

# Strategic Housing Services

## Enforcement Policy 2018

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## 1. Aim of the policy

Housing should provide an environment that is as safe and healthy as possible. Poor housing conditions can be a major cause of accidents and ill health. Tackling problems of poor housing to protect the health, safety and welfare of occupants is a key health priority.

The aims of the policy are:

- to set out the legal responsibilities, policies, principles and priorities that the Strategic Housing Service will follow when enforcing relevant legislation;
- to help provide housing which is safe and provides a healthy environment;
- to increase public confidence in the quality of private rented accommodation;
- to raise the profile and ensure transparency and consistency of enforcement activity carried out by the Strategic Housing Service.

## 2. Enforcement

### 2.1 What is Enforcement Action?

Enforcement means an action carried out in exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or service of legal notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation, to give advice to help comply with the law, when educating or gathering information. A list of the legislation covered is included at [Appendix A](#).

### 2.2 Enforcement Objectives

Within the Strategic Housing Service, the Private Sector Housing Service primarily deals with the enforcement action described in this policy; those actions that fall within the scope of our service can cover all privately owned residential accommodation and associated land. In normal circumstances enforcement action will be carried out with the objective of ensuring that:

- tenants of a private landlord or a Registered Provider (RP) live in homes free from significant risks to their health and safety;
- owners or occupiers, particularly those who are vulnerable, live in accommodation which is free from significant risks to their health and safety;

- HMO licensing requirements are complied with and licence conditions are met;
- privately owned property, including associated land, does not present a statutory nuisance to other land owners, or does not directly or indirectly present an unacceptable risk to public health, safety or the environment;
- caravan and mobile home site licensing requirements are complied with and the licence conditions are met;
- persons are held responsible for their actions, or inaction, which are detrimental to the health, safety and welfare of occupants and other residents or the quality of the local environment;
- that the principle of 'self-regulation' is reinforced
- long term empty homes are not left empty where there is a housing need;
- we meet our statutory duties as a public authority and target resources efficiently;
- tenants and park home residents are protected from illegal eviction and/or harassment.

### **3. Expectations**

In recognition of the requirements of the Regulators Code 2014 including transparency, we have set clear service standards that you can expect from staff undertaking the types of enforcement activity described in this policy.

#### **3.1 North Somerset Council**

The Strategic Housing Service will be open, act proportionately, and be consistent and helpful in its approach to enforcement. In relation to our regulatory activities you are entitled to expect our staff to:

- give clear and simple advice
- have the necessary knowledge and skills to support those we regulate
- understand the principles of good regulation and the Regulators' Code and apply them appropriately
- provide a contact point for any further contact
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by choosing a proportionate approach based on the relevant factors of each case
- give you reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)

- advise you of the procedure for making a complaint or representations in cases of dispute

## **3.2 Service Users**

Our service users can expect the following:

### **3.2.1 Landlords**

- We will expect you to be aware of your responsibilities as a landlord
- We will advise you of the legislation that applies, help you understand how you can comply with it and what action you need to take (if any).
- If there are serious hazards identified in a privately rented property we will undertake enforcement action requiring relevant defects to be repaired or improvements made
- We will consider each case on its own merits, only taking enforcement action when it is considered appropriate, if enforcement action is taken you will receive a statement setting out the reasons for such action.
- In deciding whether to prosecute or apply civil enforcement penalties we will have regard to the seriousness of the offence, the benefit of civil enforcement or prosecution, the information provided to you about your responsibilities prior to the offence being committed, whether you have been accredited as a landlord and whether some other action would be appropriate.
- A charge will generally be made for taking enforcement action.

### **3.2.2 Tenants**

- We will expect you to be aware of your responsibilities as a tenant
- We will expect you to advise your landlord of the problems in your property before contacting us.
- We will expect you to have behaved in a 'tenant-like manner' during the course of your tenancy by not wilfully or negligently damaging the property
- We will advise you as to what action we can take and advise you of the expected timescales.
- If there is an appropriate action for us to take you can expect us to initiate and complete that action.
- We will expect you to cooperate with your landlord to get the works carried out and to advise us of any action taken by the landlord.

### **3.2.3 Owner Occupiers**

- The prime responsibility for maintenance of a dwelling is with the homeowner but we recognise that the council has an important role to provide assistance, particularly to the elderly and most vulnerable who may not have resources available.
- We have a duty to take an enforcement action when a serious hazard is identified at a property.
- We will consider taking enforcement action if there is a risk to a person's health, safety or wellbeing or represents a nuisance.
- We will provide information on the types of assistance that may be available to help fund essential repairs and improvements.

### **3.2.4 Owners of Empty homes**

- We will work with owners of empty homes to help them bring them back into use.
- We will consider a full range of enforcement options (including Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) where an owner does not co-operate and the empty property has not been brought back into use within a reasonable period. Where an empty property presents a serious or imminent risk to a person's health, safety or wellbeing, or represents a nuisance, or has a detrimental impact on amenity of the neighbourhood, appropriate enforcement action will be considered depending on circumstances of each case.

## **4. Links with other council strategies and national policies**

### **4.1 Council strategies**

This document provides a framework for housing enforcement activities that may be undertaken to meet priorities set out in the Housing Strategy 2016 – 2021 and associated delivery plans.

This policy also supports the delivery of the vision for housing set out in the North Somerset Partnerships Sustainable Community Strategy - by 2026 there will be "better access to quality homes".

### **4.2 National policies**

We support the national approach to good regulation and we will ensure the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006 and Statutory Code of Regulations 2014, are followed:

- regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- regulatory activities should be targeted only at cases in which action is needed.

Our approach in meeting legislative requirements placed upon us whilst delivering our regulatory functions is set out below/

## **5. Our approach to enforcement**

### **5.1 Targeting**

We will prioritise and direct our regulatory effort. This policy identifies the enforcement priorities of the Strategic Housing Service so that our service users can see where we will normally focus our resources and make clear the approach we will take in dealing with these issues. The ways in which we target our resources are set out in a later section of this policy.

### **5.2 Proportionality**

We will ensure that enforcement action is proportionate to the risks involved, and we will ensure our evidence supports appropriate sanctions.

### **5.3 Accountability**

We will be accountable for the efficiency and effectiveness of our activities.

### **5.4 Fairness and Consistency**

We will treat all service users fairly. We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar outcomes. We will have regard to national guidelines and Codes of Practice in our decision-making processes.

We have set out how we will comply with the new Regulators Code below;

### **5.5 Regulators Code**

The Legislative and Regulatory Reform Act 2006 also requires that we have regard to guidance issued under section 23 of this Act. The Regulators Code 2014 places additional requirements on enforcement activities and we will ensure our regulatory activities comply with this Code.

### **5.5.1 Supporting economic progress**

We recognise that a key element of our activity will be to carry out our activities in a way that supports those we regulate to comply with their legal responsibilities whilst (where applicable) being able to grow their business, balanced against a background of public protection. Wherever possible, we will work in partnership with individual landlords and owners, small businesses and with voluntary and community organisations to assist them with meeting their legal obligations without unnecessary regulatory burden and expense.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice but which are not compulsory.

We are committed to improving public confidence in the Private Rented sector. We also recognise the importance of staff having the necessary knowledge and skills to support those we regulate and being able to apply the principles of good enforcement appropriately.

### **5.5.2 Engaging with Service Users**

We are committed to engaging with our service users and provide a number of mechanisms to facilitate this. We support both landlord and tenant groups which provide an opportunity for dialogue, engagement on the service direction and updating members on emerging and existing local issues within the sector.

The West of England Local Authorities work together with private organisations to bring together property professionals services and users in order to share information and best practice and develop links in this area. The WoE Landlord Panel provides an opportunity to reach a wide range of landlords and agents by dialogue with the trade organisations. The Rent with Confidence initiative is an example of our sub-regional working to encourage professionalism and self-regulation in the sector.

We also provide customer feedback forms that are sent to service users on completion of dealing with a case.

Our customer complaints procedure can be accessed through our public website, [www.n-somerset.gov.uk](http://www.n-somerset.gov.uk)

### **5.5.3 Risk based approach**

This policy sets out the local enforcement priorities particularly based on an identification of issues that could cause significant harm in the Local Authority area or generate high levels of local concern and where the council can make a difference to outcomes. By setting these priorities we are identifying those

priority risk areas where it is more likely that we will take enforcement action to achieve compliance.

We will regularly review these enforcement priorities and the effectiveness of this approach in achieving our service aims and delivery of our regulatory activities.

#### **5.5.4 Sharing Information**

If there is a shared enforcement role within the Council or external agencies, e.g. Environmental Protection Service and Avon Fire and Rescue, we will co-ordinate with these agencies to minimise unnecessary overlaps or time delays and to maximise overall effectiveness. Where the law allows we will follow the principle of “collect once, use many times” by agreeing to securely share information about individuals and businesses we regulate to minimise duplication.

#### **5.5.5 Providing Information, guidance and advice**

We are committed to the open provision of information and advice in a format that is accessible and easily understood. We will continue to make extensive use of the council’s website to provide information and guidance on our service users’ responsibilities and legal requirements, including the publication of this policy.

We also provide appropriate links to other sources of useful information such as the website operated by the West of England local authorities [www.privatehousinginformation.co.uk](http://www.privatehousinginformation.co.uk). This includes access to a landlord’s manual and online training courses focused around HMO licensing. We will also provide advice and information by case officers on site, over the telephone and in writing where this approach is more appropriate.

We will ensure that there is always a clear distinction between the information provided that is necessary to comply with the law and that which is guidance or has been identified as good practice, but not compulsory.

#### **5.5.6 Transparency**

We aim to deliver our regulatory activities in an open and consistent way. To help achieve this, we have set service standards in this policy to ensure that both those we regulate and other service users can have clear expectations of our service. We will ensure that all staff delivering our regulatory activities act in accordance with these service standards.

We will continue to publish reports that include details of performance against our service standards/performance indicators and any information from mystery shopping, customer satisfaction surveys or other feedback.

## **5.6 Compliance with Home Authority Principle**

We support the Home Authority and Primary Authority Principles, which have been developed to promote good enforcement practice and reduce burdens on business.

We will therefore:

- Provide businesses, for whom we are the ‘home/primary authority’, with appropriate guidance and advice;
- Maintain records of our contacts with ‘home authority’ businesses to reduce the amount of information they have to provide;
- Support efficient liaison between local authorities;
- Provide a system for the resolution of problems and disputes.

## **6. Local enforcement priorities**

This section looks at identifying priorities where the issues could cause significant harm in the Local Authority area or generate high levels of local concern and where the council can make a difference to outcomes.

Our local priorities are:

- tackling rogue landlords and protecting private sector tenants;
- protecting caravan/park home site residents;
- dealing with properties where their condition has a significant impact on the community or environment.

### **6.1 Tackling rogue landlords and protecting private sector tenants**

The council recognises and supports the national government’s commitment to tackling problems in the private rented sector caused by rogue landlords who fail to meet their responsibilities. We will target enforcement action against those landlords who rent out poor quality accommodation or engage in harassment and illegal eviction of tenants, particularly if the occupants are considered to be vulnerable.

There are around 2000 converted flats and houses in multiple occupation (HMO’s) in the district with a concentration of poor quality privately rented homes in Weston-super-Mare. The council has a wide range of powers to tackle the problems associated with these types of properties and will target this area as a priority.

## **6.2 Protecting caravan/mobile home site residents**

The council also recognises and supports the national government's commitment to protecting caravan and mobile home site residents. Being a coastal authority we have a high number of residential sites which are characteristically occupied by older residents.

This policy sets the protection of these residents as a high enforcement priority and we will seek to take enforcement action against site owners who fail to meet their basic responsibilities and take advantage of this vulnerable group.

## **6.3 Dealing with properties where the condition has a significant impact on the community or environment**

The initial approach in tackling these issues will generally be advice and assistance. However where environmental and/or public health concerns present an issue for the neighbouring community and owners fail to take reasonable action to remedy defects, the council will seek to take enforcement action.

## **7. Targeting enforcement action**

To ensure that we meet our policy and enforcement objectives effectively we will need to target our enforcement activity from time to time. These are some examples of how we may target action:

### **7.1 By types of property and/or the way a property is occupied**

- Empty properties
- Homes occupied by tenants who are in receipt of Housing Benefit as they are likely to be more vulnerable and the standards in those properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers
- Unlicensed HMOs
- Construction type – Where there is a problem with a particular method of construction.

### **7.2 By areas**

- Where there are particular problems in a specific locality. This can be on a street-by-street or area basis.

### 7.3 By individual/organisation

- Where a particular individual or organisation is persistently committing offences or where their activities result in the need for us to work proactively to meet our enforcement objectives.
- Where landlords are not accredited through a scheme approved by the council. This is because there is likely to be a greater risk of poor housing conditions and a corresponding impact on the health and safety of tenants in these circumstances, as through accreditation landlords undertake to meet all appropriate standards for their homes
- Tenants have responsibilities under the terms of their tenancies and the management regulations for houses in multiple occupation, and we will support landlords when dealing with problematic tenants and take enforcement action when appropriate.

Please note: this is not an exhaustive list of all the ways we may target action.

## 8. Specific enforcement actions

### 8.1 Housing conditions

The Housing Act 2004 Part 1 is concerned with assessing housing conditions and enforcing housing standards. The council is under a general **duty** to take appropriate action in relation to the most dangerous health and safety hazards referred to as category 1 hazards (bands A, B or C hazard rating). The council has the **power** to deal with less dangerous category 2 hazards (bands D to J).

Following a Housing Health and Safety Rating inspection and assessment of a dwelling, the council **must** take enforcement action in relation to category 1 hazards (bands A, B and C) that are identified.

The council **will normally** take enforcement action in relation to category 2 band D hazards unless there are any mitigating factors which will be considered before action is taken. The council **may** also take enforcement action in relation to Category 2 bands E to J where it makes the judgement that it would be appropriate in the particular circumstances of the case. In determining what type of enforcement action will be taken, factors that will be considered include:

- the specific characteristics of the residential premises concerned;
- the type and severity of the hazard;
- the likely exposure of vulnerable individuals to the hazard;
- the impact of the action on the occupier of the premises concerned;
- the landlord's or agent's previous history of compliance;

- whether the landlord or agent is accredited through a scheme approved by the council;
- whether information has previously been provided by the council to the landlord or agent about the responsibilities of a landlord or agent;
- any adverse health and safety and environmental impact of the action;
- relevant guidance and protocols that are in place.

Following the identification of a significant Housing Health and Safety Rating Hazard, the council will, where possible and reasonable, seek the views of occupiers, landlords, owners and persons in control of the accommodation, including views on the hazards present and how to deal with them. These views will be taken into account when deciding the most appropriate course of enforcement action.

The interested parties will be informed of the course of enforcement action when this decision has been made. In determining the most appropriate action, regard will be given to the planning and/or listed building status and the impact any course of action would have on the local environment.

Urgent enforcement action without consultation will be taken where health and safety hazards pose a serious or imminent risk to the occupants of premises or other members of the public.

Housing Act 2004 Part 1 enforcement action includes the following:

- taking emergency remedial action;
- making an emergency prohibition order;
- making a demolition order;
- declaring a clearance area;
- serving an improvement notice (including a suspended notice);
- making a prohibition order (including a suspended order);
- serving a hazard awareness notice.

There is a right of appeal to the Residential Property Tribunal against Notices or Orders. Details of how to appeal will always be included with Notices or Orders served.

Where enforcement action is considered under other legislation such as the Environmental Protection Act 1990, Building Acts or Public Health Act or other relevant legislation, a similar approach will be taken. In these cases the term 'hazard' may be replaced by the relevant term including 'nuisance' or 'premises prejudicial to health'.

## 8.2 Licensing of HMOs and other accommodation

The Housing Act 2004 Part 2 is concerned with licensing of Houses in Multiple Occupation (HMOs). This legislation states that certain properties must be licensed with the council, and Strategic Housing Services will endeavour to ensure this is the case. Under the legislation, certain properties require a mandatory licence to operate.

The council also has the power to designate additional licensing areas and require all HMOs in that area to apply for a licence in order to operate legally. A designation can last for a maximum of 5 years. Failure to comply with this legislation is an offence.

Part 3 of the Housing Act 2004 is concerned with selective licensing of other residential accommodation. The council has the right to designate a selective licensing area and require all privately rented properties in that area to apply for a licence in order to operate legally. A designation can last for a maximum of 5 years.

Where an area meets the legislative requirements to declare a discretionary licensing scheme we will consider using these powers.

Strategic Housing Services will charge a fee for all licence applications as detailed in our fees and charges document.

When issuing a licence, opportunity will be given for interested parties to make representations against all conditions stated on the licence. If agreement cannot be reached there is a right of appeal to the Residential Property Tribunal. Details of how to appeal will always be sent with a final licence.

Under the Housing Act 2004, licences may be issued for up to a maximum of 5 years and this will usually be the case. However, licences may be issued for shorter periods appropriate to the circumstances of the case.

All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person. The council may also require additional evidence in relation to criminal convictions if considered appropriate. There is a right of appeal to the First Tier Tribunal (Property Chamber - Residential Property) against a fit and proper person decision.

A licence holder's fit and proper person status may be reviewed if the person is prosecuted for an offence, if they breach licensing conditions, if there is evidence of poor management or for any other factors deemed relevant by this council.

### **8.2.1 Operating an unlicensed HMO**

Where the Strategic Housing Service become aware of a property that requires licensing under Parts 2 or 3 of the Housing Act 2004 but is not so licensed, we will seek to invite a licence application. Where there is no co-operation from the person(s) in control, the council will take action appropriate to the circumstances of the case. This could be by the council serving a financial penalty notice of up to £30,000 or deciding to prosecute for an offence.

Where unlicensed HMOs are identified by the council, an additional fee on top of the licence fee will be charged to recover the costs associated with the non-compliance. The length of the licence may be reduced to remove any advantage over those landlords that applied at the appropriate time.

Where landlords have been prosecuted for operating an unlicensed HMO or a civil penalty has been invoked, the council will normally use Rent Repayment Orders to claim back the Housing Benefit paid whilst the HMO was unlicensed and provide tenants with information and advice on how they can claim back the rent they paid whilst the HMO was unlicensed.

### **8.2.2 Breach of licence conditions**

The council has a points system for assessing the level of non-compliance with licence requirements. When the number of points exceeds the threshold this triggers a review of the licence holder or manager's fit and proper person status.

Points are awarded where there has been non-compliance with licence conditions and/or the Code of Good Management Practice or other matters. Non-compliance will be evidenced and the severity of breaches will be reflected in the points awarded. A person may ask for the allocation of points to be reviewed.

Where points have been awarded, enforcement action will be used to secure compliance with licensing or legal requirements in line with this policy.

The use of financial penalties or legal action will be considered where there have been serious and/or persistent breaches of licence conditions.

Each case will be judged on its own merits and regard will be had for Code for Crown Prosecutors and Ministry of Justice Guidance 'Simple Cautions for Adult Offenders'.

### **8.2.3 Management Regulations**

The Housing Act 2004 places additional responsibilities on landlords of HMOs to ensure properties are safely managed. The council will use these powers to improve management standards.

Failure to comply with the management regulations may result in a decision to prosecute for the offence or imposing a financial penalty notice of up to £30,000.

### **8.2.4 Interim and final management orders**

These powers will only be used as a last resort where other attempts to deal with risks to the occupiers' or residents' health, safety or welfare have failed. Interim Management Orders (IMOs) can be made where there is no realistic prospect of an HMO licence being granted. Effectively, the management and rental income from a property is taken away from the current landlord for up to a year. The council can apply for a Final Management Order to be approved that can last for up to five years.

Under the 2016 Act, where an agent or landlord is banned from operating in the private rented sector management orders may also be used.

## **8.3 Rogue Landlords**

The Housing and Planning Act 2016 contains a range of measures to tackle rogue landlords including:

- Civil Penalties as an alternative to prosecution in relation to specified offences;
- Extension of rent repayment orders to cover illegal eviction, breach of banning order and certain other specified offences;
- Database of rogue landlords and property agents convicted of certain offences;
- Banning orders for the most serious and prolific offenders

Where the council considers an offence has been committed we will consider the full range of powers available and use the most appropriate action. Separate policies may be issued in relation to specific enforcement options.

## **8.4 Protection from harassment and illegal eviction**

The Protection from Eviction Act 1977 and the Protection from Harassment Act 1997 set out the legal remedies for illegal eviction and harassment for most types of tenancies.

Illegal eviction and harassment are criminal acts and carry potential penalties of imprisonment and fines. The Housing Act 1988 sets out the liability of landlords who have evicted illegally to pay damages to tenants for the loss of the right to occupy.

The Deregulation Act 2015 provides tenants protection from eviction in retaliation for making a complaint in relation to health and safety issues in their home. The protection only applies in certain circumstances.

The circumstances require that a relevant formal legal notice has been served under the Housing Act 2004. Following consultation with tenant, landlord and agent groups the council will only serve the relevant formal legal notices in line with this policy. The Caravan Sites Act 1968 provides protection for occupiers of protected sites against illegal eviction and harassment. The Mobile Homes Act 2013 also brings in the requirement for local authorities to publish an up to date register of site rules that make up the express terms of an occupiers agreement made under the Mobile Homes Act 1983.

We will investigate reports of harassment and illegal eviction and undertake legal proceedings where evidence of an alleged offence exists.

## **8.5 Empty properties**

The Empty Property Delivery Plan 2016 – 2021 sets out how the Strategic Housing Service will work to bring empty properties back into use, including the use of enforcement action. In addition it may also be necessary to take enforcement action under this policy where a property is in such a condition it is creating a significant health and safety hazard to neighbouring properties or is detrimental to the amenity of the neighbourhood. We will risk assess empty properties to effectively target resources to deal with those properties which have the greatest impact on neighbourhoods and/or present a potential risk to public health or other risk or have been empty for long periods of time and other action has failed.

## **9. Other enforcement action**

### **9.1 Environmental and public health complaints**

We investigate environmental and public health complaints that are being caused within a private sector dwelling and make take enforcement action depending on the circumstances of the case. Examples of these types of complaints include premises that are 'open to access' or considered to be filthy and/or verminous.

## **9.2 Caravan site licensing**

Our main involvement with caravan (including Mobile and Park Home) sites is the duty to licence those applicable sites (holiday, touring and residential), under the Caravan Sites and Control of Development Act 1960. Licences are issued with conditions which concern maintaining adequate health and safety on sites.

The Caravan Sites and Control of Development Act 1960 makes it an offence to operate certain types of caravan site without a licence. Complaints of unlicensed sites will continue to be investigated in conjunction with the council's Planning Service on the basis that appropriate planning permission must be in place.

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Enforcement action as deemed appropriate will be taken in relation to any breaches of the licence conditions, based on the risk of the breach in relation to occupiers' health, safety or welfare. The Caravan Sites and Control of Development Act 1960 provides powers to serve a compliance notice to ensure that conditions on relevant protected sites are complied with.

The Mobile Homes Act 2013 introduced the power to require a fee to accompany licensing applications for protected sites, as well as an annual fee for those protected sites that are already licensed. We have published a fees policy for this provision in accordance with the requirements of this legislation and will review it annually.

The Council will pursue enforcement action against site owners who fail to meet their basic responsibilities and place residents often vulnerable at risk.

## **9.3 Unauthorised encampments**

Unauthorised encampments are characterised by persons camping on land that they do not own and where they do not have the permission of the landowner.

The Council's Unauthorised Camping on Public Land Policy details the procedures and guidelines for dealing with these types of occurrences.

## **10. Enforcement tools and techniques**

This policy covers all types of enforcement action carried out by the Strategic Housing Service. This policy may be supplemented by more specific guidance that relates to a specific area of legislation.

## 10.1 Informal Enforcement Action

Where appropriate, we will seek the desired improvements or protection of public health and safety by working informally with those involved. If the risk to a person's health, safety and well-being is low then it will normally be appropriate to act in this way. However, where a landlord or agent has been accredited under a scheme approved by the council and/or has previously been provided with information by the council about their responsibilities and is subsequently found to not be complying with relevant legislation concerning standards for privately rented homes, we will not normally take informal action and will instead use our formal powers.

## 10.2 Formal Enforcement Action

Where the circumstances of the case justify it, we will use our formal enforcement powers, including where:

- there is a serious risk to a person's health and safety e.g. ;
  - no heating in cold weather;
  - no hot water to wash and prepare food safely;
  - exposure to asbestos which means occupiers are likely to inhale or ingest fibres;
  - dangerous electrical wiring
  - significant dampness
- a person refuses or fails to carry out the works or actions informally
- the landlord/agent has been accredited under a scheme approved by the council and fails to comply with the scheme standards
- the council has previously provided the landlord/agent with information about their legal responsibilities as a landlord/agent
- there is a history of failure to meet requests to carry out legally required works.
- there is history of a failure to manage a property in line with legal requirements.
- the person in control of the property was aware of the breach in legislation but failed to resolve the issue independently
- there is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years, or a simple caution has been issued in the last 2 years.
- it is necessary to bring an empty property back into use when informal requests to do so have failed.

- there is evidence of a retaliatory eviction
- an individual is subject to a Banning Order or on the database of rogue landlord and agents

The above is not intended to be an exhaustive list and each case will be considered on its individual merits.

Examples of the types of formal enforcement action we can take are given below.

### **10.2.1 Penalty Charge Notices**

Certain legislation enables the council to serve a Penalty Charge Notice or Monetary Penalty Notice. Failure to pay a civil penalty may result in the council bringing prosecution proceedings or in the recovery of the charge as a debt through court action.

Penalty charge notices can be used for different types of offence, below are some examples:

- Failure to comply with a notice requiring the provision of a smoke or carbon monoxide detector (£5000 maximum)
- Failure to have a valid Energy Performance Certificate (EPC) for a rented property (£200 maximum).
- Failure to comply with the energy efficiency requirements for rented properties (£5000 maximum)
- Failure to be a member of a Government approved residential lettings or management redress scheme (£5000 maximum)
- Failure to comply with improvement notices (£30,000 maximum)
- Offences in relation to HMO Management Regulations (£30,000 maximum)
- Offences in relation to licensing schemes (£30,000 maximum)

Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served. Some legislation requires the publication of a Statement of Principles and these are published as separate documents on our website.

### **10.2.3 Statutory Notices and Orders**

These are used as appropriate in accordance with relevant legislation (they usually require the person in control to take specific action or to cease certain activities).

Examples include improvement notices, abatement notices, closure notices, stop notices, prohibition notices, suspension notices.

### **10.3 Non- Compliance**

Non-compliance with housing legislation can make people liable to be convicted of criminal offences, e.g.

- Operating a licensable HMO without a licence can carry an unlimited fine from the courts or a financial penalty imposed by the council of up to £30,000; or
- Not complying with the requirements of an Improvement Notice under the Housing Act 2004 can carry an unlimited fine from the courts or a financial penalty imposed by the council or up to £30,000.

#### **10.3.1 Simple Cautions**

We may use Simple Cautions where someone has committed a less serious crime. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple Cautions are not a criminal conviction but they are recorded and will be considered in any future proceedings.

#### **10.3.2 Financial Penalty**

Financial (civil enforcement) penalties can be imposed as an alternative to prosecution for certain offences under the Housing Act 2004, these include:

- failure to comply with an improvement notice
- failure to licence a HMO or property falling into a discretionary licensing scheme
- failure to comply with a licence condition
- failure to comply with an overcrowding notice

The burden of proof to impose a financial penalty is the same as for a prosecution and the council must be able to demonstrate beyond reasonable doubt that an offence has been committed.

Civil Financial Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches) rather than prosecution, is the most appropriate and

effective sanction in a particular case. All policies will be published on our website.

When deciding the level of the penalties to be imposed the council will consider:

- severity of the offence
- culpability and track record of the offender
- the harm caused to the tenant
- punishment of the offender
- deterrent effect needed to prevent the offender from repeating the offence
- deterrent effect needed to prevent others from committing similar offences
- removal of any financial benefit the offender may have obtained

The policy for determining civil financial penalties is set out in [Appendix C](#).

### **10.3.3 Rent Repayment Orders**

A Rent Repayment Order is an order made by the First Tier Tribunal requiring a landlord to repay a specified amount of rent to either the tenant or council, depending on how the rent was originally paid. The council must consider whether to apply for an order in the following circumstances:

- failure to comply with an Improvement Notice
- failure to comply with a Prohibition Order
- breach of a banning order
- using violence to secure entry to a property
- illegal eviction or harassment of the occupiers of a property

## **10.5 Prosecution**

Prosecuting someone is a serious matter and is considered carefully on a case by case basis.

Where criminal offences have been committed, officers may consider prosecution is an appropriate way of dealing with the offence. Factors taken into account will include:

- a simple caution is not appropriate or the person accused has refused to admit the offence; or
- a civil penalty does not offer the most effective sanction based on the circumstances of the offence; or

- 
- there is a risk to public health and safety or of environmental damage as a consequence of the breach; or
  - it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law; or
  - the breach was as a result of a deliberate act or following recklessness or neglect; or
  - the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
  - a legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or
  - obstruction of an officer in the course of their duty; or
  - the provision of false information.

Please note this is not an exhaustive list and each case will be considered on its individual merits.

We will generally warn the person accused that their actions or lack of action have made them liable before considering a prosecution against them. However officers may pursue prosecution without prior warning where, for example:

- there is a serious risk to health and safety or the environment.
- there is a recent history of failure to meet requests to carry out legally required works or meet legal standards.
- there is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years or a simple caution has been issued in the last 2 years.
- it is necessary to safeguard health and safety in the future.
- a landlord or agent has been accredited under a scheme approved by the council and is found to be contravening minimum legal standards for rented homes

The decision when to prosecute, agree a simple caution or when to issue a financial penalty will be made on a case-by-case basis in line with this policy and the other guidance referred to.

Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The council will publicise sentences following prosecution on a case by case basis.

#### **10.4.1 The Code for Crown Prosecutors**

Before a decision to either offer a simple caution, civil penalty, rent repayment order or prosecution is taken, the alleged offence(s) will be reviewed by a duly authorised manager who must be satisfied that the case meets the requirements of The Code for Crown Prosecutors. Prosecutions will need to meet the two stages of the Full Code Test; “The Evidential Stage” followed by the “Public Interest Stage” and will be assessed by an officer authorised by the Head of Legal and Democratic Services.

#### **10.5 Work in Default**

The council has powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case.

In most circumstances a person will be given notice of the council's intention to carry out works in their default. Once the council has started works it is an offence for that person to obstruct the council or any of the contractors that have been employed to carry out the works.

The cost of the works including reasonable costs incurred by the council in undertaking the works will be recovered in accordance with the relevant statutory provisions.

#### **10.6 Charging for Enforcement Action**

The Housing Act 2004 allows councils to charge for taking enforcement action. In some specific areas, the legislation allows local authorities to recover costs for the time and expenses incurred in determining what works are required to be carried out.

The upper limit for fines in the magistrates court has been removed, this means if found guilty of an offence, there is no maximum fine.

In some cases the council can apply to a tribunal to recover rent from a landlord if certain offences have been committed.

The Strategic Housing Service will generally, when appropriate, recover our costs and fees when formal action is taken. The full costs of staff time, including administrative and other costs, will be recovered.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken.

## 10.7 Recovery of Debts

Where charges for enforcement action are levied they will be registered as a local land charge against the owner's property, where possible.

This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

We will pursue all debts owed as a result of enforcement charges or charges for carrying out works in default (as well as any other charges).

To recover debts we will use some of the following means:

- Use tracing services to track down debtors and secure judgments to pay debts, which could include attachment to earnings or seizure of goods.
- Demand rents are paid to the council instead of the landlord to recover outstanding debts (where the legislation allows and it is appropriate to do so).
- Where applicable, we will recover debts using the enforced sale procedure under the Law and Property Act 1925. This allows the council to force the owner to sell their property in order to recover its costs (this power will only normally be used where there is no other realistic likelihood of recovering debts owed to the council).

## 10.8 Powers of Entry

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation under which we operate.

In general the powers will allow an officer at any reasonable time to:

- enter a property to carry out an inspection and gather evidence;
- take someone with them;
- take equipment or materials with them;
- take measurements, photographs or make recordings;
- leave recording equipment for later collection;
- take samples of articles or substances;
- and in some cases to carry out works.

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days. Notice that powers of entry need to be exercised will normally be in writing (including by email) but can in some circumstances be given verbally, depending on the relevant statutory provision.

There are specific instances, named in legislation, where no notice is required to be given, e.g. investigating an allegation that a HMO does not have a licence when it should do.

Powers of Entry can be exercised in the first instance where it is necessary to:

- protect the health safety of any person or to protect the environment without avoidable delay;
- investigate an offence;
- prevent the obstruction of officers;
- carry out a statutory duty or power.

The powers of entry can be exercised with a warrant. The Police and or security staff will accompany officers where that is appropriate. 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.

## **10.9 Powers to Require Documents**

Currently authorised officers have the power to require:

- documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004;
- electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation;
- any person with an interest in a property to provide details about its ownership or occupation.

It is an offence not to produce the required information. Where information is not provided, enforcement action will be considered e.g. simple caution if appropriate or prosecution where there is sufficient evidence and it is in the public interest to do so.

## **10.10 Obtaining and Using Tenancy Deposit Data**

The council may request tenancy deposit data for the purpose of exercising its functions under Parts 1-4 of Housing Act 2004 in relation to improving housing conditions, licensing requirements and management orders.

## **11. Partners and protocols**

Protocols have been established to help clarify how the Strategic Housing Service will work with other partner organisations or services in relation to private sector housing. This is not an exhaustive list and these protocols may be added to or change over time.

### **11.1 Fire Safety Enforcement Protocol**

The Avon Fire and Rescue Service and the West of England (WoE) Local Authorities Enforcement Protocol for Fire Safety sets out how both the council and Avon Fire and Rescue Service will take enforcement action in relation to Fire Safety in properties where there is an overlap between each organisation's duties set out under the Regulatory Reform (Fire Safety) Order 2005 and the Housing Act 2004.

Its aim is to provide clear and simple practical arrangements for landlords and officers on how to comply with the legislation cited above.

### **11.2 West of England (WoE) Enforcement Protocol with Bristol Partnership Registered Providers**

The WoE local authorities and the Registered Providers (RPs) that are in the Bristol Partnership are signed up to this protocol. The protocol sets out how each partner will work with each other in relation to complaints about housing standards in the RP's properties and if necessary how the Council will carry out enforcement action in relation to a complaint about an RP.

### **11.3 Partnership working**

There is a wide range of partners that Strategic Housing Services work with to achieve our enforcement aims, including stakeholders such as private sector landlords, Registered Providers, residents groups, other council teams, agencies such as Fire and Rescue Services and the Police and neighbouring local authorities.

We value the partners we work with and will engage with them in relation to achieving organisational goals and where the subject area is relevant and appropriate to them.

## **12. Authorisation of Officers**

Any officer carrying out enforcement work will be authorised to do so in line with the Constitution. Each authorised officer in the Strategic Housing Service will provide evidence of their delegation and you are entitled to ask to see this at the time of their visit.

Please note: once an officer has made it clear that they are authorised to carry out an enforcement activity it is normally an offence to obstruct them in their duties, for which a person is liable to enforcement action such as prosecution.

### **13. Equalities impact assessment**

In summary, the policy aims to promote the council's objectives of protecting and improving the environment, building safer and stronger communities, and enhancing health and well-being.

An Equalities Impact Assessment (EIA) has been carried out which mainly identified positive impacts on protected groups.

### **14. Appeals and complaints procedures**

We are committed to the delivery of quality services that meet your needs. If you wish to appeal against a course of formal enforcement action that has been taken then you should follow the appeal guidelines that accompany any notices/orders etc., that may have been served on you. This type of appeal will normally involve a tribunal or court hearing to listen to any appeals you may wish to make.

There may be times when things go wrong and you do not receive the standard of service you expect. If you feel that you have good cause for complaint, then we need to know. We will deal with your complaint confidentially unless this is not possible, for example if legislation applies.

#### **Complaints step one - Go direct**

If you know the specific service that your complaint is about please take it up with the manager of the service area in the first instance. If you are not sure who to speak to, you can call in to any council office, contact our Customer Services team or give your feedback online.

You can also contact your local councillor who will take the issue up for you.

#### **Complaints step two - Chief Executive Officer (CEO)**

If you are not satisfied with the outcome of your complaint after taking the matter up with the relevant manager you can refer your complaint to the council's Chief Executive Officer (CEO).

## **Our response**

We aim to reply to your complaint within 10 working days. If we can't reply fully within that timescale we will let you know.

## **Local Government Ombudsman**

If you are not satisfied with the council's CEO response you can ask for your complaint to be examined by the Local Government Ombudsman. There is a pack available to help people making complaints. Please contact our Customer Services team for further information.

## **15. Further Enquiries**

If you would like further information on any of the information contained within this enforcement policy please contact the Private Sector Housing Team on the contact details below;

Private Sector Housing Team  
North Somerset Council  
Town Hall  
Walliscote Grove Road  
Weston-super-Mare  
BS23 1UJ

Telephone: 01934 426885

Fax: 01934 426728

Email: [privaterented.housing@n-somerset.gov.uk](mailto:privaterented.housing@n-somerset.gov.uk)

Website: <http://www.n-somerset.gov.uk/Housing/>

### Index of Legislation

Please find below a list of the different pieces of legislation used by the Strategic Housing Service in delivering their regulatory activities. Please note that this is an exhaustive list and if a more appropriate legal remedy is identified this may be used by a duly authorised officer of the council to achieve the desired outcome.

Housing Acts 1985 – 2004  
Protection of Eviction Act 1977  
Rent Act 1977  
Rent (Agriculture) Act 1976  
Local Government and Housing Act 1989  
Housing Grants, Construction and Rengeneration Act 1996  
Homelessness Act 2002  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
Public Health Act 1936  
Public Health Act 1961  
Caravan Sites and Control of Development Act 1960  
Caravan Sites Act 1968  
Criminal Justice and Public Order Act 1994  
Civil Procedure Rules Part 55  
Building Act 1984  
Environmental Protection Act 1990  
Prevention of Damage by Pests Act 1949  
Housing and Planning Act 2016  
Energy Act 2011  
Energy Act 2013  
Town and Country Planning Act 1990 (Section 215)  
Energy Performance of Buildings (England and Wales) Regulations 2012  
Enterprise and Regulatory Reform Act 2013  
Anti-social Behaviour Crime and Policing Act 2014

## **North Somerset Council - Initial Equality Impact Assessment**

### **Overview**

#### **Service or project area:**

Strategic Housing Service Enforcement Policy

#### **Description of the proposal:**

Update to existing policy. The policy covers the whole of North Somerset and sets out how the Strategic Housing Service will undertake its enforcement role in regulating private sector housing, across all tenures. This update does not remove or alter any existing provision, it provides greater transparency for our service users.

A separate EIA was completed for a specific project to informally target an area of Weston-super-Mare whilst working with accreditation providers with the aim to improve housing conditions by targeting resources on non-compliant landlords/agents.

#### **Summary of changes:**

The main changes are:

- Incorporating policy guidelines for setting civil financial penalties
- Incorporating a statement of principles for the Smoke and Carbon Monoxide Alarm Regulations 2015
- Updating the policy in relation to our approach to providing information and guidance to service users and it's link to enforcement.

## Customer equality impact summary

Will the proposal have an impact on any of these groups?					Impact (positive/ negative/ both)
Insert X into one box per row.					
	High	Medium	Low	None	
Disabled people			x		Positive
People from different ethnic groups			X		Positive
Men and women (including pregnant women or those on maternity leave)			X		Positive
Lesbian, gay or bisexual people			X		Positive
People on a low income			X		Positive
People in particular age groups			X		Positive
People in particular faith groups			X		Positive
People who are married or in a civil partnership			X		Positive
Transgender people			X		Positive
Other specific impacts, for example: carers, parents, impact on health and wellbeing.  Please specify: H&W enhanced through increased access to information and transparency.			X		Positive

## Explanation of customer impact

No negative impacts have been identified through this initial EIA.

The Regulators Code places a greater emphasis on regulating bodies to be transparent in their approach and provide information to those they regulate to help them comply with their legal requirements and contribute positively towards the growth of their business.

Publication of the policy demonstrates a commitment to open and transparent decision making when taking any form of enforcement action.

The enhanced, expanded and updated information available through the NSC website will help all customers understand the principles behind enforcement actions, the service which should be expected and how to complain.

A Communication Plan is in place for the targeted action in Weston super Mare which will deliver wider benefits to the private rented sector.

## Staff equality impact summary

Are there any staffing implications for this proposal?

Yes  No

## Explanation of staff impact

<< where an impact has been identified above insert explanation of impact here >>

If yes, how many posts could be affected? State whether they are current vacant, or filled permanently or temporarily.

<< insert text here >>

## Review and Sign Off

### Directorate Equality Group

When was this assessment reviewed by the Directorate Equality Group?

Initial EIA sent to Directorate lead on 6<sup>th</sup> August 2018.

Is a further detailed equality impact assessment needed?

Yes  No

If 'yes', when will the further assessment be completed? << insert date here >>

**Service Manager:** Howard Evans

**Date:** 6<sup>th</sup> August 2018

**If this assessment identifies a medium or high risk then a Full Equality Impact Assessment needs to be completed**

### Civil Penalties under the Housing and Planning Act 2016

#### Introduction

The purpose of this policy is to guide North Somerset Council “the council” in determining the level of financial penalty under the Housing and Planning Act 2016 (“the 2016 Act”) to be imposed, and has been produced using the MHCLG statutory guidance “Civil Penalties under the Housing and Planning Act 2016 - guidance for local authorities”.

#### Relevant Legislation

The Housing and Planning Act 2016 amends the Housing Act 2004 (“the 2004 Act”) to allow financial penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

The council can impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

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

Section 126 and Schedule 9 of the 2016 Act give the council the power to impose a civil penalty against landlords and/or managing agents who are in breach of one or more of the relevant sections of the 2004 Act.

Schedule 13A of the 2004 Act prescribes the procedures the council must follow before imposing a civil penalty, for imposing the penalty, the appeal process and for recovery of the penalty.

The same standard of proof is required for a civil penalty as for a prosecution, so North Somerset Council would need to prove beyond reasonable doubt that an offence has been committed.

## Statutory Guidance

The MHCLG guidance states the maximum possible fine is £30,000 for each breach and the council should have consideration of certain factors when deciding on the level of civil penalty such as:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a financial penalty.
- d) **Punishment of the offender.** A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences.** While the fact that someone has received a financial penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a financial penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying financial penalties where the need to do so exists and (b) that the level of financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

## **Basis of this policy**

In accordance with the section 249A (4) of the 2004 Act the amount of a financial penalty is to be determined by the council. Although the statutory guidance recommends factors the council should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard.

The council therefore has wide discretion in determining the appropriate level of civil penalty in a particular case; the process the council will follow is at Annex 1.

In the absence of any specific guidance or principles issued by the Sentencing Council for England and Wales relating to the Housing and Planning Act; this policy has been drafted on the principles set out in the "[Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline](#)" which is the most relevant. It sets out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence. The range of financial penalties in this guidance uses similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice; established to promote greater transparency and consistency in sentencing.

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**Annex 1 – North Somerset Council process for determining the level of penalty to set** – using principles of the ‘Sentencing Council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences – Definitive Guidelines’

**STEP ONE – Determining the offence category**

The council will determine the offence category using only the **culpability** and **harm** factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

**Culpability**

*Very high*

Where the offender intentionally breached, or flagrantly disregarded, the law or who has a high public profile and knew their actions were unlawful

*High*

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

*Medium*

Offence committed through act or omission which a person exercising reasonable care would not commit

*Low*

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

**Harm**

Below are factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does:

*Category 1 – High Likelihood of Harm*

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

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### *Category 2 – Medium Likelihood of Harm*

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

### *Category 3- Low Likelihood of Harm*

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

We will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.'

## **STEP TWO - Starting point and category range**

Having determined the **category**, the council will refer to the following **starting points** to reach an appropriate level of civil penalty within the category range. The council will consider further adjustment within the category range for aggravating and mitigating features.

### **Obtaining financial information**

The statutory guidance advises councils to use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the council may conclude that the offender is able to pay any financial penalty imposed unless the council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the council such data relevant to his financial position to enable the council to assess what an offender can reasonably afford to pay. Where the council is not satisfied that it has been given sufficient reliable information, the council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case ***which may include the inference that the offender can pay any financial penalty.***

## Starting points and ranges

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability.

	Starting point	Range Low (min)–High (max)	
<b><i>Low culpability</i></b>			
Low harm	£50	£25	£175
Medium harm	£125	£50	£350
High harm	£300	£125	£750
<b><i>Medium culpability</i></b>			
Low harm	£350	£175	£750
Medium harm	£1,000	£350	£2,000
High harm	£2,500	£750	£4,500
<b><i>High culpability</i></b>			
Low harm	£1,000	£500	£2,500
Medium harm	£3,000	£1,000	£5,500
High harm	£6,250	£2,500	£12,500
<b><i>Very high culpability</i></b>			
Low harm	£2,500	£1,250	£4,500
Medium harm	£6,250	£2,500	£12,500
High harm	£15,000	£6,250	£30,000

## Context

Below is a list of some, but not all of the elements that provide the context of the offence and factors relating to the offender. Identification of one or a combination of these or other relevant factors will result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

## Aggravating factors

Included but not limited to:

- Previous convictions, having regard to (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and (b) the time that has elapsed since the conviction
- Motivated by financial gain

- Deliberate concealment of illegal nature of activity
- Evidence of wider/community impact
- Breach of any court order
- Obstruction of justice
- Poor track record of compliance with legal obligations
- Refusal of free advice or training
- Poor condition of the property

### **Mitigating factors**

Included but not limited to:

- No previous convictions or relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Good history of compliance/no history of non-compliance
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

### **STEP THREE – Review scale of the financial penalty**

To ensure the proposed level of financial penalty is proportionate to the overall means of the offender, the council may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range in the table above.

Full regard will be given to the totality principle at step seven where multiple offences are involved.

### **General principles to be followed in setting a penalty**

The council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the council will take into account the financial circumstances of the offender, where provided.

The level of financial penalty will reflect the extent to which the offender fell below the required standard. **The financial penalty will meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund private rented sector teams in the Council. Staffing costs associated with this function will be included within the financial penalty.

This figure will be calculated on a case by case basis according to the length of time taken to process the civil penalty. This will ensure the penalty reflects the true cost of the activities carried out by the council in carrying out these functions. The hourly rate published in the council's fees and charges policy will be used to calculate the amount.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

#### **STEP FOUR – Reductions**

The council will have regard to any wider impacts of the penalty within the organisation or on innocent third parties; such as (but not limited to):

- impact of the penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the penalty on employment of staff, service users, customers and local economy (but not shareholders or directors).

#### **STEP FIVE – Reduction for early admission of guilt**

The Council will take into account a potential reduction in penalty for an admission of guilt.

When deciding on any reduction in a financial penalty, consideration will be given to:

- the stage in the investigation or thereafter when the offender admitted guilt
- the circumstances in which they admitted guilt
- the degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

### **STEP SIX – Additional actions**

In all cases the council will consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

### **STEP SEVEN – Totality principle**

When issuing a financial penalty for more than one offence, consideration will be given to whether the total penalties are just and proportionate to the offending behaviour.

The Council will add up the penalties and consider if they are just and proportionate. If the total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. This will be carried out in accordance with the [Offences Taken into Consideration and Totality Definitive Guideline](#).

### **STEP EIGHT – Recording the decision**

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of the financial penalty that will be imposed.

### **Process for imposing a civil penalty and the right to make representations**

Before imposing a financial penalty on a person, the council will give the person notice of the authority's proposal to do so a 'Notice of intent'.

A person who is given a notice of intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within a 28 day period, this period starting the day after the date on which the Notice of intent was given.

In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations

should they consider for any reason a civil penalty should not be individually imposed upon them.

After the end of the period for representations the Council will:

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the council will consider any representations received.

In the event that the council has given Notice of Intent to impose a financial penalty to two or more persons for the same offence, the council's decision with regard to the imposition of any final penalty will be based upon the circumstances of each individual case and upon any received representations. In this regard, the payment or intended payment of a penalty by one recipient will not, in itself, be reason for the council to determine that it should not impose a penalty on a second or further person.

*Furthermore, an offender's compliance with the identified breach during the representation period would not, in itself, be reason for the council to determine that the imposition of a financial penalty was inappropriate.*

The council will generally apply the following discounted rate to any imposed financial penalties in the following circumstance:

- ***In the event that the offender complied with the identified breach (for example by making an application to licence a previously unlicensed address) within the representation period at the 'Notice of Intent' stage, the Council may reduce the level of any imposed civil penalty by up to 20%;***

## **Annex 2 – Non exhaustive list of relevant offences**

### **Housing law or landlord and tenant**

Offences under:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976

- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

### **Offences involving fraud**

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as the company director

### **Offences involving violence**

A conviction for the offence of:

- Murder
- Manslaughter Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Racially aggravated criminal damage
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

### **Offences involving drugs**

Consideration should be given to the nature of the offence and what bearing it could have on the management of a private rented property. The nature, quantity and class of drugs should be taken into account.

### **Offences involving sexual offences**

An offence contained in schedule 3 of the Sexual Offences Act 2003.

### **Unlawful discrimination**

Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

### ***Annex 3 – Non exhaustive list of vulnerable groups***

- Young adults and children
- Disabled persons
- People of a low income
- Persons with a Drug or alcohol addictions
- Victims of domestic abuse
- Looked after children
- People with complex health conditions
- People exploited where English is not their first language
- Victims of Trafficking or sexual exploitation Refugees Asylum seekers
- People at risk of harassment or eviction
- People at risk of homelessness
- The vulnerable group identified most at risk of a hazard under the Housing Health and Safety Rating System

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

## Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced requirements that a 'relevant landlord' of a 'specified tenancy' of residential premises must ensure that during any period, on or after 1st October 2015, when the premises are occupied under the tenancy that:

1. a smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
2. a carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

The landlord must ensure the alarms are in proper working order at the start of any new tenancy. A 'relevant landlord' is the immediate landlord in respect of the tenancy. A 'specified tenancy' is a tenancy, licence, lease, sub-lease or sub-tenancy of residential premises that gives somebody the right to occupy all or part of the premises as their only or main residence in return for rent. There are some exemptions.

## Enforcement

Where the council have reasonable grounds to believe that:

1. there are no or insufficient number of smoke and/or carbon monoxide alarms in the property as required by the regulations or;
2. the smoke and/or carbon monoxide alarms were not working at the start of a specified tenancy.

then the council must serve, within 21 days, a remedial notice on the relevant landlord in a method prescribed by the Regulations. The remedial notice will detail the actions the landlord must take to comply with the Regulations. The landlord has 28 days to comply with the notice. If after this period the notice has not been complied with the council will arrange for the remedial action specified in the notice to be taken (where the occupier consents) and impose a penalty on the landlord.

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## **Penalty Charge**

Where the council is satisfied, on the balance of probabilities that a landlord has not complied with a remedial notice they may require the landlord to pay a penalty charge of such amount as the council may determine but which must not exceed £5,000. Any penalty charge levied will cover the cost of all works in default, officer time, recovery costs, administration fees and a penalty. The council will give in writing a penalty charge notice within six weeks beginning with the day on which they are first satisfied that the remedial notice has not been complied with. The penalty charge is payable within 28 days, beginning with the day on which the penalty charge notice is served. The council has the discretion to reduce the penalty charge by an amount specified in the penalty charge notice if it is paid within 14 days, beginning with the day on which the penalty charge notice is served. The penalty charge shall be set at £2,500 for the first offence but this will be reduced to £1,250 if paid within 14 days. For any subsequent offences the penalty charge will be set at £5,000 with no reduction for early payment.

## **Appeals in relation to penalty charge notice**

A landlord served with a penalty charge notice can request in writing, within 28 days of the notice being served, that the council review the penalty charge notice. On consideration of any representations, the council will either confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the council's decision.

## **Recovery of penalty charge**

The council may recover the penalty charge as laid out in the Regulations. Any unpaid penalty charge shall be pursued for payment.