Long-Term Empty Home

As with most enforcement options available, an Enforced Sale will typically only be used as a last resort. Also, it is not used as a substitute for other types of informal action, but rather as a consequence of such other action failing to resolve the fundamental problems of a specific empty property. The Council will only pursue an Enforced Sale if, after having exhausted all informal and formal courses of action to resolve the issues, this presents the only viable solution.

If all appropriate steps have been taken and the property continues to remain empty, with no reasonable signs of becoming occupied, an Enforced Sale may be pursued, provided it meets all of the following criteria:

- It is an empty home that has been empty for over 6 months;
- The property or land has outstanding financial local land charges registered in Part 2 of the Local Land charges register, of over £1,000. However, if an empty property is causing a problem where the debt is below £1,000 and the owner cannot be traced or is refusing to co-operate, the use of the enforced sale could still be considered (The smaller the debt the greater the justification for initiating an Enforced Sale will need to be);
- The debt has been owed to the Council for more than three months;
- The owner is either unknown to the Council (having made all reasonable effort to ascertain ownership details) or cannot be found or is known but cannot be located. Or having been located, has been afforded every opportunity to improve the property or land or dispose of it, but has shown no inclination to do either;
- The location of the property or land and the prevailing tenure or economic conditions of the area indicates that sale and occupation would be readily achieved;
- The action is in the interests of the community and the local environment, and is the best means of ensuring that the property or land is not allowed to deteriorate again or further.