

ST HELENS COUNCIL

**PRIVATE SECTOR
HOUSING ENFORCEMENT
POLICY**

Version 4 January 2022

ST HELENS COUNCIL

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

CONTENTS	Page
EXECUTIVE SUMMARY	1
1.0 INTRODUCTION	1
2.0 AIMS	1
3.0 PRINCIPLES OF GOOD REGULATION:POLICY	3
4.0 PRINCIPLES OF GOOD REGULATION:PROCEDURES	
4.1 Procedures	5
4.2 Targeting Of Resources	5
4.3 Co-Regulation and St Helens Standard	6
4.4 Rogue Landlords	7
4.5 Landlord & Tenant Liaison	7
4.6 Social Housing Landlords	7
5.1 ENFORCEMENT OPTIONS	7
5.2 Informal Action	8
5.3 Formal Action	9
5.4 Housing Conditions – Housing Health & Safety Rating System	
5.4.1 Category 1 and 2 Hazards	10
5.4.2 Improvement Notice	10
5.4.3 Prohibition Order	11
5.4.4 Emergency Prohibition Order	11
5.4.5 Emergency Remedial Action	11
5.4.6 Demolition Order	11
5.4.7 Clearance Area Action	11
5.5 Charges for Serving Notice	12
5.6 Works in Default	12
5.7 Licensing of Houses in Multiple Occupation (HMOs)	13
5.8 Management Orders	13
5.9 Banning Orders	13
5.10 Rent Repayment Orders	14
5.11 Civil Penalty As Alternative to Prosecution	14
5.12 Other Civil Penalties	15
5.13 Compulsory Purchase Orders / Enforced Sale	15
5.14 Simple Cautions	15
5.15 Rogue Landlord Database	16
5.16 Retaliatory Eviction	16
5.17 Prosecution	16
6.0 CRITERIA FOR TAKING FORMAL PROSECUTION ACTION	
6.1 Evidential Test	17
6.2 Public Interest Test	17
6.3 General Mitigating Factors	18
6.4 Decision to Prosecute	18
6.5 Unlimited Fines	18
Appendix 1 Update 2021 – Rent Repayment Orders	19

ST HELENS COUNCIL

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

EXECUTIVE SUMMARY

This Policy updates and expands on the Council's previous Private Sector Housing Enforcement Policy. It sets out the Council's continued commitment to improving housing standards within the private sector and enables consideration of new and emerging legislation to ensure that the Council's response remains effective and legally compliant.

Enabling a high quality private sector housing market is a key Government priority, as set out in the Department of Communities and Local Government 2015 Guidance "Improving the Private Rented Sector and Tackling Bad Practice". In accordance with guidance and the current Regulators Code, the Council will seek to work with landlords in the first instance to achieve improvements to housing quality and management. However, this Policy also sets out the range of legislative tools available to the Council in circumstances where owners are non compliant or unable to facilitate improvements to their properties.

1.0 INTRODUCTION

- 1.1 The Council's Private Sector Housing Section is responsible for enforcing numerous Acts of Parliament, together with subordinate Regulations and Orders.
- 1.2 The purpose of this Policy is to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.
- 1.3 All enforcement action undertaken by the Private Sector Housing Section will be in accordance with the principles of the Regulators' Code produced by the Better Regulation Delivery Office (BRDO).
- 1.4 This Policy is intended to provide guidance on the principles and processes which will apply when enforcement action is taken.
- 1.5 This Policy will be reviewed on an annual basis to ensure compliance with current legislation and guidance.

2.0 AIMS

- 2.1 Through the St Helens Council Plan and the Council's corporate objectives the People's Services Department is committed to improve the range and quality of housing provision across all tenures and to reduce the number of homes which do not meet minimum quality standards.

In order to achieve this priority the Section:

- Will seek to ensure properties achieve the appropriate standards by working in cooperation with the owners/agents and tenants by the provision of clear advice, guidance, training, encouragement, planning of improvements and assistance.
- Will utilise all appropriate enforcement action to achieve improved standards in properties found to be jeopardising the health, safety or welfare of individuals and may, where legislation allows, make an appropriate charge for doing so.
- Will review our enforcement processes as part of the Council's Housing Strategy and will, in doing so, consider the views of interested parties and individuals. These policies and standards, etc. will be made freely available.
- Will seek to carry out its responsibilities efficiently and effectively in a way which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.
- Will make an initial response within 3 working days to requests for service.

2.2 The purpose of this Enforcement Policy is to ensure that a consistent approach is adopted. It is applicable to housing disrepair complaints and enquiries, statutory nuisances and neighbourhood renewal assessments. It is also appropriate when considering action in respect of empty properties, however specific action/procedures will be in line with the Empty Property Strategy.

2.3 The Council has applied the BRDO's Regulators' Code in developing this Enforcement Policy. The Council wants to see good landlords thrive and rogues to leave the sector and will focus enforcement activity on the worst landlords. It will assist with compliance as well as formal action. By adopting the Code's principles the Council commits itself to the following principles:

- To support those we regulate to comply and grow
- To provide simple and straightforward ways to engage with those we regulate and hear their views
- To base our regulatory activities on risk
- To share information about compliance and risk
- To ensure clear information, guidance and advice is available to help those we regulate meet their responsibilities to comply
- To ensure that its approach to its regulatory activities is transparent including publication of a set of clear service standards, setting out what those we regulate should expect from our services

2.4 The primary function of Central and Local Government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

- 2.5 This policy sets out what businesses and other regulated parties and individuals can expect from Enforcement Officers. It commits the Council to good enforcement policies and procedures. It may be supplemented by additional statements of Enforcement Policy in the future.
- 2.6 The effectiveness of legislation in protecting individuals and communities depends crucially on the compliance of those regulated. We recognise that most landlords, managing agents and individuals want to comply with the law. We will, therefore take care to help those who are regulated to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

3.0 **PRINCIPLES OF GOOD REGULATION: POLICY**

- Standards** We will respond initially to all requests for service within a maximum of 3 working days. We will then contact the landlord and / or inspect properties as appropriate, carry out all necessary investigations and consider the most effective response in each case dependant on the legislative requirements and specific circumstances. Action will be taken in accordance with the relevant legislation to achieve the required outcome. The possible consequences of a service request will be explained before an officer undertakes to visit and service users will be kept informed at all stages. The level of service and performance that users of the service and those regulated can expect to receive will be as detailed in this policy.
- Openness** We will provide information and advice in plain language on the legislation that we enforce and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set with organisations and individuals potentially affected by our work where appropriate. We will also discuss general issues, specific compliance failures or problems with those organisations and individuals affected or potentially affected by our work. Education and advice in the form of documents translated into various languages can be made available for persons whose first language is not English. The Council operates a corporate translation and interpretation service
- Helpfulness** We believe that prevention is better than cure and that our role therefore involves actively working with all affected parties to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage those affected by our work to seek advice/information from us. Applications for information and services etc. will be dealt with efficiently and promptly. We will ensure that wherever practicable our enforcement services are effectively co-ordinated

to minimise unnecessary overlaps and time delays.

Complaints about the Service

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved. All complaints will be dealt with in accordance with the corporate complaints procedure.

Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. We will take account of the circumstances of the case and the attitude of the owner or their representative when considering action, taking into account our prosecution criteria included in this document.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. Digital images may be taken as part of any investigation and any images taken will only be used for enforcement action if such action is required. Due regard will also be given to any guidance issued in statutory Codes of Practice, Home Office Circulars and the Data Protection Act 1998 and Human Rights Act 1998.

Authorisation

Officers are authorised to enforce a range of housing related legislation, including various Housing Acts, Public Health Acts, Building Acts etc. and any Regulations and Byelaws made thereunder. Officers will have the necessary training and competency to enable them to exercise the powers available to them and will produce their authorisation and ID cards when on a visit to a property.

Accountability

If any person is aggrieved by the enforcement of legislation by Officers from the Private Sector Housing Section they may register a complaint by emailing contactcentre@sthelens.gov.uk or in writing to People's Services, Private Sector Housing, Town Hall Victoria Square WA101HP. The complaint or comment will be noted and responded to in accordance with the St Helens Council Corporate Complaints Procedure

In the case of a legal notice, by appeal to the appropriate authority (appeal details will be enclosed with each statutory notice.

4.0 PRINCIPLES OF GOOD REGULATION

4.1 Procedures

Enforcement action in relation to Housing will be based on risk and will have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance.

Council Officers carrying out regulation duties are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering the criteria within this Policy and any relevant written procedures

Advice and information from a Council Officer will be put clearly and simply and will, if necessary, be confirmed in writing, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, Council Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, where there is an imminent risk to public health and safety).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within five working days and, in all cases, within ten working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (wherever possible this advice will be issued with the Statutory Notice).

The decision as to whether or not to prosecute an individual or company lies initially with the individual Officer as he or she confronts a particular situation. However, the Officer must discuss their decision with their Manager prior to any action being initiated. Prosecution is only one of a number of enforcement options available to the Officer and each option should be considered to determine whether other courses of action are more appropriate or effective.

4.2 Targeting Of Resources

The Council has a duty to keep the housing conditions in their area under review. Either as a result of that review, or for some other reason such as receipt of a service request, the Council can inspect a property if they have reason to believe a health and safety hazard exists there. The Council will prioritise inspections and further intervention towards those properties which give rise to the most serious risks or where the Council has reason to believe that any hazards are least able to be managed and rectified by the landlord.

The Council seeks to support good landlords by provision of information which will direct them to investigate and rectify defects, prior to inspection by the Council's investigating officer. This 'light touch' initial approach is in line the BRDO

Regulators' Code 2014 and is aimed at reducing the number of interventions towards compliant landlords. However, should landlords fail to cooperate or communicate within the initial consultation timescale, the Council will have a duty to consider formal enforcement action as necessary, in line with the procedures stated above. Each case will be assessed on an individual basis, with regard to the alleged housing defects and any known history or previous landlord compliance. By reducing the need to inspect in all cases, resources can be targeted towards high risk properties and the 'rogue' landlord element. Where the Officer has reason to believe that conditions at the property are likely to be of high risk to occupiers and / or that the landlord will not be compliant, a comprehensive HHSRS inspection will be triggered followed by formal enforcement action as necessary.

4.3 Co-Regulation and the St Helens Standard

Co-regulation is a partnership approach between the Council and private landlords which encourages self-regulation to avoid Council intervention and enables the Council to target the worst landlords whilst low priority cases are dealt with by the private sector.

The Council will apply a co-regulation approach for first time cases whereby it will work collaboratively with landlords to achieve compliance with legal requirements.

It will allow landlords who do not have a history of non-compliance to investigate and rectify alleged deficiencies causing hazards in the property they rent out without necessitating a Local Authority visit. Information to assist landlords will be provided up-front to reduce the number of complaints escalating to formal enforcement action.

The Local Authority will only then attend if the tenant indicates matters remain outstanding in which case any subsequent action will be formal enforcement action and the landlord charged the full cost of this action as well as the cost of repairs.

This is a risk based approach that enables the Council to target its resources in the most effective manner. Where a landlord has a history of non-compliance, any subsequent complaint about poor property conditions will be dealt with on a formal basis.

The Co-Regulation process that the Council will apply will be as follows:

- Local Authority will write to the landlord with a list of matters that have been reported by tenant(s) and asked to attend and ensure property meets minimum health and safety standards. *Note:* The Local Authority will immediately investigate any matter judged to pose an imminent risk.
- As a guide to minimum standards landlords will be directed to the Council's website which contains an overview of the standard each rental property should achieve (the 'St Helens Standard').
- Landlords will be directed to resources, including available resources from national landlord associations, to assist them to understand their duties and what is required to ensure their property is free from significant hazards and is safe to occupy.

- The local authority will contact the tenant(s) after the requisite number of weeks to confirm that the property meets the St Helens Standard.
- The case will either be closed at this stage or escalated to formal inspection with action as necessary.

4.4 **Rogue Landlords**

In situations where a landlord has proven him/herself to be a rogue operator through flagrant disregard of the law, the Council will consider targeting his/her wider private rented sector property portfolio within St Helens to identify further instances of sub-standard letting conditions with appropriate enforcement action taken as necessary in accordance with this policy.

4.5 **Landlord & Tenant Liaison**

The Council will provide a landlord and tenant liaison service to tackle management and anti-social behaviour (ASB) issues arising from the private rented sector. Where issues are identified, the Council will engage with occupiers through early intervention and prevention activity. Where this is unsuccessful, and problems persist, the Council will engage and assist with guidance to support the landlord to take necessary action to bring about a cessation of ASB or recover possession of the property in accordance with proper legal requirements.

Where a landlord fails to engage in resolving issues emanating from the occupation of his/her rental property, the Council will work with other Council departments and the Police to bring about a resolution, including (in the most serious cases) application for an Anti-Social Behaviour Closure Order under Part 4 of the Anti-Social Behaviour, Crime and Policing 2014 Act to close a property for 3 months initially and make it a criminal offence to enter the property without permission.

4.6 **Social Housing Landlords**

The Housing Health and Safety Rating System Enforcement Guidance advises that working with Registered Social Landlords (RSLs) is seen as preferable to resorting to formal enforcement measures where the landlord has a timetable for making housing stock comply with the decency standard. Accordingly, informal action may be the appropriate response where a RSL can demonstrate the necessary works will be attended to within a timescale judged by the Council Officer to be appropriate with regard to risks to the occupiers. There will be no flexibility with matters that pose an imminent threat if not addressed or if initial consultation timescales are not adhered to.

5.0 **ENFORCEMENT OPTIONS OPEN TO THE PRIVATE SECTOR HOUSING SECTION**

- 5.1 In order to achieve and maintain consistency in private sector housing enforcement the Private Sector Housing Section will use the following range of options as appropriate:

- Informal Action, including written guidance, advice and notices
- Use of statutory notices
- Carrying out work in default
- Issuing fixed penalty notices
- Use of various management orders
- Issuing simple cautions
- Refusal, revocation or the attachment of conditions to a licence
- Prosecution, issuing civil penalties, rent repayment orders, banning orders
- Compulsory purchase or enforced sale

Any decision made by an Officer regarding enforcement options will be documented along with reasons as appropriate. It is likely that such decisions may need to be justified in Court.

When deciding what course of action to take, including the prioritization of inspections, Officers will consider various factors including:

- The risk to the residential occupiers or others
- The result of consultation with the occupiers affected
- The previous history of the resident or landlord concerned
- The level of knowledge about the risk or offence that the responsible person is known to have
- The consequences of noncompliance with legislation
- The effectiveness of various enforcement options
- The availability of other appropriate remedies, including rehousing
- The effect of the condition of the property on the surrounding neighbourhood
- Use of the most appropriate legislation to deal with the issues raised.

5.2 Informal Action

The Council is duty bound to take action where it confirms the presence of a Category 1 hazard under the Housing Act 2004.

Informal action will comprise that set out at Section 4.3 above. This includes the use of letters requesting action following a complaint.

The Council will consider the use of Hazard Awareness Notices in cases involving owner-occupied properties where one or more Category 1 is identified where this is a proportionate response.

Any letters requesting action sent to individuals/companies will indicate the legislation contravened (if appropriate) and provide guidance to allow compliance with any legal requirements, and give the recipient the opportunity to contact the appropriate officer to discuss the matter further.

A reasonable time limit will be allowed for compliance with informal action. Landlords, managing agents and individuals will be made aware that failure to comply with informal requests for action or failure to engage with the Council during

a consultation period is likely to result in formal action, including payment of a charge for serving notice as appropriate.

5.3 Formal Action

Formal action may be taken in the form of Statutory Notices served when there are significant contraventions of laws and regulations where:-

- Formal action is proportionate to the risk to public health and safety.
- There is a record of noncompliance with legislation.
- The authorised Officer has reason to believe an informal approach will not be successful.
- The consequence of non-compliance could be potentially serious to public health.
- Although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.
- Where the legislation requires that formal action is taken, e.g. to abate a statutory nuisance.

Officers serving statutory notices will be prepared to discuss the works specified with individuals/company representatives and will fully consider the availability and suitability of alternative solutions.

Where a formal Statutory Notice is served, the method of appealing against the notice (i.e. if the recipient feels that the notice is excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate) and what will happen if the notice is not complied with.

Statutory Notices are important legal documents. Once served, failure to take follow up enforcement action has serious implications having regard to the contents of this Policy. Failure to comply with a Statutory Notice will normally result in the seeking of authority to prosecute, to issue a fixed penalty notice and/or works in default, as described below. Any Officer decision to take no action in the case of a Statutory Notice which has not been complied with shall only be made either in accordance with written Procedures or with the agreement of a Manager, which will be recorded for the file.

The principles of the formal action described at 5.3 above apply to any enforcement action taken with respect to improving housing conditions including abatement of statutory nuisance. However, more specifically formal action following assessment under the Housing Health and Safety Rating System will be taken in line with the Enforcement Guidance given under section 9 of the Housing Act 2004 (see 5.4 below).

5.4 Housing Conditions - Housing Health & Safety Rating System

5.4.1 **Category 1 Hazards**

Where an assessment of a property has been undertaken under the Housing Health and Safety Rating System and hazards have been rated as a category 1, band A-C, then Statutory Notice(s) will be served. Where this formal action is being considered and the person responsible agrees to take action to resolve the matter, the Officer may agree to defer formal action for a reasonable time. Deferred action will not be considered where there is an imminent risk to public health or safety.

Category 2 Hazards

Where an assessment of the property has been undertaken under the Housing Health and Safety Rating System and the hazards have been rated as a category 2 hazard, band D and below, then a Hazard Awareness Notice will usually be issued. If a number of upper range category 2 hazards, bands D and E, exist at the property and/or the conditions are such as to be affecting the material comfort of the occupying tenant then consideration will be given to the serving of a statutory improvement notice. This action could be considered in a situation where the occupants encounter one category 2 hazard after another as they move around the house. The Local Authority has prioritised Excess Cold, Carbon Monoxide, Entry by Intruders, Falls and Fire as Category 2 hazards where it may decide to take formal action. In such circumstances full consideration will be given to the effect of the hazards on the current occupier.

In all circumstances if the Council considers that there is a high risk to the health and safety of the occupant then there will be no delay in initiating enforcement action. This would include circumstances where a Housing Health and Safety Rating assessment has revealed a category 1 or 2 hazard. In all cases the circumstances and views of tenants, landlords and owners will be taken in to consideration when determining what action is to be taken.

There will be consultation with social services, tenancy support, housing needs and housing management officers, where there are vulnerable occupants, for the purposes of agreeing a suitable approach to hazards. In addition, consultation with the fire and rescue authorities before taking formal action in respect of houses in multiple occupation (HMOs) in accordance with Section 10 of the 2004 Act.

5.4.2 **Improvement Notice**

In serving a statutory notice the schedule of defects and necessary remedial works detailed in the Notice must, as a minimum, reduce a category 1 hazard to a category 2 hazard and prevent any recurrence of that hazard within 12 months. It cannot require works to start within 28 days of service and carries a 21 day right of appeal to the First-Tier Tribunal (FTT).

Suspension of an Improvement Notice

In normal circumstances an improvement notice would become operative 21 days after service. However, in agreement with his or her manager, the Officer may suspend an action specified in the notice. The notice to suspend may specify an event that triggers action, such as non-compliance with an undertaking given to the authority or a change of occupancy. Suspension may be considered in circumstances for example where the hazard is not sufficiently minor to be addressed with a hazard awareness notice but the current occupiers are not members of a vulnerable group. Suspension of an Improvement Notice might also

be appropriate to deal with a property as part of scheduled to be included strategic regeneration initiative or where remedial works would lead to a high probability of serious health consequences for occupants.

5.4.3 **Prohibition Order**

A Prohibition Order prohibits using the whole or part of a dwelling for some or all purposes, or occupation by particular numbers or descriptions of people. The Order must:

- Specify whether the order is made under section 21 or 22 of the 2004 Act
- The nature of the hazard
- The deficiency giving rise to the hazard
- The properties in which prohibitions are imposed
- Any remedial action that would result in the order being revoked
- The right of appeal (within 21 days to [FTT](#))

A Prohibition Order becomes operative 28 days after service if no Appeal made.

A Prohibition Order is an appropriate course of action in cases where statutory overcrowding has been identified under Part 10 of the Housing Act 1985.

5.4.4 **Emergency Prohibition Order**

An Emergency Prohibition Order may be made if a category 1 hazard exists and in the opinion of the inspecting Officer, the hazard involves an imminent risk of serious harm to the health and safety of any of the occupiers of those or any other property. The order prohibits use of the premises, or part of the premises, with immediate effect.

5.4.5 **Emergency Remedial Action**

If a category 1 hazard exists on the property, and in the opinion of the inspecting Officer, the hazard involves an imminent risk of serious harm to the health and safety of the occupiers of those or any other residential premises, the Council may enter the premises at any time upon obtaining a warrant (if required) to take out emergency remedial action. This action is whatever is necessary to remove the imminent risk of serious harm. A notice will be served on the responsible party within seven days of taking the emergency action.

5.4.6 **Demolition Order**

A Demolition Order is only available in response to the identification of a category 1 hazard. The Council must:

- Take into account availability of local accommodation for rehousing
- Take into account the demand for, and sustainability of the accommodation if the hazard was remedied
- Consider the prospective use of the cleared site
- Consider the environmental impact of the action.

A Demolition Order carries a 21 day right of appeal to [FTT](#)

5.4.7 **Clearance Area Action**

The provisions of Part 9 of the Housing Act 1985 and Part 7 of the Local Government and Housing Act 1989 in respect of clearance activity are retained in

respect of Clearance areas. A Council must be satisfied that clearance represents the most satisfactory course of action.

5.5 Charges for Serving Notice

Having regard to statutory powers at section 49 of the Housing Act 2004, from 1st October 2006 when a statutory notice has to be served the Council will recover the administration costs incurred to undertake this action. In assessing these costs the following factors will be considered: the time involved in carrying out the original inspection; the time involved in giving consideration to serving the notice; and other costs directly associated with serving the notice. The administrative and other expenses that the Council will recover are those incurred in –

- serving an improvement notice under section 11 or 12 of the Housing Act 2004;
- making a prohibition order under section 20 or 21 of the 2004 Act;
- taking remedial action under section 40 of the 2004 Act;
- making an emergency prohibition order under section 43 of the 2004 Act; or
- making a demolition order under section 265 of the Housing Act 1985

The charge will be levied on the person upon whom the notice or copy of the order is served and will be subject to a maximum amount fixed by the Council per notice or order served, subject to annual review of the Council's fees and charges. In all cases the Council will instigate debt recovery action.

5.6 Carrying out Works in Default

Where statute allows, works in default can be carried out by the Council where there has been non-compliance with a Statutory Notice and the time given in that Notice has expired. This will be on a case by case basis having first issued a letter informing the person on whom the notice was served of the intention to carry out work in default together with relevant timescales. In all cases the Council will seek to recover the money spent in carrying out the required works, including any administration costs.

The Council will normally only carry out works in default of a statutory notice where

- There is an imminent risk to health/safety or a situation is prejudicial to health, such that the consequences of not taking immediate and decisive action would be unacceptable including lack of hot water/heating or drainage defects **or**
- Statute does not permit prosecution for non-compliance with a statutory notice **or**
- Action to carry out works in default is compatible with further enforcement action, i.e. Enforced Sale of vacant properties
- Exceptional circumstances have been agreed in consultation with the Manager, in which case a written record of the reasons will be kept.

5.7 Licensing of Houses in Multiple Occupation (HMOs)

This authority will implement Mandatory Licensing of HMOs in accordance with Government regulation. It will be a condition of licences that:

- Satisfactory provision of facilities is provided
- There is adequate means of escape from fire
- The premises are satisfactorily managed

A licence may only be issued to fit and proper person whose property complies with licence conditions and where the agreed licence fee has been received by the Council.

The Regulators' Code principles will apply in the case of a landlord failing to apply for, or operating without, a licence. Immediate prosecution may be considered where there is gross negligence putting the health and safety of occupants at imminent risk.

Where a house is occupied as an HMO, planning permission may be required and in such circumstances the Private Sector Housing Section will liaise with the Council's Planning Officer.

Please note: Action will be taken in accordance with this policy to address Category 1 and 2 hazards in HMOs irrespective of, and in addition to, any license requirements.

5.8 Management Orders

Management Orders can be considered in circumstances where it appears to Officers that there is no reasonable prospect of a House in Multiple Occupation (HMO) being licensed in the near future and that it is necessary to protect the health and safety or welfare of persons occupying it. The decision to make an interim and final management orders will be made subject to consultation with the Council's Legal Officer and can be made separately and in addition to the consideration of other enforcement action.

From October 2017, the Council will consider applying for a management order in circumstances where the landlord or property agent has received a Banning Order.

5.9 Banning Orders

From October 2017, the Council will in all instances consider applying for a Banning Orders where a landlord has been convicted of one or more banning order offence as defined by regulations made under the Housing and Planning Act 2016. This will exclude him/her from letting or engaging in letting agency or property management work. When considering applying for a Banning Order, the Council will have consideration of applicable Government Guidance ensuring that all statutory requirements are met.

Consideration will be given to any evidence of housing offences(s) committed by the landlord in other Local Authority areas.

5.10 Rent Repayment Orders

In all instances, the Council will consider applying for a Rent Repayment Order (RRO) where a landlord has committed any of the following offences to recover Housing Benefit and the housing costs element of Universal Credit from the landlord:

- Offences in relation to licensing of houses in multiple occupation (s.72(1) Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Housing Act 2004 (s.95(1))
- Failure to comply with an Improvement Notice (s.30 Housing Act 2004)
- Failure to comply with a Prohibition Order (s.32 Housing Act 2004)
- Breach of a Banning Order (s.21 Housing and Planning Act 2016)
- Using violence to secure entry to a property (s.6 Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (s.1 Protection from Eviction Act 1977)

This may be following conviction or, depending on the offence, may be in addition to a civil penalty. The decision to apply for a RRO will be taken on a case by case basis and will be in accordance with Government guidance to Local Housing Authorities ensuring that all statutory requirements are met.

SEE UPDATE APPENDIX 1

5.11 Civil Penalty As Alternative to Prosecution

The Council will consider imposing a civil penalty under the Housing & Planning Act 2016 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)

The Council will decide on a case by case basis whether to prosecute or issue a civil penalty based on the circumstances of the offence, taking account of Government guidance. The Council aims to ensure that the most serious cases/circumstances are prosecuted through the courts, however consideration will be given to dealing with other less-serious offences by way of a civil penalty to punish the offender but without criminalising them for the offence.

The Council will use an enforcement matrix, approved by way of delegated executive decision, to determine a) whether to prosecute or issue a civil penalty and

b) the level of any civil penalty to impose.

Consideration will be given to any evidence of housing offence(s) committed by the landlord in other local authority areas.

5.12 Other Civil Penalties

The Council will consider the use of fixed penalty notices, where an offence has been committed under specific legislation, including, but not limited to the following:

- The Smoke and Carbon Monoxide Alarm Regulations 2015
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) Order 2014
- The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

The penalty regime specific to each piece of legislation will be subject to formal approval via delegated executive decision.

5.13 Compulsory Purchase Orders / Enforced Sale

In accordance with the Council's Empty Property Strategy, where a property has been vacant for over 6 months and it appears to officers that there is no reasonable prospect of the property becoming occupied, then the Council may consider enforcing change of ownership through either Compulsory Purchase or Enforced Sale. Such action will be subject to consultation with the Council's Legal Officer and approval by the Director of People's Services

5.14 Simple Cautions

The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence but the public interest does not require a prosecution such as first time, low-level offences where a Simple Caution can meet public interest. Any decision by the Council to issue a Simple Caution will be made in accordance with the Ministry of Justice Guidance (2013) having established the following:

:

- The views of the victim about the offence
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances
- Whether the offender has made any form of reparation or paid compensation

A Simple Caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record. Failure to accept a simple caution leaves the Council with an option to instigate legal proceedings instead.

Simple cautions can be cited in court if the same person or organisation, within three years of the original offence, commits a similar offence.

5.15 Rogue Landlord Database

From October 2017, the Council will in all cases look to update the national database of rogue landlords and property agents with details of all landlords and property agents where it has successfully applied for a banning order to be made against them unless exceptional circumstances are considered to apply. The entry will be maintained for the period for which the banning order has effect and will be removed after this period.

The Council will in all cases also look to update the national database with details of all landlords and property agents who have been convicted of a banning order offence, or have received two or more civil penalties as an alternative to prosecution within a 12 month period, unless exceptional circumstances are considered to apply. The entry will be maintained for the period specified in a decision notice (normally at least 2 years unless removed or varied earlier) and will be removed after this period.

Consideration will be given to any evidence of civil penalties given for relevant offences committed by the landlord/property agent in other local authority areas.

When considering updating the Rogue Landlord Database, the Council will have consideration of applicable Government Guidance.

5.16 Retaliatory Eviction

Measures to prevent retaliatory eviction were introduced under the Deregulation Act 2015. The Council's Private Sector Housing Section will deal with complaints from tenants about poor property conditions in accordance with this Enforcement Policy. Tenants who have complaints of disrepair or poor conditions will be advised to contact their landlord in writing in the first instance. Following this, if it becomes necessary for the Council to serve an improvement notice or notice of emergency remedial action, this will protect the tenant from eviction for a period of 6 months from the date of the notice.

5.17 Prosecution

The Private Sector Housing Section recognises that the decision to prosecute carries considerable consequences. Legal proceedings will only be instigated where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

6.0 CRITERIA FOR TAKING FORMAL PROSECUTION ACTION

Prior to deciding whether to take formal enforcement the Officer should consider the Guidance provided in the Code for Crown Prosecutors and the factors listed below. The list is not considered exhaustive or prescriptive since ultimately each case must be taken on its merits.

6.1 Evidential Test

- What the law actually states
- Whether or not an offence has been committed
- What the offence is
- Who is responsible under the Act
- Who has power of enforcement
- Who investigates
- Who decides to prosecute (this shall not be the investigating officer)
- Sufficient evidence
- Reasonable chance of success
- Avoidance of undue delay

6.2 Public Interest Test

- **The Seriousness of the offence**

A serious offence would include instances of blatant and reckless disregard of the law which may or is likely to be a serious risk to public health and safety

A serious offence would also include the failure to comply with a Statutory Notice.

- **The Public Benefit of a Prosecution**

Any prosecution must be able to demonstrate that it is only taken for the benefit of the general public. If there is no public benefit then the prosecution should not be pursued.

A prosecution which attracts local publicity can have a salutary effect on the occupiers of similar premises.

The prosecution might also establish a legal precedent applicable to other individual companies or other geographic areas.

- **The likelihood of the defendant being convicted**

Cases should not be instituted unless the officer considers he or she has adequate evidence to prove the matter beyond reasonable doubt.

Consideration must also be given to whether the individual or company will be able to establish and maintain a "due diligence" defence.

- **The Previous History of the Party or Premises Concerned**

This would include instances of persistent and repeated breaches of legal requirements leading to poor and deteriorating standards in the premises affected or where it appears the individual, or management, is neither willing nor structured to deal with these repeated breaches of the law.

Consideration must also be given as to whether the individual or company ever received a formal caution in the past.

Consideration will be given to any evidence of housing offence(s) committed by the landlord in other Local Authority areas.

- **Witness co-operation**

The Officer must also take into account the ability and suitability of any important witness to give evidence and their willingness to co-operate in the legal process.

6.3 General Mitigating Factors

Mitigating factors are very important but by definition are likely to be at odds with, and therefore have to be balanced against evidential and public benefit tests. It is expected that where a case meets all other criteria then mitigating factors will not prevent prosecution from being considered. However, an Officer will always seek to identify any mitigating factors and these shall be clearly taken into account in coming to any decision.

Mitigating factors may include:

- Any explanation by the individual/company
- Evidence that the individual or Company is concerned to prevent a recurrence of the problem
- Offenders age and state of health
- Offenders attitude to the offence

6.4 Decision to Prosecute

All decisions to prosecute will be made in consultation with the Council's Legal Officer and following submission of a report to the Director of People's Services.

Any person subject to potential prosecution action will be invited to send written representations to the Council for consideration prior to any final decision being made.

6.5 Unlimited Fines

Under Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, Level 5 housing offences previously punishable on summary conviction by a maximum fine of £5,000 are now punishable by an unlimited amount.

APPENDIX 1

Update 2021 – Rent Repayment Orders

The Housing Act 2004 introduced rent repayment orders (RROs) to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically HMOs. RROs are a means by which a tenant or local authority can seek to have up to 12 months of rent repaid in addition to other enforcement action.

RROs have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences.

RROs can now be applied for to cover the following situations:

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

Applications for an order must be made to the First-tier Tribunal.

Where the offence was wholly committed before 6 April 2017 or the commission of the offence started before the 6 April 2017 and ended no later than 5 April 2018, the provisions in the Housing Act 2004 continue to apply.

Where the offence was wholly committed on or after 6 April 2017, the provisions in the Housing and Planning Act 2016 and this guidance should be used.

An order can be applied for when one of the above offences has been committed, whether or not the landlord has been convicted. Where the landlord has not been convicted of the relevant offence, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

If the Council paid the rent through either housing benefit or universal credit, any rent recovered must be repaid to the Council. If the tenant paid the rent in full (no HB or UC) any amount recovered must be paid to the tenant. If the rent was paid partly through HB/UC and by the tenant, the amount recovered must be repaid on an equivalent basis to each party. If there are multiple tenants in the property, each must apply for a RRO to recover the rent they have paid.

The maximum amount of rent that can be recovered is capped at 12 months.

Any income received from a RRO can be retained by the Council provided it is used towards private sector housing enforcement activities.

A RRO can be applied for any of the above offences committed on or after the 14 November 2017.

For offences relating to a failure to comply with an Improvement Notice, Prohibition Order or Banning Order, the notice or order must have been served on or after the 14 November 2017.

When to apply for an RRO

The Council will apply for a RRO in all cases where the landlord has been convicted of a relevant offence and some or all of the rent was paid through housing benefit/universal credit. Where a landlord has not been convicted, the Council will take the following factors into account in deciding whether a RRO is appropriate and how much should be recovered:

- a) Punishment of the offender – RROs should have a real economic impact on the offender. The Council will consider the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has been convicted of similar offences
- b) Deter the offender from repeating the offence – the level of the penalty should be set at a high enough level to deter the offender from repeating the offence
- c) Dissuade others from committing similar offences – the issue of a RRO will be in the public domain therefore robust and proportionate use of the orders is likely to help others comply with their responsibilities
- d) Remove any financial benefit the offender may have obtained as a result of committing the offence.

Who is named on the RRO?

A RRO can only be applied for in the name of the landlord of the property.

Civil Penalty and RRO

The Council can impose a civil penalty and apply for a RRO for the following offences:

- Failure to comply with an Improvement Notice (s.30 Housing Act 2004)
- Offences in relation to licensing of HMOs (s.72(1) failure to licence)
- Offences in relation to licensing of houses under Part 3 of the Housing Act 2004 (s.95(1), selective licensing)

Prosecution and RRO

The Council can prosecute a landlord and seek a RRO for the same offence.