

# Hertsmere Housing Enforcement Policy

## 1. Introduction

The primary enforcement role of the Private Sector Housing (PSH) Officer(s) is to maintain and improve the housing conditions in Hertsmere Borough Council's area (this excludes properties owned by the council). It endeavours to achieve this through advice, information and financial assistance. Where this approach fails or is not appropriate and it is necessary to protect the health safety and welfare of persons, then the service will take the appropriate enforcement action.

### **The aim of this policy is to:**

- Set out the criteria and priorities we will use when enforcing legislation so it is transparent and clear to the public.
- Set out our policy in respect of charges that may be imposed for enforcement
- Ensure our enforcement is consistent, fair, proportionate and targeted.
- Ensure it is consistent with the aims and objectives contained in other strategy documents including the Empty Homes Strategy, HMO Licensing Policy and Standards and Private Sector Housing Strategy.
- Expand on the Corporate Enforcement Policy for housing enforcement matters

### **In developing this policy we have had regard to:**

- the Human Rights Act 1988
- the statutory Regulators' Code issued under the Regulatory and Effective Sanctions Act 2008
- the Code for Crown Prosecutors (see section 6)
- the Equalities Act 2010 respond in a fair and transparent way

## 2. General Principles

When carrying out enforcement action it is important that the council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the council will act in such a way that is

- Transparent

- Accountable
- Proportionate
- Consistent
- Targeted only at cases where action is needed

Relevant advice/guidance and legislation underpinning this strategy includes:

- Council’s Corporate enforcement strategy
- DCLG document “Housing Health and safety Rating System; Enforcement Guidance”.
- Regulator’s Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Housing Acts 2004 and 1985
- The Housing and Planning Act 2016
- Local Government Miscellaneous Provision Act 1976
- The Building Act 1984
- The Environmental Protection Act 1994
- The Caravan Site and Control of Development Act 1960
- The Caravan Sites Act 1968
- Mobile Homes Act 1983 and 2013
- The Mobile Homes (Site Licensing) (England) Regulations 2014
- Protection from Eviction Act 1977
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Other legislation may be used occasionally

Once the council has established that there are residential premises which fail to meet minimum requirements, it will seek to secure compliance with relevant legislation. How the council approaches each case will depend on a range of factors;

### **3. The Regulator's Code**

The Regulators' Code, which was issued in April 2014 under the Legislative and Regulatory Reform Act 2006, seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.

The council therefore takes care to help businesses and others meet their legal obligations without unnecessary expense or burden, while taking firm action, including prosecution where appropriate, against those who disregard the law or act irresponsibly. The principles relate to standards, openness, helpfulness, and complaints about service, proportionality, and consistency.

#### **3.1 Statutory Guidance**

When considering any formal action the council will have regard to any published statutory guidance currently in force.

##### **Approach to enforcement action**

In deciding how to proceed, the council has to be satisfied that they have sufficient evidence to prove that an offence has been committed and this needs to be to the criminal burden; 'beyond reasonable doubt' or in civil cases 'on the balance of probabilities'. In determining the appropriate course of action the council will consider each case individually and will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants, the impact on the wider community and whether there is a realistic prospect of conviction.

#### **3.2 Enforcement Action Following a Complaint under Housing Act 2004**

When responding to complaints in respect of housing conditions under Part 1 of the Housing Act 2004 (guidance was published under section 9 in February 2006). This document, namely Housing Health and Safety Rating System – Enforcement Guidance, is of particular importance. The council always has regard to this guidance when considering enforcement action under Part 1 of the Act, the council will notify the landlord/owner of the intended inspection by letter, or sometimes by other appropriate means. The council would expect any responsible landlord, owner (or his agent) to make contact upon receipt of the notification to discuss the complaint. If the pre-arranged inspection takes place and there is no attendance by the landlord (or his agent) and there is no record of any other response being made, the council will take the appropriate enforcement action.

However, if communication has been made and there is a genuine commitment to remedy any housing deficiencies within reasonable

timescales, the landlord will be given the opportunity to resolve any problems on an informal basis

The opportunity to resolve problems on an informal basis is strictly time-limited. If the council is of the opinion that the landlord is not making reasonable progress towards a suitable resolution, the council will take the appropriate enforcement action.

### **Enforcement action following an investigation, Priority or High Priority, or Proactive Inspection**

When responding to these types of complaints (or engaging in proactive inspections), the first visit will usually be carried out on an informal basis, without any notification being given to the landlord. Following such an inspection, the council will usually make an informal approach to the landlord if any problems have been identified. If there is a genuine commitment to remedy any housing deficiencies within reasonable timescales, the landlord will be given the opportunity to resolve any problems on an informal basis. However, in cases where significant problems have been highlighted, the council will usually return to the premises at a later date to undertake a fully notified inspection to ascertain whether any Category 1 hazards exist on those premises.

The opportunity to resolve problems on an informal basis is strictly time-limited. If the council is of the opinion that the landlord is not making reasonable progress towards a suitable resolution, the council will take the appropriate enforcement action.

### **3.3 Duty to Take Action (including Category 1 Hazards)**

Whilst the council prefers to resolve housing problems on an informal basis, there are circumstances in which it has a mandatory duty to take action. Therefore, in some situations, the council will have no option but to proceed with the required remedy in order to comply with relevant legislation. Examples include the requirement to take the appropriate enforcement action in respect of Category 1 hazards.

### **3.4 Emergency Situations**

On occasion, the council is faced with a dangerous situation. In cases where there is an imminent risk of serious harm to any person, the council will attempt to make contact with the landlord or owner and, if contact is made, request that immediate action is taken. If contact cannot be made, or an unacceptable response is forthcoming, the council will take the action necessary to protect public health.

### **3.5 Enforcement Action in Respect of Unlicensed Premises**

This paragraph applies when a residential property contains housing deficiencies requiring intervention and the premises should be licensed by the council, and are not, owing to the failure of the landlord to make a full and valid licence application. In such circumstances, the council will normally proceed with formal enforcement action following inspection of the premises. The consequences of operating unlicensed premises without reasonable excuse are considered very serious.

### **3.6 Enforcement Action in Respect of Historically Non-Compliant Landlords**

The council recognises that most private sector landlords operate compliant businesses and take pride in delivering a valuable resource to society. However, this is not always the case, and a minority of landlords and managing agents routinely provide poor quality accommodation and/or fail to manage their properties satisfactorily. The council is of the opinion that knowledge of a landlord's compliance history is a relevant factor in considering whether to take formal enforcement action. Therefore, where a landlord or managing agent is associated with poor quality housing and management, and an inspection of one of their properties reveals poor housing conditions requiring intervention, the council will normally proceed with formal enforcement action without recourse to informal remedies.

### **3.7 Category 2 Hazards**

Whereas the council must take the appropriate enforcement action in respect of Category 1 hazards (hazard bands A-C), the taking of action in respect of Category 2 hazards (hazard bands D-J) is discretionary. In general terms, the council is of the opinion that its discretionary powers should be exercised whenever it is appropriate to do so.

Every case is carefully considered on an individual basis. Any Category 2 hazard (irrespective of hazard banding) may be subject to enforcement action if the council determines that there is a risk to health and safety that should be mitigated. However, it is more likely that action will be taken in respect of hazards that fall between hazard bands D and G. While hazards with a hazard banding of H, I or J are less likely to be subject to enforcement action, the council reserves the right to use its discretionary enforcement powers in respect of such hazards.

Although the council will usually tend towards enforcement action in respect of higher rated Category 2 hazards, after careful consideration of the individual circumstances of a case, the council may decide not to exercise its discretionary powers and take no form of enforcement action whatsoever.

Note: The Housing Health and Safety Rating System (HHSRS) (Housing Act 2004) is the Government's approach to the evaluation of the potential risks to health and safety from deficiencies identified in dwellings. The HHSRS is based on a logical evaluation of both the likelihood of an occurrence that could cause harm and the probable severity of the outcomes of such an

occurrence. The HHSRS is an evidence based method of assessment with 29 hazard categories. Guidance is obtained from two key documents produced by ODPM Housing Health and Safety Rating System – Operating Guidance and Housing Health and Safety Rating System – Enforcement Guidance.

#### **4. When a Tenant Moves Out (Improvement Notices)**

If a tenant vacates a property that is subject to an Improvement Notice served under the Act, the council will usually continue to enforce the original requirements and timescales of the notice. The council believes that this approach deters landlords and agents from engaging in retaliatory evictions and safeguards the health and safety of future tenants.

However, each case is determined on its own merits, and in some situations the council may agree to the suspension or variation of the requirements of an Improvement Notice once a property becomes empty. Applications for a suspension or variation must be made to the council, in writing, as soon as possible after vacation.

#### **5. Charging for Enforcement Action**

Under section 49 of the Act, the council may make such reasonable charges as considered appropriate as a means of recovering the administrative and other expenses incurred in taking enforcement action. The council has determined that charges will be made in respect of the following types of enforcement actions:

- The service of Hazard Awareness Notices
- The service of an Improvement Notice (see notes below);
- The making of a Prohibition Order;
- The taking of Emergency Remedial Action;
- The making of an Emergency Prohibition Order;
- The making of a Demolition Order (under the 85 Act)

Whilst there is a policy of charging for Notices, the council has discretion to recognise notice recipients who fully comply with the notices served upon them. Therefore, the charge may be waived if a notice recipient completes the remedial works and/or actions specified in an Improvement Notice to an acceptable standard within the timescales stated.

Charges are subject to change and will be reviewed on an annual basis.

When a Residential Property Tribunal allows an appeal against an underlying notice or order, it may decide to reduce, quash, or require the repayment of

any associated demand served under section 49 of the Act. However, it is important to note that there are no separate appeal provisions relating to the service of a demand. Therefore, if a notice recipient does not appeal against the underlying notice or order, he/she may not appeal against the council's decision to make a charge for the enforcement action. The scope of the expenses that may be charged by the council are set out in section 49 of the Act.

For Hazard Awareness Notices and Improvement Notices, these are:

- Determining whether to serve the notice;
- Identifying the action to be specified in the notice;
- Serving the notice

### **5.1 For Emergency Remedial Action - These are:**

- Determining whether to take such action;
- Serving the relevant notice

### **5.2 For Prohibition, Emergency Prohibition and Demolition Orders - These are:**

- Determining whether to make the order;
- Serving copies of the order on the owners of the premises

The expenses incurred in respect of each intervention are calculated having regard to officer time and other incidental costs, such as visits, photocopying and postage. The council may also employ the services of an outside company or agency to help assist with the enforcement action. These costs will also form part of the charge made under section 49. Examples include the provision of laboratory asbestos testing, electrical reports, structural engineer's reports, and other similar specialist services.

The council may, from time to time, calculate the average cost of enforcement action and set a fixed charge for the expenses incurred by the council. Where possible, and in all cases where the enforcement action involves the service of an Enforcement Notice, the total charge will be specified in the covering letter to the notice or order.

### **5.3 Penalties for Non-Compliance**

#### **Offences**

It is generally an offence not to comply with a statutory notice served, or order made, by the council's Housing Team. There are some minor exceptions, where works-in-default is the potential consequence for non-compliance. Every notice served, or orders made, will specify the maximum fine level for non-compliance. For certain offences, there are also ongoing daily fines that

are incurred after conviction for continued non-compliance. The most common type of notice served by the council (which requires action on the part of the recipient) is the Improvement Notice.

For some offences, there is a defence of “reasonable excuse”. If this defence is available, it will be made clear in the notes attached to the notice or order.

## **6. Letting Agent and Property Management Redress Scheme**

Letting agents and property management companies must register with one of three Government approved redress schemes. These schemes will ensure private rented sector tenants or landlords have a straightforward route to complain about their agents. Where they do not register on a scheme the council can by notice require the person or agent to pay a fine up to a maximum of £5,000. Appeals can be made to the First- tier Property Tribunal.

The council considers this breach to be serious and will proceed with the required remedy in order to comply with relevant legislation.

## **7. Smoke and Carbon Monoxide Alarm Regulations**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces a duty for the authority act in cases where smoke detectors and carbon monoxide detectors are not fitted to certain properties being rented out to tenants. This is an important piece of safety regulation intended to reduce the numbers of unnecessary deaths caused by fires and carbon monoxide poisoning. The penalty charge of £5,000 was agreed by this council as it was considered a very serious matter. It is proposed to charge the full amount with a 50% reduction if paid within 14 days.

## **8. Mobile Home and Caravan Site Enforcement**

Under the Mobile Homes Act 2013, if it appears to this local authority that the occupier of the land concerned is failing or has failed to comply with a condition attached to the site licence, we may serve a compliance notice on the occupier. An occupier of land who has been served with a compliance notice may appeal to a residential property tribunal against that notice. We may revoke or vary the compliance notice. Where this local authority has revoked or varied a compliance notice, we must notify the occupier of the land to which the notice relates of the decision as soon as is reasonably practicable.

An occupier of land who has been served with a compliance notice which has become operative commits an offence if the occupier fails to take the steps specified in the notice.



It is an offence to breach a licence condition and on summary conviction the offender can currently be fined up to £2,500.

Where a condition requires works to the site to be carried out and these are not done either within the time specified or to satisfaction of the local authority, the authority will consider prosecution and may carry out the works itself and recover from the licence holder any expenses it has reasonably incurred in doing so.

The local authority may apply to the court to have a licence revoked if the licence holder has been convicted on two or more occasions of breaches of licence conditions.

## **9. Moveable Dwelling (Camp site) Enforcement**

Under Section 269 Public Health Act 1936 a person who contravenes any of the provisions of this section, or fails to comply with any condition attached to a licence granted to him under this section, shall be liable to a fine not exceeding level 1 on the standard scale, and to a further fine not exceeding £2 for each day on which the offence continues after conviction thereafter.

The council considers this breach to be serious and will proceed with the required remedy in order to comply with relevant legislation.

## **10. Prosecution**

When a person fails to comply with a notice served, or order made, the council will begin an investigation to consider whether or not an offence has been committed.

If the council forms the opinion that an offence has been committed, it will initiate prosecution proceedings in the First Tier Tribunal, Magistrates Court or issue a civil penalty notice unless there are good reasons not to do so.

### **Standards**

We will always make clear when there is a legal requirement to be followed, and under which legislation it is required. We will always make clear the difference between legal requirements and recommended best practice. All investigations will follow best professional practice and legal requirements. As part of the investigation process, perpetrators will wherever possible be formally interviewed under the Police and Criminal Evidence Act 1984, be given the opportunity to establish a statutory defence, and have the opportunity to give an explanation or make any additional comments about the allegations. Evidence will be gathered and used in accordance with the Criminal Procedure and Investigations Act 1996 and not kept for longer than required under the Act's code of practise.

## 10.1 Simple Cautions

In certain circumstances, the council may decide to issue a simple caution, rather than initiating prosecution proceedings in the Court system. Simple cautions can quickly and simply deal with less serious offences. A simple caution is not a criminal conviction but may still form part of a defendant's criminal record. Simple cautions will still appear on the Police National Computer (PNC) and Disclosure and Barring Service (DBS) records.

Simple cautions may only be issued when:

- The evidence is such that there would have been a realistic prospect of conviction, had the case gone to court; and
- The suspect admits the offence; and
- The suspect consents to being cautioned and understands the significance of admitting guilt and being subject to a simple caution.

Simple cautions are also recorded on a secure register held by the council and may be referred to in future criminal proceedings. The issuing of a simple caution is intended to discourage reoffending. A simple caution may not be offered if there has been a similar offence within the previous 2 years.

Further information regarding simple cautions can be obtained from the Ministry of Justice document: Simple Cautions for Adult Offenders, which is available online from [www.cps.gov.uk](http://www.cps.gov.uk)

## 10.2 Works in Default

In respect of much of the legislation mentioned above, the council has the discretionary power to carry out works-in-default when a statutory notice has not been complied with. It will be made clear within the original notice if this power is available to the council following non-compliance.

The power is an entirely separate matter to prosecution. The council may, in some cases, carry out works-in-default and decide not to prosecute. It may, however, in other cases, decide to prosecute and choose not to carry out works-in-default. In some cases, the council will do both. Each case is considered on its own merits.

The decision to carry out works-in-default is always made by a senior officer, as the action requires the expenditure of public monies. The senior officer will also determine the scope and nature of the works-in-default, as not all the works required by the underlying notice may be undertaken.

In taking such action, the council will strictly adhere to its own Contract Standing Orders for the procurement of goods and services. It will also ensure that the cost of remedial action is reasonable.

All expenses incurred in carrying out works-in-default will be recharged to the relevant person by way of statutory demand notice. The expenses usually include:

- The cost of external contractors and consultants; and
- The cost of council officers' time, including travelling expenses; and
- The cost of sundries, such as photocopying and postage of documents; and
- An accountancy charge (charged as a percentage of the total cost).

Interest, at a rate determined by the council, may also be levied from the date of the service of the demand notice. Any provision for appealing against the level of the expenses charged will be detailed in the demand notice.

The expenses will remain as a local land charge on the property concerned until the debt has been paid in full.

### **10.3 Civil Penalty Notices**

The Housing and Planning Act 2016 has enabled the council to issue Civil Penalty Notices of up to £30,000 per offence for breaches of the Housing act 2004.

In Particular the relevant offences are:

- Section 30 of the Housing Act 2004 – Failing to comply with an Improvement Notice
- Section 72 of the Housing Act 2004 – Offences in relation to the licensing of Houses in Multiple Occupation
- Section 95 of the Housing Act 2004 – Offences in relation to the licensing of houses under Part 3 of the Housing Act 2004 (Selective Licensing of Residential Accommodation)
- Section 139 of the Housing Act 2004 – Offences in relation to the contravention of an overcrowding notice
- Section 234 of the Housing Act 2004 – Failure to comply with Management Regulations in respect of Houses in Multiple Occupation.

In deciding how to proceed, the council must be satisfied that there is sufficient evidence to prove that an offence has been committed and this needs to be to the criminal burden, i.e. beyond reasonable doubt.

In making a decision as to what, if any, enforcement action is appropriate, the council will refer to its own Enforcement Policy and must also have regard to the Code for Crown Prosecutors. Each case will be considered individually and will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants; and the impact on the wider community.

A defendant will be invited in for an interview under the Police and Criminal Evidence Act to give them an opportunity to give an explanation. This may be used as evidence if it discloses information relevant to the case. However, will also be an important part of the decision making process.

A civil penalty may be appropriate where:

- The Council is satisfied that a relevant offence has been committed and that it is in the public interest to proceed formally.
- No history of previous non-compliance with relevant legislation
- No previous convictions of relevant offences
- The offence was committed as a result of a genuine mistake or misunderstanding, but this must be balanced against the seriousness of the offence.
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

A prosecution may be appropriate where:

- The offence was serious, for example breach of a prohibition order or where there was imminent risk of injury or loss of life:
- The offender has been prosecuted for similar Housing Act offences

In determining the amount of civil penalty, the council will use a Financial Penalty Matrix which takes into account relevant matters including:

- The penalty should act as a deterrent to repeating the offence, and to others from committing similar offences;
- The penalty should remove any financial benefit obtained as a result of the commission of the offence;
- The severity and seriousness of the offence;
- The culpability and past history of the offender;
- The harm, or potential harm, caused to the tenant.

The Matrix may change from time to time;

<b>The Matrix Score Total</b>	
<b>Score</b>	<b>Penalty</b>
1 - 5	£250
6 - 10	£500
11 - 20	£750
21 - 30	£1,000
31 - 40	£2,500
41 - 55	£5,000

56 - 65	£10,000
66 - 75	£15,000
76 - 85	£20,000
86 - 95	£25,000
96 -100	£30,000

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

- The persons affected in terms of physical injury, negative impacts on their health, and any psychological distress;
- Any vulnerability of the persons affected.
- The number of persons affected.
- The community in terms of economic loss and the effects on public health, public complaints and the effects of poor housing condition on the neighbourhood.

The degree of harm will depend on the personal characteristics and circumstances of the person affected, normally the tenant. Where no actual harm has resulted from the commission of the offence the council will consider the relative danger and the potential of harm that could have resulted as a result of the offences.

In determining the 'level of culpability', the council will have regard to the following:

- Whether there was the intention to commit the offence
- Whether the offence has resulted from reckless behaviour for example where the offender had some appreciation of the effects their actions would have but proceeded regardless.
- Whether the offender had knowledge of the risks of harm that their actions could cause.
- Whether the offender's actions are considered to be negligent.

The amount of penalty can be increased if there are any relevant aggravating factors. Furthermore the amount of penalty can be reduced if any relevant mitigating factors are disclosed by the offender.

Where the council are satisfied that more than one offence has been committed a multiple Civil Penalty Notice can be issued, for example, multiple breaches of the Management regulations in a House in Multiple Occupation.

For instance, the council could decide that it is appropriate to issue a civil penalty for the most significant offences and warn the offender that continuation or repeating of the other offences may result in further formal enforcement action being taken.

## Final Penalty Matrix

Offender Name:		Ref:	
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Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	18
<b>1. Culpability</b>	Low; Offence committed with little or no fault on the part of the responsible person	Low/Medium; An awareness of the legal framework and systems in place to ensure compliance but these were not implemented	Medium/High; despite an awareness of the legal responsibilities the responsible person failed to put in place suitable systems in place to ensure compliance	High; There was some awareness of the law but the responsible person still allowed/committed the offence.	Very High; Intentional breach by responsible person. For example non-compliance with a Formal Notice	
<b>2. Removal of Financial Incentive</b>	No Significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2-3 properties). Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	
<b>3. Offence &amp; History</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offenders. Ongoing offences of moderate to large severity or a single instance of a very severe offence or multiple breaches.	Serial offender. Multiple enforcement over recent times. Continuing serious offence(s).	
<b>4. Harm ,or potential harm, to Tenant(s)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with some reliable evidence.	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with reliable evidence (e.g. prescription drugs present, clear signs of poor health witnessed).	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with very reliable evidence provided (e.g. medical, social services reports).	*Score is doubled on this section
<b>Total Score</b>						<b>0</b>

Where it has been determined that a Civil Penalty Charge as opposed to prosecution is the appropriate course of action the council will follow the following process:

A 'Notice of Intent' will be served on the person(s) responsible for the commission of the offence(s). The recipient of the Notice is given 28 days to make representation to the council regarding the proposal to impose a Civil Penalty.

Following the 28 day period the council will decide; whether to impose the proposed financial penalty and the appropriate value. This could be varied taking into account any comments received from the recipients.

If the council decides that a Civil Penalty is still appropriate it will issue a Final Notice which will specify certain information:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information on how and when to pay the penalty
- Information regarding the right of appeal against the imposition of a Civil penalty to the First Tier Property Tribunal
- The consequences of failure to comply with the Notice

If the penalty charge is not fully paid within the prescribed time, including after an appeal has been finally determined and the charge upheld, the council will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.

The council may at any time withdraw any notices it has served or amend the amount of penalty specified.

Any money recovered through civil penalties will be used by this authority for its statutory duties and enforcement.

## **11. Debt recovery**

The council will seek to recover all debts owed as soon as possible. The council's Housing Team will instruct the council's Debt Recovery Team to initiate recovery proceedings when the following debts have not been paid:

- Charges relating to the service of a statutory notice or order (section 49 of the Act);
- Expenses incurred with the taking of Emergency Remedial Action;
- Expenses incurred with the carrying out of works-in-default.

Where appropriate, the council will use the enforced sale procedure under the Law of Property Act 1925 as a means of recovering any monies owed.

It is the intention to consult with legal services and ensure that there is consistency in our approach.

## **12. Notices Served for the Declaration of Information**

Notices served under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976; a person who - (a) fails to comply with the requirements of a notice served on him in pursuance of the preceding subsection; or (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently unlimited).

The council will always prosecute where these notices are not complied with (unless there are good reasons not to do so).

## **13. Notices Served for the Provision of Information**

Notices served under Housing Act 2004, section 235; a person commits an offence if he fails to do anything required of him by this notice and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently unlimited).

The council will always prosecute where these notices are not complied with (unless there are good reasons not to do so).

## **14. Rent Repayment Orders**

The Housing Act 2004 introduced rent repayment orders to cover situations where the responsible person for a property had failed to obtain a licence for a property that was required to be licensed. Specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover additional offences:

- 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; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

Either a local authority or tenant can apply to the First Tier Property Chamber for a rent repayment order. If the council secures a prosecution for a relevant offence



they must consider applying for a rent repayment order. However, a rent repayment order can be applied for when a relevant offence has been committed, whether or not the person responsible has been actually convicted. Providing there is adequate evidence that a landlord has failed in his duty the first tier tribunal can give a rent repayment order.

Nevertheless where the council makes application for a rent repayment order and the responsible person has not been convicted it has to be satisfied that they have sufficient evidence to prove that an offence has been committed and this will need to be to the criminal burden i.e. beyond reasonable doubt.

It should be noted that the council can impose a civil penalty and apply for a rent repayment order for certain offences.

The following factors will be taken into account when considering how much rent the council will seek to recover:

- Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Factors this authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the responsible person and whether the landlord has previously been convicted of similar offences.

- Deter the offender from repeating the offence.
- The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- Dissuade others from committing similar offences.
- Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain.
- Remove any financial benefit
- This is an important element of rent repayment orders. The responsible person is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities
- Up to a maximum of 12 months repayment order.

Local authorities have guidance from Government to use rent repayment orders to recover housing benefit or universal credit whenever possible. Where benefits are paid and topped up by the tenant, the guidance provides a formula to calculate how payment should be made. The council may guide a tenant in how to make an application to the First-Tier Tribunal.

Any income gained from the rent repayment order will be kept by the local authority for use for its statutory functions in relation to their enforcement activities covering the private sector as specified in the regulations.

## **15. Database for Rogue Landlords and Letting Agents**

This council will make use of the Database for Rogue Landlords and Letting Agents provided by the Housing and Planning Act 2016 to record convictions and to search for any suspects or offenders convicted by this or other local authorities.

## **16. Other Legislation**

Where possible offences are discovered under other various pieces of legislation the Housing Services Department will refer matters to other departments including but not exclusively Environmental Health, Fraud, Planning Enforcement, Benefits etc. and other external agencies such as the Police, Fire and Rescue Service, HMRC, Border Agency etc. Officers will, where necessary, produce witness statements, exhibits and supporting evidence to those departments and agencies for investigation purposes and for prosecution when required.

## Housing Services Enforcement Notice Charges

Enforcement Notices	Housing Act 2004
Improvement/Suspended Improvement Notice (S11/12)	£350.00
Prohibition/Suspended Prohibition Order (S20/21)	£350.00
Emergency Remedial Action (S40)	£350.00
Emergency Prohibition Order (S41)	£350.00

Service of second and subsequent Statutory Notice under the Housing Act 2004 (at the same time)	
Improvement/Suspended Improvement Notice (S11/12)	£75.00
Prohibition/Suspended Prohibition Order (S20/21)	£75.00
Emergency Remedial Action (S40)	£75.00
Emergency Prohibition Order (S41)	£75.00

Review of suspended Statutory Notices under the Housing Act 2004	
Suspended Improvement Notices (S11/12)	£75.00
Suspended Prohibition Orders (S20/21) £74 for each Notice reviewed	£75.00

Smoke and Carbon Monoxide Alarm Regulations	
Local Authority has set PCN level up to a maximum of £5000.00	The Penalty Charge set at £5000.00 for the offence but this will be reduced to £2,500 if paid within a 14 day period from the date of service.
Note: All charges above may be subject to change from time to time.	