



West
Northamptonshire
Council

Private Sector Housing Enforcement and Civil Penalties Policy v2.0

for the Regulation of Housing Standards

Date

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1. Introduction

- 1.1 West Northamptonshire Council is committed to improving standards in private sector housing, bringing empty homes back into use and ensuring that all private rented accommodation is well managed, properly maintained, energy efficient and safe.
- 1.2 In order to improve standards in private sector housing, the Council's Private Sector Housing Service will request information, carry out inspections, process licence applications, provide owners and landlords with advice and information, encourage and promote good practice, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders or issue financial penalties.
- 1.3 The Council has statutory powers and duties to regulate private sector housing and these are assisted by the Housing Health and Safety Rating System (HHSRS), the Mandatory Licensing of Houses in Multiple Occupation and, in designated parts of the district, the Additional Licensing of Houses in Multiple Occupation.
- 1.4 Although West Northamptonshire has many excellent landlords, it also has a significant number of criminal and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 1.5 The Council regards managing and letting rented housing as a business and expects everyone involved in it to be familiar with their legal obligations. It also believes that it should be the offender (rather than good, responsible landlords or the local council taxpayers) who pays for the cost of housing enforcement, and that no-one who breaks the law should gain a financial advantage over someone who does not.
- 1.6 This approach enjoys widespread support from local landlords who want the Council to create a level playing field for all landlords by dealing robustly with criminal and irresponsible landlords who flout the law and try to profit from their non-compliance.
- 1.7 The Council welcomes the action that the Government is taking to crack down on criminal and irresponsible landlords and it is committed to making full use of its powers to improve standards in West Northamptonshire's private rented sector.
- 1.8 The Council's intelligence-led, targeted approach to housing enforcement, together with its expectation that all members of its Private Sector Housing Team will maintain their professional competencies, means that the Council is well placed to detect and investigate possible offences and, where appropriate, to impose a civil penalty as an alternative to prosecution.
- 1.9 This Private Sector Housing Enforcement and Civil Penalties Policy describes the Council's approach to enforcement, including serving statutory notices, making orders, issuing financial penalties, carrying out works in default and pursuing enforced sales, compulsory purchase and prosecution.
- 1.10 Note – In this Policy, the term "landlords" also includes "property agents", "managing agents" and "letting agents" unless otherwise specified

2. Guidance and Legislation

- 2.1 A wide range of guidance on enforcement has been issued by the Government and other agencies, and the Council will continue to have regard to all relevant statutory guidance when reviewing its policies and procedures and updating as appropriate.
- 2.2 This Private Sector Housing Enforcement and Civil Penalties Policy has been developed with specific regard to:
- The Housing Act 2004
 - The Housing and Planning Act 2016
 - Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities - Department for Communities and Local Government published April 2017
 - Statutory guidance that has been issued by the Government under Schedule 13A of the Housing Act 2004 and Schedule 9 of the Housing and Planning Act 2016

3. Private Sector Housing Team

- 3.1 The Private Sector Housing Team's multi-agency approach to housing enforcement is intelligence-led, risk-based and targeted.
- 3.2 Working closely with other local authorities, HMRC and a diverse range of regulatory and law enforcement services – including the Police, Trading Standards, the Gangmasters & Labour Abuse Authority and the Fire & Rescue Service – the Private Sector Housing Team strives to improve landlords' awareness of their duties and is responsible for the administration and enforcement of HMO licensing, and ensuring that individuals, businesses and organisations comply with their legal obligations in relation to housing conditions, overcrowding, energy efficiency, illegal eviction, harassment and aspects of public health.
- 3.3 All the Officers in the Private Sector Housing Team will be fully trained, competent and authorised by West Northamptonshire Council. Authorised Officers will carry an Identity Card (displaying their name and photograph) and, where appropriate, a Warrant Card (displaying their name, job title and a list of the legislation in respect of which they are authorised to act).
- 3.4 The Private Sector Housing Team may use all available powers to achieve its objectives, including powers of entry, the power to require a person to produce documents and/or information about their identify and interest in property or land, and the power to require certificates regarding gas and electrical safety. This list is not exhaustive and other powers may be utilised where appropriate.
- 3.5 Although the Private Sector Housing Team will work with owner-occupiers and registered social landlords to ensure that their homes meet minimum standards and are not causing a danger or statutory nuisance to other households in the area, it will prioritise and target resources to raise standards in the private rented sector.

4. Purpose of this Housing Enforcement and Civil Penalties Policy

- 4.1 The purpose of the Private Sector Housing Enforcement and Civil Penalties Policy is to provide transparency and ensure that everyone who is affected by the Council's housing enforcement and civil penalties process understands what action the Council may take and when.
- 4.2 Most importantly, this Policy also aims to ensure that:
- Tenants of private landlords and registered social landlords live in homes that are free of unacceptable hazards and risks to their health and safety and landlords comply with their duties in relation to gas, electrics and energy performance certificates, etc.
 - All Houses in Multiple Occupation 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;
 - Private housing is not left empty for an unreasonable amount of time and/or becomes an eyesore and nuisance to neighbouring properties;
 - Privately owned property and land does not present a statutory nuisance to other landowners, and does not directly or indirectly present an unacceptable risk to the occupier, public health, safety or the environment;
 - Lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice; and
 - The Council meets its statutory obligations in relation to private housing.
- 4.3 The Private Sector Housing Enforcement and Civil Penalties Policy is designed to ensure transparency, consistency and fairness in the way in which decisions are made on whether to prosecute or impose a civil penalty and, if a civil penalty is to be imposed, how it will determine the size of each civil penalty.
- 4.4 Further information about the Council's approach to civil penalties – including its 9-stage assessment process which strikes the balance between harm, culpability, punishment and deterrent – is provided in Sections 10 – 18 of this Policy.

PRIVATE SECTOR HOUSING ENFORCEMENT

5. Principles of Good Enforcement

5.1 When discharging its duties in relation to private sector housing, the Council will take into account the principles of good enforcement set out in:

- Part 2 of the Legislative and Regulatory Reform Act 2006; and
- The Regulators' Code

5.2 Although the list is not exhaustive and the Council may consider other relevant legislation and any updates of the legislation listed, the Council will have regard to the following when exercising its enforcement powers:

- The Human Rights Act 1998
- The Equality Act 2010
- The Police and Criminal Evidence Act 1984 and the Codes of Practice issued under sections 60, 60A and 66.
- The Criminal Procedure and Investigations Act 1996
- The Regulation of Investigatory Powers Act 2000
- The Code for Crown Prosecutors
- Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities
- Housing Health and Safety Rating System (HHSRS) - Enforcement Guidance Housing Act 2004

5.3 The Private Sector Housing Team will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers and will take into account the impact on tenants. In doing so, it will have regard to the role of inspections, compliance visits and advice and guidance, and the principles underpinning its advisory and regulatory activities.

Benefits to the Local Economy

5.4 West Northamptonshire Council aims to create neighbourhoods of choice: areas where people want to live, bring up their children and work. Maintaining healthy housing and attractive neighbourhoods will benefit the local economy.

Property Inspections and Compliance Visits

5.5 The Private Sector Housing Team will undertake proactive property inspections, based on risk and intelligence, and ensure that its resources are targeted at the worst properties first including, for example, licensable Houses in Multiple Occupation that are operating without a licence.

- 5.6 Officers will target empty properties in order to end the blight that those properties have on neighbourhoods and increase the supply of good quality, affordable housing that meets the needs of local people.
- 5.7 The Private Sector Housing Team will respond to residents' complaints on a risk assessed basis about substandard, unsafe and problematic private housing and adopt an escalating regulatory approach to enforcement.

Advice and Guidance

- 5.8 Wherever possible, the Private Sector Housing Team will work with landlords to resolve problems before escalating the situation to more formal enforcement action. This may not be possible in the more extreme circumstances and where progression to enforcement cannot be avoided.
- 5.9 The Council will provide clear, accessible advice and guidance to make it easier for landlords and agents to understand and meet their responsibilities.
- 5.10 Although the Council's website www.westnorthants.gov.uk contains key information about private rented housing, the Council will also continue to liaise with landlords and agents through the landlord forum, emails and social media etc.

Principles underpinning Enforcement Action

- 5.11 The Private Sector Housing Team's enforcement activity will be:
- **Targeted** – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.
 - **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
 - **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
 - **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
 - **Consistent** – Enforcement action will be undertaken by well-trained investigators, and the Private Sector Housing Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.
 - **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

6. Regulation of Private Sector Housing

Dealing with Complaints

- 6.1 The Private Sector Housing Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.

Housing, Health and Safety Rating System (HHSRS)

- 6.2 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a risk-based assessment that is used to determine the level of risk (from 29 defined hazards) that residential property poses to the health and safety of the occupants and visitors.
- 6.3 There are two categories of possible hazards:
- **Category 1 hazards** represent a serious risk to health and safety. The Council has a legal duty to take appropriate action to deal with these.
 - **Category 2 hazards** represent a lesser risk and, although it has no legal duty to take action, the Council will exercise its power to reduce category 2 hazards where appropriate.
- 6.4 In most cases, the Council will follow a pre-formal process in which it will seek to work with landlords to reduce hazards. However, it may be necessary for the Council to instigate immediate formal action in the event of imminent risks of severe harm or death. Nothing in this policy prevents the Council's decision regarding the use of informal or formal actions. The Council will avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.
- 6.5 When considering what action should be taken in relation to Category 2 hazards, the Council will have regard to national guidance and take into account whether or not there are also any Category 1 hazards present. It will also consider the presence of two or more Category 2 hazards which, when taken together, amount to neglect of the property or disregard for the tenant's health, safety and wellbeing.
- 6.6 Where the responsible person has a history of disregarding previous enforcement advice or action, this will be taken into account when determining an appropriate course of action.
- 6.7 Reasonable charges will be made for any formal enforcement action that the Council takes under Part 1 of the Housing Act 2004, as provided for by section 49 of that Act. (see separate West Northamptonshire Council Fees and Charges Scheme for further information (<https://www.westnorthants.gov.uk/budget-and-charges/fees-and-charges>)).

Houses in Multiple Occupation (HMOs)

- 6.8 In West Northamptonshire, there are many hundreds of Houses in Multiple Occupation: properties that are occupied by more than one household that share facilities.
- 6.9 As HMOs are higher risk than single family homes, the conditions, facilities and management

are regulated. Some HMOs are subject to licensing:

- **Mandatory HMO Licensing** – An HMO licence is required for HMOs that are occupied by 5 or more persons where there is some sharing of facilities and comprise 2 or more households.
- **Additional HMO Licensing** – An HMO licence is required for HMOs that are situated in the Additional HMO area, are occupied by at least 3 persons who are sharing facilities and comprise 2 or more households or are self-contained units that are not compliant with Building Regulations 1991 or later.

- 6.10 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 6.11 It is a criminal offence if a person controlling or managing a licensable HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.
- 6.12 We aim to issue a new licence within 26 weeks from the date of application. Issuing a licence within this time frame is dependent on the landlord supplying the required information and payment within timescales and that no representations are made. Where information or payments are late, or representations made, then the processing time will be longer. Tacit consent does not apply given that we have to check the HMO meets the prescribed standards including whether we need to inspect the property to confirm it is suitable for licensing. In the interest of public safety, each licence application will be given full consideration by the council before it is approved or rejected. If you have not heard from us within 20 weeks, then please contact us

Licensable HMOs operating without a licence

- 6.13 The Council has an intelligence-led, targeted approach to housing enforcement and the identification of licensable HMOs that are operating without a licence. It will work to safeguard and improve the living conditions of the occupiers and ensure that properties are appropriately licensed and that the conditions are suitable. It will also pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will prosecute them or impose a civil penalty.
- 6.14 Consideration will be given to any representations that are received from landlords in relation to exceptional circumstances that may have resulted in a 'duly made' HMO licence application not being submitted on time.
- 6.15 If a landlord responds quickly to the Council's notification that an HMO requires an HMO licence and they co-operate fully with the Council to ensure that the HMO is licensed as soon as practicable, the Council may decide (at its sole discretion) not to prosecute the landlord or impose a civil penalty. Each case will be determined on its individual merits and circumstances.

- 6.16 Where a licensable HMO is operating without a licence, any eviction notice that is served on the tenants under Section 21 of the Housing Act 1988 will be invalid. Such notices will continue to be invalid for as long as the HMO remains unlicensed.
- 6.17 The Council will provide tenants with information and advice on how and when they can apply to the First Tier Tribunal for a rent repayment order.

Renewal of HMO licences

- 6.18 It is the responsibility of the landlord to ensure that their HMO licence is renewed on time. Failure to do so may result in prosecution or the imposition of a civil penalty.
- 6.19 As part of the renewal process for HMO licences, and in addition to its routine inspection programme, the Council may undertake further inspections of the property. Where changes to legislation, or the Council's amenity standards have changed you may be asked to carry out additional works or reduce the occupancy numbers. The existence of a HMO licence does not guarantee the renewal of the licence on identical terms.
- 6.20 The Council will provide tenants with information and advice on how and when they can apply to the First Tier Tribunal for a rent repayment order.

HMO licence fees

- 6.21 The Council charges fees for licensing HMOs.
- 6.22 The HMO licence fees cover the administration and enforcement of the licensing schemes and are subject to regular review. For further information, please refer to the West Northamptonshire Council Fees and Charges Scheme (<https://www.westnorthants.gov.uk/budget-and-charges/fees-and-charges>).

Duration of HMO licences

- 6.23 HMO licences will normally be granted for the full 5-year period.
- 6.24 The length of the HMO licence may be reduced, from 5 years to an appropriate lesser period, where any of the following apply:
- To allow time for the owner to resolve outstanding planning or building control matters before the property can be used as an HMO;
 - Where there are concerns that the proposed management arrangements may not be satisfactory, and evidence is required to show that management is satisfactory before a longer licence period can be agreed;
 - Where it is necessary to remove any advantage that the applicant might gain over those licence holders who applied at the appropriate time.
 - Where a scheme, for example, an additional or selective HMO licensing requirement, is time limited by law.
- 6.25 Following the expiry of an HMO licence, a new application and fee will be required.

The 'fit and proper person' test

- 6.26 In deciding to grant an HMO licence, the Council must be satisfied that the proposed licence holder is a 'fit and proper person' to be the licence holder, the proposed manager of the HMO is a 'fit and proper person' to be the manager of the HMO, and everyone involved in the management of the property are 'fit and proper persons' to be involved in its management.
- 6.27 This requirement is to ensure that those responsible for operating the licence and managing the HMO are of sufficient integrity and good character to be involved in the management of the residential property and as such they do not pose a risk to the welfare or safety of persons occupying the property. The Council would expect that property managers are resident of the UK.
- 6.28 The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a 'fit and proper person'. When making this decision, the Council will take into account their fitness to hold the licence or to manage the property.
- 6.29 When considering whether a person is 'fit and proper', the Council will consider each case on its merits and must have regard to whether the applicant has:
- Previous convictions involving fraud or other dishonesty, violence, drugs or sexual offences;
 - Practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying out of any business;
 - Been served with a Banning Order in accordance with Part 2, Chapter 2 of the Housing and Planning Act 2016, or any amendment thereof;
 - Contravened any provision of housing or landlord and tenant law; and
 - Acted otherwise than in accordance with an approved code of practice with regard to the management of HMOs or of excepted accommodation.
- 6.30 When considering whether a person is 'fit and proper', the Council must also have regard (among other things) to the following:
- The nature of any convictions and the relevance of those convictions to the management of the HMO. (Convictions relating to fraud, running unlicensed HMOs or violence, for example, may affect someone's 'fit and proper' status, and a conviction based on the existence of a Category 1 hazard would give an indication of an applicant's approach to health and safety in a property).
 - The weight of any convictions. (An administrative breach of the HMO Management Regulations, such as not displaying the Code of Good Management Practice, is unlikely to affect a person's 'fit and proper' status).
- 6.31 When considering whether a person is 'fit and proper' the Council may also take into account whether any person associated or formerly associated with the applicant, licence holder or manager has done any of the things identified in 5.27 and 5.28, if it considers this information relevant.

- 6.32 The Council is entitled to take into account other factors in so far as they are relevant to the fitness and propriety of the relevant person. It would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be ‘fit and proper person’.
- 6.33 Although discretion may be appropriate if an offence is isolated and there are mitigating circumstances, multiple offences – or a series of offences over a period of time – are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim is vulnerable.
- 6.34 A person’s ‘fit and proper’ status may be reviewed at any time. Removal of the status, by the Council or any other relevant authority may lead to a refusal and/or revocation of the HMO licence(s).
- 6.35 The Council will also share information with other authorities in making a determination regarding the ‘fit and proper’ status of licence holders and managers or allowing other authorities to make such a determination.

HMO Management Regulations

- 6.36 The HMO Management Regulations place obligations on landlords and managers of HMOs to maintain and manage the HMOs they run.
- 6.37 The Regulations also place obligations on occupiers of HMOs to not obstruct or interfere with the management and maintenance of the HMO.
- 6.38 There are two sets of Regulations:
- The Management of Houses in Multiple Occupation (England) Regulations 2006
 - The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.
- 6.39 Although both sets cover the same requirements, they relate to different types of HMOs. The Regulations cover the following:
- Duty of the manager to provide information to occupier.
 - Duty of the manager to take safety measures.
 - Duty of the manager to maintain water supply and drainage.
 - Duty of the manager to supply and maintain gas and electricity.
 - Duty of the manager to maintain common parts, fixtures, fittings and appliances.
 - Duty of the manager to maintain living accommodation.
 - Duty to provide waste disposal facilities.
 - Duties of occupiers of HMOs.
- 6.40 Breaching any of the Regulations is an offence under section 234 of the Housing Act 2004,

which carries an unlimited fine or the imposition of a civil penalty of up to £30,000 for each breach.

- 6.41 If the HMO is licensed, the Council will inform the landlord and/or manager of the breaches of the HMO Management Regulations and provide them with a reasonable amount of time to remedy the breaches, having regards to the risk to the tenants. Formal enforcement action will then be considered if the breaches are not remedied.
- 6.42 If the HMO is unlicensed, or there is an imminent risk to the occupiers formal enforcement action may be considered immediately.

Overcrowding

- 6.43 Overcrowding is a difficult issue to deal with because, unlike other hazards, there is often very little that the landlord can do to resolve the problem unless the tenant has moved other people into the accommodation since the start of the tenancy.
- 6.44 In cases of severe overcrowding, the Council will explore the housing options available to the tenants, including a move to alternative accommodation.
- 6.45 When a tenancy expires, the Private Sector Housing Team may require the landlord to reduce or limit the number of people living in the property when it is re-let.

Empty Properties

- 6.46 There is a high demand for accommodation in West Northamptonshire. As well as being a wasted source of housing, empty properties can be an eyesore, damage adjoining properties, blight neighbourhoods and attract anti-social behaviour.
- 6.47 The Council will identify, risk assess and prioritise long-term, problematic and nuisance empty properties, using the full range of informal and formal action (including enforced sales and compulsory purchase) to bring them back into use.

Illegal eviction and harassment

- 6.48 The Council is committed to enforcing tenants' rights under the Protection from Eviction Act 1977, and it will work proactively to prevent illegal evictions and harassment, assist in reinstating tenants who have been evicted illegally and, where tenants are unable to return, investigate alleged offences.
- 6.49 Depending on their tenant's security of tenure, most landlords are normally required to give notice and obtain a court order for possession after the notice has expired.
- 6.50 Illegal eviction occurs when the tenant is unlawfully prevented from entering all or part of their accommodation. Examples include:
- The use of violence (or threats of violence) to force the tenant to leave;
 - Preventing the tenant from entering accommodation they have the right to occupy;
 - Changing the locks while the tenant is out; and

- Evicting a tenant before the proper legal procedures have been followed.

6.51 Harassment occurs when a landlord (or someone acting on their behalf) does something that is likely to interfere with the tenant's peace and enjoyment or persistently withdraws or withholds services that the tenant reasonably requires for the occupation of the premises in the knowledge that this is likely to cause them to leave the property or refrain from exercising their tenancy rights. Examples include:

- Forcing the tenant to sign agreements which take away their legal rights;
- Removing or restricting essential services such as hot water or heating, or failing to pay bills in order that these services are cut off;
- Constant visits to the property (especially if late at night or without sufficient or reasonable notice);
- Entering the accommodation when the tenant is not there, or without the tenant's permission; and
- The use of violence or threats of violence.

6.52 The Council will work closely with the Police to investigate and prosecute offences of illegal eviction and harassment. They will also provide tenants with support in applying for injunctions, compensation and rent repayment orders.

Charging for Enforcement

6.53 The Housing Act 2004 allows local housing authorities to make a reasonable charge to recover administrative and other expenses incurred when taking certain enforcement action. Other legislation allows them to recover the cost of Officers' time and expenses incurred when determining what works need to be carried out as works in default.

6.54 The Private Sector Housing Team will recover all costs and fees when formal action is taken, and it is satisfied that it is reasonable for the responsible person to bear the cost. The full costs (Officers' time, expert reports and overheads, etc) will be charged and, in some cases – where it is reasonable and proportionate – the enforced sale of the property will be considered in order to recover costs.

Deciding on an Appropriate Sanction

6.55 The criminal standard of proof is required to be met in order to justify either the imposition of a civil penalty or a prosecution in the Magistrates' Court for a relevant housing offence. This means that, before taking formal action, the Council needs to satisfy itself beyond reasonable doubt that, if the case were to be prosecuted in the Magistrates' Court, a person's conduct amounted to a relevant housing offence.

6.56 To achieve a conviction in' Court, the Council must be able to prove beyond reasonable doubt that a relevant housing offence has been committed by the accused. The same principle applies in respect of civil penalties issued in accordance with section 249A and Schedule 13A of the Housing Act 2004 so, where a civil penalty is imposed and an appeal is subsequently made to the First-Tier Tribunal Property Chamber, the Council will need to be able to prove to the Tribunal that the relevant housing offence has been committed beyond

a reasonable doubt.

6.57 Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties may not be issued in cases where serious offences may have been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches) rather than prosecution.

7. Options to Regulate and Ensure Compliance

7.1 The following table contains some examples of situations where different types of action may be taken. Decisions are made, however, on a case-by-case basis.

ACTION	GENERAL CIRCUMSTANCES
No Action	Where formal action may not be appropriate. In such cases, customers may be directed to other sources of advice and support.
Informal Action and Advice includes verbal advice and advisory letters	Where it may be appropriate to deal with the issues through informal action and advice. In such cases, the pre-formal stage of the HHSRS may be followed, with the Council working collaboratively with responsible landlords and owners to address and resolve any problems.
Hazard Awareness Notice	Where a landlord or owner has agreed to take remedial actions and the Council is satisfied that the work will be completed within a reasonable time, where the Council considers this to be a reasonable response to less serious hazards, or where improvement or prohibition of use may not be practicable or reasonable in the circumstances These notices are advisory only, but do not prevent the Council from taking further action later if an unacceptable hazard remains
Service of Enforcement Notices informing of or requiring repairs or specific legal requirements	Where a person refuses or fails to carry out works through the pre-formal HHSRS process; Where there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach; Where there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc); Where standards are extremely poor, and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; Where the person has a history of non-compliance with the Council and/or other relevant regulators; Where the person has a record of criminal convictions for

	<p>failure to comply with the housing requirements (which may include housing management);</p> <p>Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or</p> <p>Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.</p>
<p>Powers of Entry (for more information, see Paragraphs 7.2 - 7.5 below)</p>	<p>Where it is necessary to carry out a statutory duty or power;</p> <p>Where it is necessary to investigate an offence;</p> <p>Where it is necessary to prevent the obstruction of Officers; and/or</p> <p>Where it is necessary to protect the health and safety of any person, or to protect the environment, without delay.</p>
<p>Powers to Require Information and/or Documents</p>	<p>Where it is necessary for information to be provided to enable Officers to carry out their powers and duties;</p> <p>Where it is necessary for documents to be provided to enable Officers to carry out their powers and duties under the Housing Act 2004;</p> <p>Where it is necessary to prove the tenancy of a property, for example, assured shorthold tenancies, bank statements, rent books or equivalent; or where it is necessary to determine the relationships of tenants, for example, birth certificates, passports, marriage certificates etc.</p> <p>Where it is necessary for, for example, electrical certificates, gas safety certificates, fire risk assessments and fire detection certificates to be provided in relation to HMOs;</p> <p>Where it is necessary for insurance documents and energy performance certificates to be provided in relation to privately rented properties; and/or</p> <p>Where it is necessary for any person with an interest in a property to provide details about its ownership, management and occupation, etc.</p>
<p>Emergency Remedial Action / Emergency Prohibition Order</p>	<p>Where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises</p>
<p>Works in Default for failing to comply with a Notice (for more information, see Paragraphs 7.6 - 7.9 below)</p>	<p>Where works are required – in accordance with a Notice – to address a serious hazard, but these are not carried out within the permitted time.</p> <p>In such cases, these works may be carried out by the Council, as works in default, independently to the consideration of any other action, such as civil penalties or prosecution.</p>

<p>Injunctive Action (for more information, see Paragraph 7.10 below)</p>	<p>Where the situation is dangerous and/or there is significant public detriment, and the offenders have repeatedly been found guilty of similar offences; and/or Where it is necessary to prevent further offences and/or the harassment of tenants, witnesses or other people.</p>
<p>Revocation of HMO Licenses and Approvals (for more information, see Paragraph 7.11 below)</p>	<p>Where the Licence Holder, or the named Property Manager is not a "fit and proper person"; and/or Where there are serious breaches of the licensing conditions and/or serious management offences.</p>
<p>Civil Penalties (for more information, see paragraphs 7.12 – 7.19 below)</p>	<p>Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public; Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged; Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders, or no reasonable progress has been made in relation to the carrying out of the requirements; Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate; Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.</p>
<p>Simple Caution (for more information, see Paragraphs 7.20 - 7.22 below)</p>	<p>Where an offence is less serious and the person who has committed the offence has admitted their guilt. In such cases, a Simple Caution may be offered (as an alternative to Court or Civil Penalty action, and on the understanding that the Council's costs will be paid by the offender) where it is likely that they will heed a warning about their behaviour and the legal consequences if they commit further offences.</p>

<p>Prosecution (for more information, see Paragraphs 7.23 – 7.26 below)</p>	<p>Where the offence is not covered by applying a Civil Penalty.</p> <p>Where the case also involves offences applied by other agencies i.e. Trading Standards, Northamptonshire Fire and Rescue Service etc. as well as Private Sector Housing Offences and the case is multi agency set of prosecutions heard on the same day.</p> <p>Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public.</p> <p>Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged.</p> <p>Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders, or no reasonable progress has been made in relation to the carrying out of the requirements;</p> <p>Where a simple caution is considered inappropriate or the defendant has refused to accept a simple caution; and/or</p> <p>Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.</p>
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Powers of Entry

- 7.2 In certain circumstances, Powers of Entry into a property are provided to authorised Officers in accordance with the legislation. In general, the powers will allow an Officer at any reasonable time to:
- Enter a property to carry out an inspection
 - Take any other persons with them (generally to assist the officer during their visit)
 - Take equipment or materials with them (generally to assist the officer during their visit)
 - Take measurements, photographs or make recordings
 - To leave recording equipment on the premises for later collection
 - Take samples of articles or substances found on the premises
 - Sometimes carry out works, or to facilitate works undertaken by contractors working for the Officer, for example, fitting smoke alarms, or arranging specialist inspections and works to electrical installations
- 7.3 In many cases, prior notice will be given to owners and to occupiers. Although the notice will normally be given in writing or by e-mail, it may sometimes be given verbally, depending on the relevant statutory notice. The amount of notice given will depend on the specific requirements of the legislation being enforced. There are circumstances where the Council is not required to provide prior notification of entry, these include but not exclusively the licensing and management of houses in multiple occupation.
- 7.4 Powers of Entry can (and, in some circumstances, will) be enforced with a Warrant, obtained from a Magistrate. Police and/or other regulatory agencies – including but not limited to Planning Enforcement, the Immigration Service, the Fire Service, the Gangmasters & Labour Abuse Authority and Trading Standards – will often accompany Council Officers when they enforce Power of Entry.
- 7.5 It is an offence to obstruct an Officer in the course of their duty. Officers exercising their Power of Entry will carry identification and details of their authorisation to carry out their action.

Carrying out Works in Default

- 7.6 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so, or carry out emergency remedial action where there is imminent risk to occupants.
- 7.7 In most circumstances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.
- 7.8 The full cost of the works will be recovered in accordance with the relevant statutory provisions. A Charge will be placed on the property and the debt will be pursued if timely

payment is not made. If interest can be charged while the debt remains unpaid, this will be added to the debt. (For further information, see the Private Sector Housing Fees & Charges Policy).

7.9 The Council is not obliged to carry out the works and reserves the right not to do so in certain circumstances.

Revocation of HMO Licences and Approvals

7.10 The Council may revoke an HMO licence or the approval of an HMO licence in the following circumstances:

- Breach(es) of licence condition(s), or that the structure of the HMO is such that a new or renewal application would not be granted on similar terms as the existing licence.
- Where the licence holder and/or the manager are no longer considered 'fit and proper' person(s).
- By agreement with the license holder because, for example, they have disposed of their interest in the property.
- Where the property licensed ceases to be a HMO

Civil Penalties

7.11 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

7.12 The Council's use and calculation of civil penalties is described in Sections 10 – 18 of this Housing Enforcement and Civil Penalties Policy.

Simple Cautions

7.13 Where someone has committed an offence or offences and fully accepts responsibility for the offence(s), Officers may offer a Simple Caution where the circumstances suit a Simple Caution rather than a prosecution or civil penalty.

7.14 Simple Cautions will be considered where:

- The defendant has admitted their guilt; and
- The defendant is aged 18 or over; and
- The defendant agrees to be given a Simple Caution; and
- Civil Penalties are not appropriate or cannot be applied

7.15 If the defendant agrees to receive a Simple Caution, the Council will seek to recover the costs of the investigation as part of the Simple Caution process. If they do not agree to receive a Simple Caution, they will be prosecuted.

Prosecution

- 7.16 When deciding whether to prosecute, the Council must take account of the Code for Crown Prosecutors and be satisfied that there is sufficient, admissible and reliable evidence beyond all reasonable doubt that an offence has been committed by an identifiable individual company or representative of that company. It must also be satisfied that there is a realistic prospect of conviction.
- 7.17 The Code also requires that a decision must also be made as to whether a prosecution would be in the public interest. Where there is evidence, Officers will consider prosecution and, as part of their investigation, they will take into account, amongst other things, the following:
- Any reasonable explanation provided by the individual or company.
 - Evidence that the individual or company intends to prevent any recurrence of the problem.
 - An individual's state of health.
 - The offender's attitude to the offence.
 - The interactions between the Council and the offender during the investigation of the offence
- 7.18 Any decision to prosecute will initially be considered at a case conference attended by the Officers and relevant senior officers from Private Sector Housing. If a prosecution is deemed appropriate, then the case will be fully prepared and referred to the Council's legal service for consideration of the evidence with a view to prosecuting.
- 7.19 Prosecutions will be brought without unavoidable delay and generally there is a requirement to lay an Information for summary only offences at the Magistrates' Court within six months of the offence being committed. To ensure fair and consistent decisions in relation to prosecutions, any decision to prosecute will take into account the Code for Crown Prosecutors.

8. Management Orders

Interim Management Orders

- 8.1 If the Council is satisfied that there is no reasonable prospect of a licensable HMO being licensed (with appropriate conditions) in the near future, or if it is necessary to take immediate steps to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity, it must make an Interim Management Order in respect of the HMO. These Orders also enable the Council to take any other appropriate steps to ensure the management of a licensable HMO.
- 8.2 The Council must also make an Interim Order if it has revoked an HMO licence, but that revocation has been appealed or not yet come into force and, if it were in force, there will be no reasonable prospect of the house being licensed in the near future or if it would necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity if it were in force.

- 8.3 Although the Council may delegate the management of the HMO to another agency or partner – and there are provisions to vary, revoke and appeal against an Interim Management Order – an Interim Management Order will be in force for 12 months or until an HMO licence is granted if this happens within 12 months.
- 8.4 An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect rent and to use that rent to pay for work to the property.

Special Interim Management Orders (All privately rented dwellings including HMOs)

- 8.5 Where the Council is satisfied that a significant and persistent problem of anti-social behaviour in an area is attributable, in full or in part, to the anti-social behaviour of an occupier of an HMO or other privately rented dwelling and that the landlord is failing to take appropriate action to combat the problem and the making of a Special Interim Order will lead to its reduction or elimination, it can apply to the First Tier Tribunal for a Special Interim Management Order for that dwelling.
- 8.6 The Council must also be satisfied that a Special Interim Order is necessary for protecting the health and safety or welfare of persons occupying, visiting or otherwise engaging in lawful activities in the vicinity of the house before making an application to the Tribunal.
- 8.7 These Orders operate in the same way as Interim Management Orders (see Paragraphs 7.1 – 7.4).

Final Management Orders

- 8.8 If the Council is satisfied (on the expiry of any Interim Management or Special Management Order) that the HMO still requires a licence but it is still not able to grant the HMO a licence, it must make a Final Management Order in order to secure the proper management of the house on a long term basis in accordance with a management scheme.
- 8.9 A Final Management Order is similar to an Interim Management Order in that there are provisions to vary, revoke and appeal against a Final Management Order, the Council may delegate the Management of the HMO to another agency or partner, and the Council continues to manage the property with many of the rights of the landlord. However, it must review the arrangements from time to time, but Final Orders may last up to 5 years. If the conditions that led to it being made still apply, then the Council may have to make a new Final Order for another maximum period of 5 years.

9. Rent Repayment Orders

- 9.1 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.
- 9.2 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically the offences in relation to licensing of HMOs.
- 9.3 The Housing and Planning Act 2016 extended rent repayment orders to cover a much wider range of offences, described below:

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

9.4 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

9.5 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

9.6 The Council will consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

9.7 The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

PRIVATE SECTOR HOUSING CIVIL PENALTIES

10. The Government's Intentions and Expectations

10.1 The Government has said that it wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants.

10.2 However, it has also pledged to crack down on criminal and irresponsible landlords who flout the law and knowingly rent out unsafe and substandard accommodation.

10.3 The Housing and Planning Act 2016 introduced a number of measures to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:

- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences;

- **Extension of rent repayment orders** to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
- **Database of rogue landlords and property agents** who have been convicted of certain offences or received multiple civil penalties;
- **Banning orders** for the most serious and prolific offenders.

10.4 When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords.

10.5 In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the DCLG) explained why the maximum penalty is £30,000:

“ [it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000”.

“ It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”.

10.6 Although the Government states (in its guidance) that, generally, it would expect the maximum civil penalty of £30,000 to be “reserved for the very worst offenders”, it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord’s previous record of offending.

10.7 The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

① The severity of the offence

The more serious the offence, the higher the civil penalty should be.

② The 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.

③ 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 the local housing authority imposes a civil penalty.

④ The punishment of the offender

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

⑤ Whether it will 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.

⑥ Whether it will deter others from committing the offence

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

⑦ Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

- 10.8 The Government's practice of empowering local authorities to impose financial penalties on offenders is reflected in other legislation and regulations as detailed in Section 11
- 10.9 This Private Sector Housing Enforcement and Civil Penalties Policy describes West Northamptonshire Council's approach to the imposition of financial penalties in respect of all regulatory matters relating to private sector housing.

11. Offences Covered by Civil Penalties

Housing Act 2004

- 11.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.
- 11.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below ("relevant offences" for the purposes of the Housing Act 2004):

- **Section 30** Failure to comply with an Improvement Notice
- **Section 72** Offences in relation to licensing of Houses in Multiple Occupation
- **Section 95** Offences in relation to licensing of houses under Part 3 of the Act
- **Section 139** Offences of contravention of an overcrowding notice
- **Section 234** Failure to comply with management regulations in respect of Houses in Multiple Occupation

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

- 11.3 Civil penalties are intended to be used against landlords who are required to belong to a Redress Scheme and are in breach of Article 3 and/or Article 5 of the above Order:
- **Article 3** Failure of the requirement to be a member of a Redress Scheme if undertaking lettings agency work.
 - **Article 5** Failure of the requirement to be a member of a Redress Scheme if undertaking property management work.
- 11.4 Failure to comply with the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 could result in the Council imposing a civil penalty of up to £5,000 for each offence.
- 11.5 In 2015, the Department for Communities and Local Government, published 'Improving the Private Rented Sector and Tackling Bad Practice'. In this they stated that with regards to the penalty for breach of a requirement to belong to a redress scheme 'the expectation is that a £5,000 fine should be considered the none and that a lower fine should only be charged if the enforcing authority is satisfied that there are extenuating circumstances.'

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended)

- 11.6 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements that all landlords must on and after 1st October 2015. The legislation was amended in 2022
- Provide and install a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation (this includes bathrooms and lavatories)
 - Provide and install a carbon monoxide alarm in any room which is used wholly or partly as living accommodation and contains a fixed combustion appliance (excluding gas cookers)
 - After 1st October 2022, where a report is made by a tenant or their nominated representative to the landlord that a prescribed alarm is now working, then the alarm is repaired or replaced as soon as is reasonably practicable

- 11.7 Civil penalties are intended to be used against landlords who fail to comply with a remedial notice requiring them to install appropriate smoke and/or carbon monoxide detection under the 2015 Regulations.
- 11.8 Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will result in the Council imposing a financial penalty (or more than one penalty if there is a continuing failure) and, if necessary, the Council will undertake the installation of appropriate smoke and/or carbon monoxide detection as 'works in default'.
- 11.9 Although it is for the Council to determine the size of the financial penalty imposed, the penalty must not exceed £5,000. The size of the financial penalty will be calculated having regards to the table in Appendix 3.
- 11.10 The Regulations require the Council to issue a statement of principles regarding the determination of the financial penalty value. For the avoidance of doubt, this Private Sector Housing Civil Penalties Policy is the Council's statement of principles.

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

- 11.11 Civil penalties are intended to be used against landlord who let or continue to let properties covered by the Regulations if they have an Energy Performance Certificate (EPC) EPC rating below E, without a valid exemption being in place.
- **Regulation 23** Renting a domestic property that fails to meet the minimum energy efficiency standard, and the breach at the time of the penalty notice being served is less than three months. The penalty must not exceed £2,000, in addition to any publication penalty.
 - **Regulation 23** Renting a domestic property that fails to meet the minimum energy efficiency standard, and the breach at the time of the penalty notice being served is more than three months. The penalty must not exceed £4,000, in addition to any publication penalty.
 - **Regulation 36** The registration of false or misleading information regarding the energy efficiency standard for a domestic property. The penalty must not exceed £1,000, in addition to any publication penalty.
 - **Regulation 37** The failure to comply with the requirements of a compliance notice served on a domestic property. The penalty must not exceed £2,000, in addition to any publication penalty

Notwithstanding at any financial penalties imposed on a landlord, relating to a single offence, under Regulation 23 and Regulation 36 or 37 must not exceed a cumulative value of £5,000

- 11.12 The size of the financial penalty will be calculated having regards to the table in Appendix 4.

Tenant Fees Act 2019

11.13 Civil penalties are intended to be used against landlords who are in breach of Section 8 and/or Section 12 of the Tenants Fees Act 2019:

- **Section 8** Failure to comply with Section 1 (prohibitions of landlords), Section 2 (prohibitions of letting agents) or Schedule 2 (the holding of deposits). The penalty must not exceed £5,000.
- **Section 12** A further breach of Section 1 (prohibitions of landlords), Section 2 (prohibitions of letting agents) or Schedule 2 (the holding of deposits) within five years. The penalty may exceed £5,000 but must not exceed £30,000.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

11.14 Civil penalties are intended to be used against landlords who are in breach of the requirement to belong to a Client Money Protection Scheme and/or ensure that information about the scheme is available to tenants and at properties:

- **Regulation 6** Failure of a property agent to belong to a Client Money Protection Scheme (regulation 3). The penalty must not exceed £30,000.
- **Regulation 7** Failure of a property agent to comply with requirements to ensure information regarding client money protection is available at private rented properties and made available to tenants (regulation 4). The penalty must not exceed £5,000.

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

11.15 Civil penalties are intended to be used against landlords who fail to undertake the necessary inspections and repairs in relation to the electrical system in private rented accommodation.

11.16 Although it is for the Council to determine the size of the financial penalty imposed, the penalty must not exceed £30,000. More than one penalty can be imposed in the event of a continuing failure. Any financial penalty is in addition to the costs that the Council is entitled to recover in relation to the remedial action it has carried out.

12. The Council's Use of Civil Penalties

12.1 West Northamptonshire Council will continue to take robust action against those landlords that flout the law, and it will ensure that its use of civil penalties is consistent, appropriate, proportionate and fair.

12.2 Civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be

issued with a civil penalty for the same offence.

- 12.3 Where the Council is in a position to prosecute a letting / managing agent and/or landlord for a relevant housing offence, it has the option of imposing a civil penalty on them as an alternative to prosecution.
- 12.4 Where a letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both of them, as an alternative to prosecution. The level of the civil penalty imposed on each offender may differ, depending on the circumstances of the case.

13. Consideration of a Civil Penalty

- 13.1 The criminal standard of proof is required to be met in order to justify either the imposition of a civil penalty or a prosecution in the Magistrates' Court for a relevant housing offence (see paragraph 11.2).
- 13.2 This means that, before taking formal action, the Council needs to satisfy itself beyond reasonable doubt that, if the case were to be prosecuted in the Magistrates' Court, a person's conduct amounted to a relevant housing offence for the purposes of the Housing Act 2004 or legislation identified in sections 11.3 – 11.10 of this Private Sector Housing Enforcement and Civil Penalties Policy.
- 13.3 To achieve a conviction in the Magistrates' Court, the Council must be able to prove beyond reasonable doubt that a relevant housing offence has been committed by the accused. The same principle applies in respect of civil penalties issued in accordance with section 249A and Schedule 13A of the Housing Act 2004 so, where a civil penalty is imposed and an appeal is subsequently made to the First-Tier Tribunal Property Chamber, the Council will need to be able to prove to the Tribunal that the relevant housing offence has been committed beyond a reasonable doubt.
- 13.4 Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties may not be issued in cases where serious offences may have been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches) rather than prosecution.
- 13.5 Any decision to impose a civil penalty will be fully considered at a case conference attended by the relevant Officers and either the Housing Enforcement Manager or the Private Sector Housing Manager. Legal advice regarding the sufficiency of the evidence against an individual will also be sought from the Council's in-house legal service prior to a decision being made whether to issue a penalty. If a civil penalty is deemed appropriate, the Council will adhere fully to the process as set out in section 249A and Schedule 13 of the Housing Act 2004.
- 13.6 Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of any previous relevant housing offences committed by the landlord or letting / managing agent.

- 13.7 In order to ensure that the civil penalty is set at an appropriate level, the Council will consider the following factors (described in more detail in Paragraph 10.7 above) that the Government has identified, in its statutory guidance, as being pertinent:
- ① The severity of the offence
 - ② The culpability and track record of the offender
 - ③ The harm caused to the tenant
 - ④ The punishment of the offender
 - ⑤ Whether it will deter the offender from repeating the offence
 - ⑥ Whether it will deter others from committing the offence
 - ⑦ Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence
- 13.8 The final factor is an overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence and risking the safety of tenants.
- 13.9 The guiding principle will be to ensure that the offender does not benefit as a result of committing an offence: it should not be cheaper to offend than to ensure that a property is well maintained and properly managed.
- 13.10 In deciding the level of civil penalty that will be applied, the Council will use its 9-stage Civil Penalty Scoring Matrix which will take into account any reasonable adjustments for aggravating or mitigating factors.
- 13.11 Income received from civil penalties will be retained by the Council to support its statutory enforcement activities, and its efforts to raise standards, in West Northamptonshire's private rented sector.

14. West Northamptonshire's 9-Stage Process

- 14.1 After having regard to the Government's guidance on the methodology to use in setting the level of civil penalty, West Northamptonshire Council has devised its own 9-stage process for determining the level of civil penalty to impose.
- 14.2 The first seven stages in the Council's 9-stage process are included in a '**Civil Penalty Scoring Matrix**' (see Pages 34 - 37) and the last two stages relate to the handling of multiple offences and the checks that will be carried out before the 'Notice of Intent' is issued:

STAGE ONE – Culpability of the offender

When assessing the culpability of the offender, the Council will consider a range of matters, including (but not limited to) whether or not the evidence shows that the offence was committed deliberately, how long the offence continued, whether or not the offence was repeated and whether or not the offence was premeditated.

The Council will also take into account the fact that letting accommodation is a business activity that is designed to make a profit and it should therefore be treated like any other business. Ignorance of the law is not an excuse for non-compliance with statutory requirements and duties.

Letting / managing agents and landlords with large property portfolios – together with those who are accredited and/or are members of professional associations – will be expected to have more knowledge and experience, so will be considered to be more culpable. For this part of the 'Scoring Matrix', the Council will apply a double weighting for Stage One where the offence is committed by a letting agent, a managing agent or a portfolio landlord who has a portfolio of more than five properties.

As a successful prosecution of an offender who breaches a Banning Order can result in the most severe punishment, the offender's score for Stage One will also be increased by 10 if the offender has breached a Banning Order.

STAGE TWO – Seriousness of the offence and the level of harm caused

When assessing the seriousness of the offence and the level of harm it has caused, the Council will consider the following:

- The number of people affected;
- The nature and extent of the actual or potential impact on the victim(s) and whether or not it is serious, long-term, life-changing or potentially fatal;
- The vulnerability of the victim(s): children, vulnerable adults and people with protected characteristics under the Equalities Act 2010);
- The actual or potential harm to the surrounding area or community; and
- The level of punishment that can be imposed under the law. All of the offences carry a potentially unlimited (maximum) fine and breaching a Banning Order may result in a prison sentence of up to 51 weeks.

As the Council considers this aspect of the assessment to be particularly significant, it has doubled the weighting for Stage Two in order to reflect its seriousness.

STAGE THREE – Punishment of the offender

When considering the punishment that should be imposed on the offender, the Council will take the following into account:

- Any attempts that have been made to cover up evidence of the offence, mislead Officers or harass occupants and witnesses.
- The landlord and/or letting / managing agent's refusal to accept and/or act on the advice and recommendations of the Council or another enforcement agency in relation to their responsibilities as a landlord / agent; and
- The relationship between the offence and other crime (such as illegal eviction, harassment, environmental crimes, modern slavery, prostitution and the production and distribution of illegal drugs).

STAGE FOUR – Removal of any financial benefit gained from committing the offence(s)

When assessing the financial benefit that the landlord and/or letting / managing agent has gained from committing the offence(s), the Council will take into account any financial benefit arising from the commission of the offence(s).

Subject to the maximum level of £30,000 per offence and providing there is evidence of such financial benefit, the Council will consider whether it would be appropriate to impose a level of civil penalty which would be greater than the financial benefit gained from committing the offence.

As the Council considers this aspect of the assessment to be particularly significant, it has doubled the weighting for Stage Four in order to reflect its significance.

STAGE FIVE - Deterring the offender from repeating the offence and others from committing similar offences

When determining the level of the civil penalty, the Council will give consideration to whether or not the level of civil penalty that is imposed will act as a deterrent to the offender and others.

Where this is unlikely, the Council will consider whether it would be more appropriate to prosecute the offender instead.

STAGE SIX – Assessment of assets and income

When determining the level of the civil penalty, the Council will take into account any

representations made by the offender regarding their income, assets and ability to pay, adjusting the level of the penalty accordingly where appropriate.

However, where such representations are made, the penalty will not automatically be revised downwards simply because an offender has (or claims to have) a low income. The value of an offender's assets (including their full rental portfolio) and income will be considered when determining an appropriate level of civil penalty.

A landlord who has a large property portfolio and a low income, for example, may initially be assessed as being able to afford to pay only a low level civil penalty. However, after taking into account the value of their assets, their civil penalty may be adjusted upwards.

STAGE SEVEN – Mitigation

When determining the level of the civil penalty, the Council will consider any mitigating factors during the assessment process. Examples may include the following:

- The offender acts voluntarily to remedy the problem
- The offender co-operates fully with the investigation
- The offenders had a good track record of maintaining property and complying with legislation and statutory standards prior to the offence(s)
- The offender self-reports (for failing to license their HMO, for example), co-operates with the Council and accepts responsibility for the offence
- The offender has a mental disorder or learning disability, and this is linked to the offence that has been committed
- The offender has a serious medical condition(s) that requires urgent, intensive or long-term treatment and this is linked to the offence that has been committed.
- The offender is young and lacks maturity
- Any other mitigating factors that the offender wants the Council to take into account when determining the level of civil penalty.

The offender will also have the opportunity to inform the Council (during the 'Notice of Intent' stage) of any other mitigating factors they believe are relevant. The Council expects all requests for mitigation to be accompanied by supporting evidence.

STAGE EIGHT – Totality principle

When determining the level of the civil penalty, the Council will apply the principle of totality if there is a possibility that more than one civil penalty will be imposed.

Where there are multiple offences resulting from the same incident or conduct, the Council

will assess each offence, using the 'Scoring Matrix'. After aggregating the penalties, the Council may decide that it is appropriate in the circumstances to issue one civil penalty that reflects the most serious of the offences relating to the incident or conduct. Where the aggregate total exceeds the maximum civil penalty that can be imposed, the Council may find it appropriate to consider prosecution rather than issue a civil penalty.

Where there are multiple offences resulting from separate incidents or conduct, the Council will assess each offence individually, using the 'Scoring Matrix', and apply separate civil penalties where it is proportionate to do so.

STAGE NINE – Review and check

Before a 'Notice of Intent' is issued, the process and level of civil penalty will be reviewed and checked with the Council's in-house Legal Services team and the Housing Enforcement Manager.

The purpose of this review is to ensure that the process has been applied correctly and the level of civil penalty is reasonable and proportionate.

Relationship between 'Scoring Matrix' and the level of Civil Penalty

- 14.3 Each offence will be assessed and the totality principle will then be applied.
- 14.4 An assessment will be carried out before the Notice of Intent is issued, and a reassessment will then be carried out following receipt of any representations.
- 14.5 The starting point for determining the civil penalty will be the scores from the Civil Penalty Scoring Matrix (see Appendix 1):

Score range	Size of the civil penalty (where the penalty must not exceed £5,000)	Size of the civil penalty (where the penalty must not exceed £30,000)
0 – 10	£40	£250
11 – 20	£80	£500
21 – 40	£125	£750
41 – 60	£160	£1,000
61 – 80	£400	£2,500
81 – 100	£800	£5,000
101 – 120	£1,600	£10,000
121 – 140	£2,500	£15,000
141 – 160	£3,300	£20,000
161 – 180	£4,100	£25,000
181 – 200	£5,000	£30,000

15. Financial Means to Pay a Civil Penalty

- 15.1 In setting a civil penalty, the Council should assume that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.
- 15.2 It is for the offender to disclose to the Council such data relevant to their financial position as will enable the Council to assess what s/he can reasonably afford to pay.
- 15.3 Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.
- 15.4 As many offenders may own one or more properties in West Northamptonshire, it is likely that they could have assets that they can sell or borrow against. After taking into account any mortgages on such properties, the Council may find it appropriate in the circumstances of the case to determine the amount of equity that could potentially be released from the property if it were to be sold on the open market. If an offender to whom this applies claims that they are unable to pay a financial penalty and demonstrates that they have only a low income, consideration will be given to the likely amount of equity that could be released, if any of the properties were to be sold or refinanced, when deciding upon an appropriate level of civil penalty.

16. Other Consequences of Imposing a Civil Penalty

- 16.1 Where a civil penalty has been imposed on a landlord or agent, this will form part of the Council's consideration when it reviews the HMO licence applications relating to properties in which that person has had some involvement.
- 16.2 Although the imposition of a civil penalty will not automatically preclude the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant an HMO licence.
- 16.3 Where a landlord has two civil penalties imposed on them within a period of 12 months and each relates to a Banning Order offence for the purposes of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council will register the landlord's details on the nationwide Database of Rogue Landlords and Property Agents.

17. Collection of Unpaid Civil Penalties

- 17.1 It is the policy of West Northamptonshire Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the County Court.
- 17.2 Some of the Orders available to the Council through the County Court are as follows:
- A Warrant of Control for amounts up to £5,000;
 - A Third-Party Debt Order;
 - A Charging Order, and;
 - Bankruptcy or insolvency.
- 17.3 Where a Charging Order has been made, and the amount of the Order is more than £1,000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.
- 17.4 Where the civil penalty is appealed and the First Tier Tribunal confirms or varies the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. Inclusion on the Register may make it more difficult for the Landlord to obtain financial credit.

PRIVATE SECTOR HOUSING FEES AND CHARGES

18. Purpose of Private Sector Housing Fees & Charges

- 18.1 The law allows Councils to charge for the licensing of Houses in Multiple Occupation and the cost of the enforcement action it takes in relation to private sector housing.

- 18.2 Although the Council values the very important role that the private rented sector plays in meeting the high demand for housing in West Northamptonshire, it also recognises the need to take robust action against those landlords whose selfish, anti-social and unlawful behaviour is putting tenants' health and wellbeing at risk, spoiling local neighbourhoods and placing an additional financial burden on public services.
- 18.3 The fees and charges reflect the current cost of enforcement actions and processes, and it sets out an approach that is designed to ensure transparency, consistency and fairness in how fees and charges are applied.
- 18.4 The details of the fees and charges are outlined in the West Northamptonshire Council Fees and Charges Scheme (<https://www.westnorthants.gov.uk/budget-and-charges/fees-and-charges>)

19. Principles underpinning the Charges

- 19.1 West Northamptonshire's Private Sector Housing Fees & Charges are based on the following principles:
- The Council will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners, landlords and occupiers;
 - All fees and charges will be calculated on the basis of what it costs the Council to license HMOs, take enforcement action, carry out works in default and provide advice and written reports;
 - All licensable HMOs will be subject to the same fees and charges arrangements, irrespective of whether they are affected by the Mandatory HMO Licensing regime or the Additional HMO Licensing regime;
 - Owners and landlords who fail to license their HMOs on time will be required to pay more for their HMO licence and, when they are eventually issued with an HMO licence, the Council is likely to issue them with a shorter licence that lasts less than the standard term;
 - Persons responsible for housing enforcement activities (including the owners of long-term and problematic empty properties) who are served with formal Notice(s) by the Council will be required to bear the full cost of enforcement in line with this Policy;
 - Where it is necessary for the Council to carry out works in default, the Council will seek to recover all of its costs (including the cost of the works) from the person responsible at the earliest opportunity.

20. Calculating the Fees & Charges

- 20.1 The Council will carry out an annual review of its fees and charges for Private Sector Housing to ensure they reflect the true cost of the work. Any changes will come into effect in the subsequent municipal year.
- 20.2 The revised fees and charges reflect the true cost of the work involved and have been calculated by determining all costs involved the licencing or enforcement activities.

- 20.3 The costs associated with maintaining the mandatory and additional House in Multiple Occupation licensing schemes, together with the ongoing staff costs in relation to administration and enforcement and the projected inflation over the 5-year licensing period have also been included in the calculations.

21. Licensing of Houses in Multiple Occupation

- 21.1 Although a large proportion of licensable Mandatory and Additional HMOs are licensed, the Council is continually uncovering Mandatory and Additional HMOs that are being operated, unlawfully, without an HMO licence.
- 21.2 It is a criminal offence if a person controlling or managing an HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.
- 21.3 If a licensable HMO does not have a licence, any Section 21 Notice (a notice seeking possession) that the landlord serves on the tenants is likely to be invalid. Identifying and targeting licensable HMOs that are operating without a licence, therefore, will not only help the Council to tackle criminal and irresponsible landlords, but it also aims prevent homelessness.
- 21.4 Although enforcement action has an important role to play in ensuring that HMOs are properly managed and meet the required standards – and the Council is firmly committed to ensuring that the cost of such action is borne by the offenders
- 21.5 All licensable HMOs (Mandatory and Additional) will be subject to the same fees and charges arrangements, and penalties;
- 21.6 Owners and landlords who fail to submit their completed licence application (for the initial HMO licence or the renewal of their HMO licence) in a timely manner when they are issued with an HMO licence, they may be issued with a shorter licence lasting less than 5 years.

Cost of the initial HMO Licence

- 21.7 The cost of the initial licence fee will depend on the number of people that the HMO can accommodate and when the licence application is received by the Council.
- 21.8 A bigger licence fee will be charged if the HMO is able to accommodate more than 5 persons,.
- 21.9 A HMO licence fee comprises a first payment for the processing of the licence application and a second payment of for the administration and enforcement of the licensing scheme
- 21.10 If the HMO can accommodate more than 5 persons, the size of the second payment (for the administration and enforcement of the licensing scheme) will be increased for each additional person (above 5 persons) that the HMO can accommodate. This reflects the increased time necessary for the effective inspection, administration and enforcement relating to these larger properties.

Length of the initial HMO Licence

21.11 The length of the initial licence will depend on when the completed licence application (including the licence fee) is received by the Council.

21.12 A licence of up to 5 years – which, in the case of an Additional HMO licence, shall expire no later than the end of the Additional Licensing Scheme approval – will be issued if the completed licence application is received:

- within 13 weeks of the HMO becoming licensable; or
- within 13 weeks of the owner completing the purchase of an existing, licensable HMO

21.13 If a licence application is submitted more than 13 weeks after becoming licensable and the Housing Enforcement Team is not satisfied that the delay is justified, a housing enforcement report will be produced and the Council will consider its various options, including prosecution and the imposition of a civil penalty.

Cost of renewing an HMO Licence

21.14 The cost of renewing an HMO licence will depend on the number of people that the HMO can accommodate and when the licence application is submitted.

21.15 HMO licence renewal fees comprises a first payment for the processing of the licence application and a second payment of for the administration and enforcement of the licensing scheme.

21.16 If the HMO can accommodate more than 5 persons, the size of the second payment (for the administration and enforcement of the licensing scheme) will be increased for each additional person (above 5 persons) that the HMO can accommodate. This reflects the increased time necessary for the effective inspection, administration and enforcement relating to these larger properties.

Licence Fee Refunds

21.17 You will only be entitled to a refund if:

- Your property does not need a licence at the time of application, for example it falls under one of the exemptions, and an inspection of the property as part of the application process has not been completed, or
- You make a duplicate application

21.18 You're not entitled to a refund if:

- Your property needs to be licensed at the time of application, or

- You subsequently sell the property, both whilst the application is being processed or during the licence term

Additional charges

- 21.19 In order to improve efficiency and keep its HMO fees and charges as low as possible, the Council require all HMO licence applications (including licence renewals) and payments to be made online.
- 21.20 Where it is necessary for an Officer to sit with the applicant to complete their licence application online or where, at its discretion the Council accepts a paper application the Council will normally charge an additional processing fee as detailed in the West Northamptonshire Council Fees and Charges scheme (<https://www.westnorthants.gov.uk/budget-and-charges/fees-and-charges>).
- 21.21 A charge of will normally be made if the landlord / owner / applicant fails to attend an arranged inspection or cancels it with less than 24 hours' notice.

22. Housing Enforcement

Formal Enforcement Notices

- 22.1 The Council's Private Sector Housing Team will respond to complaints from tenants and other residents about private housing and it will prioritise the complaints on the basis of an assessment of the risk and seriousness.
- 22.2 The Housing, Health and Safety Rating System (HHSRS), set out in Part 1 of the Housing Act 2004, is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s) of the property or neighbouring properties.
- 22.3 Where enforcement action is necessary, the Council will use a variety of regulatory powers and will normally charge offenders for the cost of preparing and serving Statutory Notices. The amount charged reflects the true cost of the work and takes into account the average number of hours taken to complete the task, the hourly rate of the Officers involved and the service on-costs.
- 22.4 In exceptional circumstances, the Council may exercise its discretion and decide not to charge for the cost of enforcement. Such decisions will be made by the Council's Assistant Director Housing & Communities or their authorised nominee and will be based on the individual circumstances and merits of each case.

Carrying out Works in Default

- 22.5 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so.
- 22.6 In most instances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.

- 22.7 The full cost of the works will be recovered in accordance with the relevant statutory provisions. A Charge will be placed on the property and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt.
- 22.8 In order to encourage owners and landlords to undertake the work themselves, the Council's charges for arranging works in default reflect the true cost of organising and paying for the work.
- 22.9 The Council is not obliged to carry out the works and reserves the right not to do so where the cost of the works is likely to be high or there may be difficulties recovering the costs. Works may be considered to remove serious hazards only.

23. Discretionary Services

- 23.1 Where the Council is asked to provide a discretionary service in relation to private sector housing – such as an Immigration Compliance Visit & Report – it will make a reasonable charge that reflects the true cost of the work.
- 23.2 Although the Council will continue to provide owners and landlords with advice and guidance, this will be provided mainly through the Council's website.

24. Debt Recovery

- 24.1 Where a charge is made for enforcement action, the debt will be registered as a local land charge against the property. This means that, when the property is sold, the whole debt (including the interest that has accrued) will have to be repaid.
- 24.2 The Council will not, as a matter of course, allow a land charge to sit against a property until it is sold. It will vigorously pursue all debts that are owed to it in relation to its enforcement activity, works in default and other charges.
- 24.3 In order to recover outstanding debts, the Council may:
- Use databases and tracing agencies to track down debtors with a view to securing money judgments against them and appointing court bailiffs to recover the debt.
 - Demand that rents are paid to the Council, rather than the landlord, where the law allows, and it is appropriate to do so
 - Use the enforced sale procedure under the Law of Property Act 1925, where appropriate, to force the sale of the property in order to recover the money that is owed.

25. Guidance

- 25.1 A wide range of guidance on licensing and enforcement has been issued by the Government and other agencies, and the Council will continue to have regard to all relevant guidance when formulating its policies and procedures.

APPENDIX 1 - CIVIL PENALTY SCORING MATRIX

STAGE ONE – CULPABILITY OF THE OFFENDER
 (Double the score if the offender is a letting agent, managing agent or a portfolio landlord with more than 5 properties. Add 10 if the offender has breached a Banning Order)

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
<ul style="list-style-type: none"> • Short term offence. • And/Or, no premeditation. • And/Or, no previous history. 	<ul style="list-style-type: none"> • The offence has been ongoing for a short time. • And/Or, minor prior infractions. • And/Or, multiple offences identified (between 2-5) which may include a repeat of the current offence 	<ul style="list-style-type: none"> • The offence has been ongoing for a moderate period of time. • And/Or no premeditation • And/Or, there are multiple offences identified (between 6-10). • And/Or, a case history of non-cooperation • And/Or relevant prior offending which may include a repeat of the current offence 	<ul style="list-style-type: none"> • The offence has been ongoing for a significant period of time • And/Or some premeditation, • And/Or, there are multiple offences identified (between 11-20). • And/Or, a case history of non-cooperation • And/Or relevant prior offending including a repeat of this offence. 	<ul style="list-style-type: none"> • The offence has been ongoing for a significant period of time • And/Or premeditation, • And/Or, there are multiple offences (21+). • And/Or, a case history of non-cooperation • And/Or relevant prior offending including a repeat of this offence. 	
Breach of Banning Order?					
TOTAL					

STAGE TWO – SERIOUSNESS OF THE OFFENCE AND THE LEVEL OF HARM CAUSED

Not applicable (Score = 0)	Minor (Score = 10)	Moderate (Score = 20)	Serious (Score = 30)	Severe (Score = 40)	TOTAL
<ul style="list-style-type: none"> • Very little or no harm caused. • And/Or One victim household. • And/Or No vulnerable occupants. 	<ul style="list-style-type: none"> • Low-level health risk(s) / harm(s) identified. • And/Or One victim household. • And/Or No vulnerable occupants. 	<ul style="list-style-type: none"> • Moderate-level health risk(s) / harms(s) identified. • And/Or Two to four victim households. • And/Or Vulnerable occupants potentially exposed. 	<ul style="list-style-type: none"> • Severe level health risk(s) / harm(s) identified. • And/Or Two to four victim households. 	<ul style="list-style-type: none"> • Severe level – health risk(s) identified. • And/Or Five or more victim households. 	

STAGE THREE – PUNISHMENT OF THE OFFENDER

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
<ul style="list-style-type: none"> • No other crime, • And/Or no attempt to pervert the course of justice, • And/Or a willingness to adhere to advice. 	<ul style="list-style-type: none"> • Minor previous breaches, • And/Or no attempt to pervert the course of justice, • And/Or a willingness to adhere to advice. 	<ul style="list-style-type: none"> • Minor previous breaches. • And/Or Offender made attempt(s) to pervert the course of justice • And/Or unwilling to cooperate. 	<ul style="list-style-type: none"> • Significant other crime. • And/Or Offender made attempts to pervert the course of justice • And/Or hostile to cooperation. 	<ul style="list-style-type: none"> • Severe harm resulting from other crime. • And/Or Offender made attempts to pervert the course of justice, • And/Or is hostile to Council and others. 	

STAGE FOUR – REMOVAL OF ANY FINANCIAL BENEFIT GAINED FROM COMMITTING THE OFFENCE(S)

Not applicable (Score = 0)	Minor (Score = 10)	Moderate (Score = 20)	Serious (Score = 30)	Severe (Score = 40)	TOTAL
<ul style="list-style-type: none"> Negligible financial impact. 	<ul style="list-style-type: none"> Low to moderate financial impact. 	<ul style="list-style-type: none"> Medium level financial impact. 	<ul style="list-style-type: none"> Large financial impact. 	<ul style="list-style-type: none"> Maximum financial impact available. 	

STAGE FIVE – DETERRING THE OFFENDER FROM REPEATING THE OFFENCE AND OTHERS FROM COMMITTING SIMILAR OFFENCES

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
<ul style="list-style-type: none"> • Little or no deterrence likely. • And/Or unlikely Repeat offending 	<ul style="list-style-type: none"> • Low level offence, • And/Or unlikely to be reported on. • And/Or Mild deterrence. 	<ul style="list-style-type: none"> • Some publicity may result. • And/Or Will act as a deterrent from repeating offence(s). 	<ul style="list-style-type: none"> • Publicity will be sought. • And/Or Large deterrence to offender and landlord community. 	<ul style="list-style-type: none"> • Publicity inevitable via numerous methods. • And/Or Massive deterrence to re-offending and to wider landlord community. 	

STAGE SIX – ASSESSMENT OF ASSETS AND INCOME

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
<ul style="list-style-type: none"> • No demonstrable or significant assets. • Does not apply to agents. 	<ul style="list-style-type: none"> • Low asset value (single property landlord, for example). • Does not apply to agents. 	<ul style="list-style-type: none"> • Small portfolio / agent (5 properties or less) • And/Or moderate assets / income. 	<ul style="list-style-type: none"> • Small / medium portfolio landlord / agent (5-10 properties) • And/Or with other assets / income. 	<ul style="list-style-type: none"> • Large portfolio landlord / agent (10+ properties). • And/Or Wider assets / income considered. 	

STAGE SEVEN – MITIGATION
 (This score will be subtracted from the overall matrix score)

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
<ul style="list-style-type: none"> • None. 	<ul style="list-style-type: none"> • Minor mitigating factors. 	<ul style="list-style-type: none"> • One major mitigating factor or multiple minor mitigating factors. 	<ul style="list-style-type: none"> • Two or major mitigating factors. 	<ul style="list-style-type: none"> • Multiple major mitigating factors. 	

APPENDIX 2 - CIVIL PENALTY FINANCIAL STARTING POINTS

Where a Civil Penalty is being proposed, the maximum value is provided in the relevant statutory provisions, but the table below will be used to convert the score from the assessment (Appendix 1) to a financial value for the civil penalty.

Score range	Size of the civil penalty (where the penalty must not exceed £1,000)	Size of the civil penalty (where the penalty must not exceed £2,000)	Size of the civil penalty (where the penalty must not exceed £4,000)	Size of the civil penalty (where the penalty must not exceed £5,000)	Size of the civil penalty (where the penalty must not exceed £30,000)
0 – 10	£10	£20	£35	£40	£250
11 – 20	£20	£35	£70	£80	£500
21 – 40	£25	£50	£100	£125	£750
41 – 60	£35	£65	£135	£160	£1,000
61 – 80	£85	£165	£332	£400	£2,500
81 – 100	£170	£335	£670	£800	£5,000
101 – 120	£335	£670	£1350	£1,600	£10,000
121 – 140	£500	£1000	£2000	£2,500	£15,000
141 – 160	£670	£1350	£2700	£3,300	£20,000
161 – 180	£840	£1700	£3400	£4,100	£25,000
181 – 200	£1000	£2000	£4000	£5,000	£30,000

APPENDIX 3 - CIVIL PENALTY FINANCIAL STARTING POINTS

Where a Civil Penalty is being proposed under the Smoke and Carbon Monoxide Alarm Regulations 2015, as amended, the maximum value is provided in the relevant statutory provisions, but the table below will be used in consideration of the value of the financial penalty.

Property type	1 st contravention lack of /defective smoke alarms	1 st contravention Lack of/defective Carbon Monoxide detector(s)	2 nd contravention of either Smoke or Carbon Monoxide detector(s)
Single house without inner room*	£2,000	£2,000	£5,000
Single house with inner room**	£3,000	£2,000	£5,000
Shared house or flat in multiple occupation ***	£3,000	£2,000	£5,000
Poorly converted blocks of flats****	£4,000	£2,000	£5,000
Bedsits*****	£4,000	£2,000	£5,000

*The means of escape from a habitable room such as a living room or sleeping room is not through another habitable room such as a kitchen or living room.

** The means of escape from a habitable room such as a living room or sleeping room is through another habitable room such as a kitchen or living room.

***The property is let on a single tenancy agreement to a group of sharers.

****The property was converted in to flats prior to the introduction of the 1991 Building Regulations or was converted after the introduction of the 1991 Building Regulations and does not meet them.

*****The rooms within the property are let to separate individuals on individual tenancy agreements.

APPENDIX 4 - CIVIL PENALTY FINANCIAL STARTING POINTS

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (MEES) Regulations are enforced by local authorities, who have powers to check and ensure compliance within the Private Rented Sector (PRS). – where a breach of these regulations has been identified the local authority have powers to issue financial penalties up to £5000, the table below will be used in consideration of the value of the financial penalty.

Property type	Max penalty	Mitigation
Regulation 38 (1) (c) – non compliance with regulation 37	£2000	Have produced an EPC which is an E or above after service of notice reduce by 50%
Regulation 38 (1) (a) Let for less than 3 months	£2000	Have produced an EPC which is an E or above after service of notice reduce by 25%
Regulation 38 (1) (a) Let 3 months or more	£4000	Have produced an EPC which is an E or above after service of notice reduce by 15%
Regulation 40 Providing false or misleading information	£1000	No mitigation
Total	£5000	