



# Enforcement Protocol



Private Sector Housing



26.09.25  
Version 2

# Document Version Control

Author (Post Holder Title): Private Sector Housing Manager

Type of document: Protocol

Version: 2.0

Issue Date: 18 November 2020

Approval Date: 30 September 2020

Internal or external publication: External publication

Document available on: Council website and intranet

## Review History

Issue	Date	Comments
1.0	02.12.21	Re-formatting and updates to sections 3, 5 and 8 to include amendment to MEES regulations.
1.1	22.04.22	Annual review completed. Updates to section 8.
1.2	22.04.23	Annual review completed.
2.0	26.09.25	Re-formatted onto latest branded template and updates to section 8 and appendices to include further information on banning orders and rogue landlord database.

## Consultees

Internal	External
Legal	
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# 1. Purpose

- 1.1. This protocol outlines Milton Keynes Council's approach to the enforcement and powers available to regulate and manage non-compliance within the private rented sector, including properties owned and managed by registered providers. The protocol also applies to owner occupied homes and empty properties.
- 1.2. The protocol should be read in conjunction with the Council's Corporate Enforcement Policy, which sets out what any resident, business or visitor can expect from any council officer when carrying out enforcement action across the council, it provides a summary of the Council's enforcement powers and the principles of application.

# 2. Aims

- 2.1. The aims of this protocol are to:
  - Outline the range of enforcement options available to use when managing and regulating housing conditions in the private housing sector;
  - Ensure a fair, reasonable and consistent approach to enforcement is used in accordance with all appropriate guidelines and legislation;
  - Provide tenants and landlords with an overview of the consequences of enforcement action.

# 3. Purpose

- 3.1. The Council is committed to ensuring that all residents within the borough living in the private sector occupy homes that are safe and meet the required standards.
- 3.2. The Council recognises that most landlords want to be compliant and provide a good standard of accommodation to their tenants. This protocol sets out how the Council intends to take appropriate action using powers available under relevant legislation to tackle rogue landlords that have a clear disregard for their responsibilities and the safety of their tenants.
- 3.3. This protocol outlines our approach to securing those standards are met, seeks to ensure that good practice is maintained, and all properties let as residential dwellings, those in private ownership and properties under registered providers are of a good quality and are well managed.

- 3.4. Note: in the protocol the term 'landlords' includes 'property agents', 'managing agents' and 'letting agents', unless otherwise specified.

## **4. Equality Statement**

- 4.1. The Council is committed to treating all customers fairly and all enforcement decisions will be fair, independent, and objective. The Council is committed to promoting equality and will endeavour to ensure that all Landlords and Tenants are treated fairly and without unlawful discrimination.

## **5. Legal Framework**

- 5.1. The following summarises the legislation that informs the regulation of housing in the private sector; this list is not exhaustive, and the Council may consider other relevant legislation and any updates of legislation.

- Housing Act 1985
- Housing Act 2004
- Housing and Planning Act 2016
- The Environmental Protection Act 1990
- The Local Government (Miscellaneous Provisions) Act 1976
- Deregulation Act 2015
- Protection from Eviction Act 1977
- General Data Protection Regulations 2018
- The Equality Act 2010
- Coronavirus Act 2020

## **6. Powers to investigate**

- 6.1. Enforcement action within the private sector will be carried out by officers authorised under the scheme of delegation. Powers available to assist our investigations are:

### **6.2. Powers of entry**

- 6.2.1. Section 239 of the Housing Act 2004: officers have powers of entry to inspect properties at any reasonable time to carry out their duties, providing 24 hours'

notice has been given to the owners (if known) and occupiers (if any) of the premises they intend to enter. Prior notice is not required where entry is to ascertain whether an offence has been committed under section 72 (offences in relation to licensing of HMOs), section 95 (offences in relation to licensing houses) or section 234(3) (offences in relation to HMO management regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then an application can be made for a warrant to be granted by a Justice of the Peace. A warrant will include the power to enter by force if necessary.

### **6.3. Power to require documentation**

6.3.1. Section 235 of the Housing Act 2004: the council has the power to require documentation to be produced in order to identify whether any offence has been committed under Part 1-4 of Housing Act 2004 or to support our functions under Parts 1-4 of the Housing Act 2004.

6.3.2. The Housing and Planning Act 2016 provides additional powers to require information to determine whether to apply for a Rent Repayment Order or Banning Order, to make an entry in the Rogue Landlord Database or when considering the level of a Civil Penalty.

6.3.3. Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 allows a requisition for information to be served.

### **6.4. Power to use certain information**

6.4.1. Section 237 of the Housing Act 2004: The Council has powers to use the information obtained under section 235 and Housing Benefit and Council Tax information to carry out its functions under Parts 1-4 of the Housing Act 2004.

## **7. Our Approach**

7.1. Tenants renting in the private sector should in the first instance report all repair issues to their landlord in writing and allow them an opportunity to resolve it. If the landlord fails to resolve the repair issues within a reasonable time period, then tenants can report the matter to the Council. The Council will investigate where category 1 or 2 hazards or other regulatory breaches potentially exist at the property.

- 7.2. Registered Providers (i.e. Housing Associations) are expected to maintain their homes to the required standard. If tenants have repair issues, they will be advised to use the Registered Providers (RP) complaints procedure or contact the Housing Ombudsman. The Council will only assist RP tenants if the property has a category 1 hazard or is a House in Multiple Occupation which does not comply with safety or amenity standards, and where the RP's own procedures have not resolved the issue.
- 7.3. The Council following receipt of a service request about poor housing conditions will carry out an initial risk assessment, which may not always involve a visit to the property. If an inspection is necessary, tenants have the right to invite Council officers into the property without the need to inform their landlord or require permission. The Council will not normally inform the landlord of an initial visit unless directed or agreed by the tenant or if it is deemed necessary. The tenant will be kept informed of the Council's actions and receive copies of any relevant documents.
- 7.4. The type of enforcement action taken will vary according to the legislation being applied. In some cases, enforcement action is a statutory duty. In other cases, informal action may be appropriate in the first instance to work with landlords and residents offering advice, information and assistance to reach compliance.

Where an informal approach fails or there is a serious contravention, the full range of enforcement options available will be considered to achieve compliance.

- 7.5. The type of enforcement action pursued is considered on a case-by-case basis. Taking consideration of the specific circumstances of a case, the most appropriate enforcement options will be applied accordingly. In every case, enforcement seeks to:
- Promote and achieve sustained compliance with the law
  - Ensure that landlords take action to deal immediately with serious risks
  - Ensure that landlords who breach legislative requirement are held to account
- 7.6. The Council will investigate and identify the need to take enforcement action by:
- Proactive inspections of dwellings
  - Responding to a complaint or request for assistance
- 7.7. During events that cause major disruption to normal service delivery the Council may have to temporarily adapt its approach to enforcement to meet the changing circumstances caused by the event and taking account of any government guidance at the time.

# 8. Enforcement Options

8.1. The type of enforcement action and legislation most commonly applied is listed below. This is not an exhaustive list and is not intended to be a definitive or full interpretation of the legislation.

## 8.2. No action

8.2.1. In certain circumstances where the detrimental impact on the tenant or community is small or no breach of legislation or concerns are identified no action will be taken.

## 8.3. Informal action

8.3.1. Informal action includes verbal advice, written requests or warnings and inspection reports or schedules requesting remedial work. Informal action is used as a first response in the case of many breaches of legislation that are identified to assist in rectifying breaches as quickly and efficiently as possible and avoiding the need for further enforcement action.

8.3.2. Wherever possible, the Council will work with landlords and building owners to help bring properties into compliance. When undertaking informal action, we will allow a reasonable time period for works to be carried out. If works are not carried out in this time period, the level of enforcement will be escalated.

## 8.4. Statutory action

8.4.1. In certain circumstances it will be appropriate for the Council to take formal action to ensure the safety of tenants and other occupiers of a building. In most cases the Council will work with owners or landlords to give them an opportunity to remedy a problem, however, in some circumstances the Council has a duty to take action.

## 8.5. Housing Act 2004: Part 1 Housing Health and Safety Rating System

8.5.1. Section 5 of the Housing Act 2004 places a duty on the Council to take enforcement action where a category 1 hazard under Housing Health and Safety Rating System (HHSRS) exists in a property. Section 7 of the Housing Act 2004 gives the Council a power to take action should a category 2 hazard under HHSRS exist.

8.5.2. Prior to taking enforcement action, the Council will need to carry out an assessment under the HHSRS to determine whether any hazards are present at the property and

what, if any, enforcement action is needed. This will usually involve a visit to the property to carry out an inspection. The tenant and landlord (and other interest parties) will be made aware of the inspection in accordance with our powers of entry (section 6.2). When any defects are identified, an HHSRS assessment will be completed to determine if any category 1 or 2 hazards exist.

The Council will have regard to the [HHSRS operating guidance](#) and [HHSRS enforcement guidance](#) when determining the hazard rating and appropriate enforcement option.

8.5.3. The following enforcement options are available under this process:

- A hazard awareness notice
- An improvement notice (including suspended notices)
- A prohibition order (including suspended orders)
- Emergency remedial action
- An emergency prohibition order
- A demolition order
- Declaration of a clearance area

8.5.4. A statement of reasons under section 8 of the Housing Act 2004 will accompany all notices and orders. All notices and orders issued will include timescales that are reasonable and comply with statutory legislation. We will also inform landlords of any right of appeal, the period within which an appeal can be made and who the appeal should be made to. We will maintain contact with the landlord throughout the duration of the notice or order to ensure any requirements are complied with. We will also keep the tenant updated and provide copies of any relevant documents. If a notice or order is not complied with, we will escalate the level of enforcement.

## **8.6. Works in default**

8.6.1. Works in default becomes an enforcement option after service of an enforcement notice or order which has not been complied with. This is a discretionary power and the Council reserve the right not to act. Works in default will be considered as a last resort after every effort has been made to secure compliance. In each circumstance, works in default will be considered on a case-by-case basis taking into account certain factors such as the level of risk, vulnerability and costs.

8.6.2. If works in default are actioned, it is an offence to obstruct the Council or any contractor to carry out the works once they have started. The cost of the works and all other associated costs will be recovered from the responsible person in

accordance with the relevant statutory provisions. All outstanding debts will be registered against the property as either a Local Land Charge or title deed charge and any interest accrued will be added to the debt.

## 8.7. Civil penalties

8.7.1. Civil penalties are a financial penalty that can be imposed by the Council under the Housing Act 2004 and the Housing and Planning Act 2016 (section 23, 126 and schedule 9) as an alternative to prosecution for the following offences:

- Failure to comply with an improvement notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under part 3 of the Housing Act 2004 (section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
- Breach of a banning order (section 21 of the Housing and planning Act 2016)

8.7.2. The standard of proof required to impose a civil penalty is that required for a criminal prosecution. This means the evidence should indicate beyond reasonable doubt that an offence has been committed.

Prior to imposing a civil penalty, a notice of intent must be served no later than six months after the council has sufficient evidence of the conduct to which the penalty relates or at any time when the offending conduct is continuing. The notice must set out:

- The amount of the proposed civil penalty
- The reasons for proposing to impose the civil penalty
- Information on the right to make representations

The recipient has the option to make written representations within 28 days beginning from the date the notice was served. The Council must decide whether to confirm, vary or withdraw the notice. If the Council decides to impose the civil penalty, it must serve a final notice containing the following:

- The amount of the penalty

- The reasons for imposing the penalty
- Information on how to pay the penalty
- The period in which to pay the penalty (28 days from when the notice is served)
- Information on rights of appeal
- The consequences of failure to comply with the notice

The Council can withdraw or vary a notice of intent or a final notice at any time. Any withdrawal or variation will be made in writing.

The recipient of a final notice has the right to appeal to the First-tier Tribunal within 28 days from the date the notice served. The appeal can be made against the Councils' decision to impose a penalty and/or the amount of the penalty. The First-tier Tribunal has the power to confirm, vary (increase or reduce) the level of fine or cancel the civil penalty. It can only increase the fine to a maximum of £30,000.00. The final notice is suspended until the appeal is determined. Appeal rights are contained in Schedule 13A of the Housing Act 2004.

- 8.7.3. A civil penalty cannot be imposed where there has already been a conviction or where a prosecution is pending for the same offence. Similarly, if a civil penalty has been imposed there cannot be a conviction.
- 8.7.4. A civil penalty will be imposed for each individual breach of the management regulations for Houses in Multiple Occupation (see section 8.11).
- 8.7.5. The Council must have regard to the statutory guidance: [Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Authorities](#) when determining whether a civil penalty or prosecution is the appropriate sanction and the level of civil penalty, which can be up to a maximum of £30,000.00.
- 8.7.6. The factors within the statutory guidance that must be considered are:
- a) Severity of the offence
  - b) Culpability and track record of offender
  - c) The harm caused to the tenant
  - d) Punishment of the offender
  - e) To deter the offender from repeating the offence
  - f) To deter others from committing similar offences
  - g) To remove any financial benefit the offender may have obtained as a result of committing the offence.

## 8.8. Civil penalties matrix

- 8.8.1. The Council will also have regard to the civil penalty matrix (adopted by delegated decision 27 March 2018) which is to be used in conjunction with the statutory guidance. The matrix is not intended to provide a prescriptive tariff application but offers guiding principles intended to provide consistency, transparency and a fair assessment when determining the level of civil penalty to be imposed. The rationale will be applied on a case-by-case basis to the specific circumstance of each case. The matrix is attached in appendix A.
- 8.8.2. If a civil penalty is not paid within the specified time period, the Council will refer the case to the County Court for an order of that court to recover the money.
- 8.8.3. The income from civil penalties will be retained by the Council's private sector housing team and used to fund their enforcement activities.

### **8.9. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

- 8.9.1. The Council can also impose a civil penalty if it is satisfied that a landlord has breached a duty imposed on them by these Regulations. The approach taken will be as per the guidance above in relation to the penalties available under the Housing Act 2004. Action may be taken when the Council is of the view that the landlord has failed to undertake the necessary inspections and repairs in relation to electrical installations in that private rented property. The Council may also undertake the necessary inspections and repairs and recover costs from the landlord.

### **8.10. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

- 8.10.1. The Council has the power to issue a penalty charge of up to £5000 where a landlord has breached their duty of compliance under the above regulations.
- The penalty charge amounts will be imposed in accordance with the published '[Statement of Principles](#)' also attached in appendix B.
  - Once a penalty charge has been imposed, and subject to any decision made via representation or appeal, any unpaid charges will be registered as a charge against the property until the debt is recovered.

### **8.11. The Energy Efficiency (Private rented Property) (England and Wales) Regulations 2015**

- 8.11.1. The above regulations are often known as the MEES Regulations. Under these, the Council has the power to impose a civil penalty. This will be considered where a

landlord has let or continued to let properties subject to MEES that have an Energy Performance Certificate (EPC) rating below an E, without a valid exemption in place. The following maximum penalties apply per property and per breach. The maximum penalty amount per property cannot exceed £5,000. A publication penalty relates to the publication of certain information contained in a Penalty Notice on the PRS Exemptions Register. The Council shall impose a publication penalty in respect of all breaches that are subject to a Penalty Notice for a minimum of 12 months unless there are exceptional circumstances.

- Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.
- Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.
- Up to £1,000 and/or publication penalty for providing false or misleading information on the PRS Exemptions Register.
- Up to £2,000 and/or publication penalty for failure to comply with a compliance notice.

## **8.12. Management Orders**

8.12.1. Under Part 4 Chapter 1 of the Housing Act 2004, the Council has power to take over the management of a privately rented property through a management order in certain circumstances such as where a privately rented property is unlicensed, or no suitable licence holder can be found.

8.12.2. Section 26 and Schedule 3 of the Housing and Planning Act 2016 allows the Council to also make a management order where a banning order has been made and where a private rented property is let in breach of a banning order.

8.12.3. Part 4 Chapter 2 of the Housing Act 2004 allows the Council to make an Empty Dwelling Management Order (EDMO) to secure management of an empty dwelling for period of up to seven years for the purpose of ensuring the property becomes and remains occupied.

8.12.4. The Council will consider a management order or EDMO where the legislation allows and where all other options have been exhausted provided it is a financially viable option.

## **8.13. Banning Orders**

8.13.1. A banning order is an order by the First-tier Tribunal (FTT) that bans a landlord from:

- Letting housing in England; and
- Engaging in letting agency or property management in England

8.13.2. Decisions on whether to make an application for a banning order will be made on a case-by-case basis in line with this protocol. The Council will pursue a banning order in cases where we believe an individual is a serious offender and poses significant risk as a practising landlord. The banning order offences are listed in: [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)

8.13.3. The Council must have regard to the statutory guidance: [Banning Order Offences under the Housing and Planning Act 2016 Guidance for Local Authorities](#), when making the decision to pursue a banning order.

8.13.4. The council will consider the following factors when deciding whether to apply for a banning order and when recommending the length of any banning order:

- **The seriousness of the offence.** All banning order offences are serious. When considering whether to apply for a banning order the council will consider the sentence imposed by the court in respect of the banning order offence itself. The more severe the sentence imposed by the court, the more appropriate it will be for a banning order to be made.
- **Previous convictions/rogue landlord database.** The council will check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received civil penalties in relation to banning order offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be aware of their legal obligations.
- **Upper tribunal decisions.** The council will refer to upper tribunal decisions.

The council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors should include:

- **The harm caused to the tenant.** This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).

- **Punishment of the offender.** A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.
- **Deter others from committing similar offences.** An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

The council may also have regard to other relevant matters deemed appropriate to the case.

8.13.5. A banning order can be imposed for a minimum of 12 months. The Council will recommend to the FTT the length of ban, but the FTT will ultimately determine the length of a banning order.

8.13.6. Appendix C sets out the matrix the council will use to determine whether to apply for a banning order and the recommended length of time of the ban.

8.13.7. Prior to making an application to the FTT for a banning order, a 'Notice of Intent' shall be served on the landlord against whom the application for a banning order is proposed. The notice must set out:

- That the local housing authority is proposing to apply for a binning order and the reasons for this.
- The length of each proposed ban.
- Information about the right of the landlord to make representations during the notice period which must not be less than 28 days.
- The Notice of Intent must be served within six months of the landlord being convicted of the banning order offence.

8.13.8. After the end of the consultation period, the council will decide whether to pursue a banning order on the basis of any representations received. Should the council wish to proceed, an application to the First-tier Tribunal will be made.

#### **8.14. Rent Repayment Orders**

8.14.1. The First-Tier Tribunal can make an order requiring a landlord to repay a specified amount of rent. This is known as a rent repayment order. These were introduced under The Housing Act 2004 in respect of landlords who failed to obtain a HMO licence for a property which was required to be licensed as such.

8.14.2. Rent repayment orders have now been extended under the Housing and Planning Act 2016 to cover the following offences:

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

8.14.3. Rent repayment orders can be granted to the tenant or the Council, depending on how the rent was paid.

8.14.4. The Council when pursuing a rent repayment order must have regard to the statutory guidance: [Rent repayment orders under the Housing and Planning Act 2016](#).

8.14.5. A criminal standard of proof is required. This means that the FTT must be satisfied beyond reasonable doubt that the landlord has committed the offence, or the landlord has been convicted in the courts of the offence.

8.14.6. The maximum amount of rent that can be recovered is capped at 12 months. The Council will calculate the amount but ultimately the FTT will decide.

8.14.7. A rent repayment order can be made against a landlord who has received a civil penalty but only after the relevant appeal period has passed.

8.14.8. It should be noted that tenants also have the right to apply for a rent repayment order.

### **8.15. Prosecution**

8.15.1. The Council may decide to prosecute in respect of serious or recurrent breaches or where other enforcement actions such as statutory notices have failed to secure compliance. When deciding whether to prosecute will have regard to the Crown Prosecution Service [code for crown prosecutors](#). Prosecution will only be considered where we are satisfied that the prosecution is in the public interest, and we have sufficient evidence to provide a realistic prospect of conviction.

8.15.2. In most cases the Council will consider the use of civil penalties as an alternative to prosecution. Consideration will also be given to the use of Rent Repayment Orders in addition to prosecution and/or civil penalties.

8.15.3. The Council has the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution. Before a simple caution is given the Council will as far as is possible consider the following:

- The views of the victim (normally the occupiers)
- The nature and extent of any harm or loss and its significance to the victim
- Whether the offender is remorseful, has made any form of repatriation or paid compensation.

### **8.16. Rogue landlord database**

8.16.1. The Housing and Planning Act 2016 under section 30 places a duty on the Council to input the details of any landlord or managing agent that has been issued with a banning order onto the national database of Rogue Landlords.

8.16.2. The Council also has discretion to input the details of landlords or managing agents who have been convicted of a banning order offence or received two or more civil penalties within a 12-month period.

8.16.3. The Council will apply to have landlords or managing agents' details entered on the database where there is a duty to do so and in cases where the law allows discretion when it's in the public interest.

8.16.4. When determining whether to make an entry on the database and when determining the length of an entry on the database, the Council must have regard to the statutory guidance: [Database of rogue landlords and property agents under the Housing and Planning Act 2016](#).

8.16.5. Appendix D sets out the matrix the council will use to determine whether to make an entry onto the database and the length of time of the entry.

### **8.17. Appeals**

8.17.1. Where a statutory notice or order is served or a licensing decision is made, the method of appealing will be included within the documentation provided. This will include the full postal address and contact information for the relevant appeal body and relevant time period to submit an appeal. To reduce the potential for unnecessary appeals, the Council will aim to provide clear reasons for any decision to a person against whom enforcement action is being taken.

### **8.18. Charges for enforcement action**

8.18.1. The Housing Act 2004 allows the Council to charge for taking enforcement action where enforcement action involves the service of statutory notices and orders. A charge will normally be made for the cost of administration at the current rate for officers' time and other expenses involved. Charges may be waived at the Council's discretion and no charge will be made for Hazard Awareness notices served under the Housing Act 2004. Charge amounts will be periodically reviewed.

### **8.19. Recovery of expenses**

8.19.1. The Council will recover expenses reasonable incurred, in line with relevant statutory provisions. The sum recoverable will be registered as a Local Land Charge on the property concerned until recovered, including any interest incurred. For larger sums of money, the Council may apply for the charge to be registered on the property title deed. In some circumstances, to recover monies owed, the Council may enforce the sale of the property according to the Law of Property Act 1925.

## **9. Houses in Multiple Occupation**

9.1. The Council will investigate and inspect all houses in multiple occupation (HMO) to ensure the health and safety of occupiers and compliance with the law. The Council where appropriate will work on an informal basis with the landlord or managing

agent to reach compliance. In cases where serious hazards are identified or there are serious contraventions, the Council will take the appropriate course of enforcement action to achieve compliance. The Council will consider imposing a civil penalty or prosecution for any breach of enforcement action.

## **9.2. Licensing of Houses in Multiple Occupation (HMO)**

9.2.1. The Council will work to ensure that all HMOs that are required to be licensed under the provisions of the Housing Act 2004 are properly licensed and that they comply with the licence conditions. Licences will be granted where:

- the property is reasonably suitable for occupation as a HMO;
- the property can be made suitable by the imposition of conditions;
- the management arrangements are satisfactory;
- the proposed licensee is a fit and proper person to hold a licence;
- the proposed manager is a fit and proper person to either hold a licence or manage a HMO.

9.2.2. A licence will be refused if the landlord or managing agent has been issued with a banning order.

9.2.3. The Council will consider imposing a civil penalty or prosecution for any licensing offences committed. Licensing offences are:

- Operating a licensable HMO without a licence;
- Allowing a HMO to be occupied by more than is specified on the licence;
- Breaching the licence conditions.

## **9.3. Variation and revocation of a HMO licence**

9.3.1. The council will seek to vary a licence where there has been a change of circumstances, or the property has changed since the licence was granted.

9.3.2. A licence will be revoked where:

- There is a change in ownership;
- The licence holder has died;
- The property is no longer licensable;
- The licence holder or manager is no longer a fit and proper person.

## **9.4. HMO management regulations**

- 9.4.1. Section 234 of the Housing Act 2004 specifies regulations for HMOs to ensure there are in place satisfactory management arrangements and standards of management. The regulations also impose duties in respect of repair, maintenance, cleanliness and good order of the house and facilities. A person commits an offence if they fail to comply with a regulation. The Council will consider imposing a civil penalty for each individual breach of the management regulations. For serious contraventions or recurrent breaches, the Council may consider prosecution.

## **10. Publicity and Communications**

- 10.1. The council will work with the communication team to publicise the verdicts and sentences of criminal cases and basic personal information about the convicted offender, in accordance with guidance issued by the criminal justice system. This will reassure the public, act as a deterrent, and inform residents of action that has been taken to tackle rogue landlords.

# 11. Appendices

## Appendix A: Civil Penalty Matrix

<b><u>DETERRENCE</u></b>					
<p><b>Deter the offender from repeating the offence.</b> The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.</p> <p><b>Deter others from committing similar offences.</b> While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that;</p> <ul style="list-style-type: none"> <li>a) the local housing authority is proactive in levying civil penalties where the need to do so exists</li> <li>b) the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.</li> </ul>					
	<b>Score = 1</b>	<b>Score = 5</b>	<b>Score = 10</b>	<b>Score = 15</b>	<b>Score = 20</b>
Pick one box only to the right choosing the criteria that most closely fits the case	Very high level of confidence penalty will deter the offender from re offending.	High level of confidence that penalty will deter repeat offending.	Moderate level of confidence that a moderate financial penalty will deter repeat offending.	Little confidence that a higher financial penalty will deter repeat offending.	*Very little confidence that a financial penalty will deter repeat offending.
	Technical infringement.	Minor offence.	Moderate offence.	Serious Offence.	Very serious offence.
	No benefit to publicising the penalty through informal channels.	Low level publicity through informal channels would deter others form offending.	Some publicity thorough informal cannels would deter others from offending.	Publicity through informal channels would deter others from offending.	Significant publicity through informal channels would deter others from offending.

### HARM/POTENTIAL HARM

**The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

**The scoring in this section is doubled to highlight that preventing harm to tenants is a priority for the service**

	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Pick one box only to the right choosing the criteria that most closely fits the case	<p><b>Potential</b> for low level of harm</p> <p>One person at risk</p> <p>One occupant exposed</p>	<p><b>Potential</b> for harm to multiple occupants</p> <p>Few people exposed to the risks</p> <p>One vulnerable occupant</p>	<p><b>Actual</b> harm which results treatment by a GP. Potential for significant harm</p> <p>Few occupants affected</p> <p>Multiple occupants potentially exposed</p>	<p><b>Actual</b> harm which results in hospital treatment tenant expected to recover completely</p> <p>Multiple occupants including vulnerable occupants potentially exposed</p>	<p>Significant <b>actual</b> harm which resulted in hospital treatment and could lead to a life long illness</p> <p>Multiple vulnerable occupants potentially exposed</p>

### PUNISHMENT

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

	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Pick one box only to the right choosing the criteria that	<p><b>Small</b> landlord 1 property</p>	<p><b>Medium</b> landlord 2-3 properties</p>	<p><b>Small</b> portfolio landlord 4-10 properties</p>	<p><b>Medium</b> portfolio landlord 11-99 properties</p>	<p><b>Large</b> portfolio landlord 100 or more properties</p>

most closely fits the case			Local managing agent	Regional managing agent	National managing agent
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### **CULPABILITY**

**Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Pick one box only to the right choosing the criteria that most closely fits the case	Offender not aware of the offence but ought to have known	No response to informal action	Moderate level of enforcement taken in the previous 12 months	High level of enforcement taken during the previous 12 months	*Multiple enforcement taken during the previous twelve months
	No previous history	No previous warnings or civil penalties issued	A previous warning no civil penalty	More than one warning ignored and one previous civil penalty issued for minor offence	More than one warning ignored, previous civil penalty issued for serious offence.
	Offender co-operative	Offender co-operative	Offender co-operative	Offender uncooperative	Offender uncooperative
	Offence remedied	Offence remedied	Offence remedied	Continuing minor offence	Continuing serious offence

### **FINANCIAL BENEFIT**

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

	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
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Pick one box only to the right choosing the criteria that most closely fits the case	<b>No financial benefit</b> from operating illegally or substandard accommodation	<b>Some benefit</b> from operating illegally or substandard accommodation	<b>Moderate benefit</b> gained from operating illegally or substandard accommodation	<b>High level of benefit</b> gained from operating illegally or substandard accommodation	<b>Significantly high level of benefit</b> gained from operating illegally or substandard accommodation
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**NOTE:** - add the scores for the boxes chosen, remembering to double the score for the Harm/potential harm box, to provide a total score. Compare the total score with the table below to inform you of the civil penalty.

Score	Fee
5	£250
6-10	£500
11-20	£750
21-30	£1,000
31-40	£2,500
41-50	£5,000
51-60	£10,000
61-70	£15,000
71-80	£20,000
81-90	£25,000
91-120	£30,000

## Appendix B: Statement of Principles

### Statement of principles for determining the financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

#### Introduction

This statement sets out the principles required under regulation 13 of the smoke and carbon monoxide (England) regulations 2015 (the regulations) in determining the financial penalty that the council will apply in exercising its powers under regulation 8 of the same regulations.

The regulations allow the council to issue a Penalty Charge Notice where a relevant landlord had failed to take all reasonable action to comply with a remedial notice served under regulation 5.

The remedial notice would require a relevant landlord within 28 days to comply with their duties under regulation 4(1) to ensure that:

- i. A smoke alarm is installed on each storey of the premises on which there is room used wholly or partly as living accommodation; and
- ii. A carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a fixed combustion appliance; and
- iii. Checks are made on or behalf of the landlord to ensure the alarms are in proper working order at the start of any new tenancy.

#### Financial Penalty

Landlords issued with a penalty charge notice have been given 28 days to comply with statutory provisions that they should already have undertaken. The work a landlord is required to undertake is not onerous and is of a low cost in comparison to the potential risk to the tenants. Principally the aim is to encourage landlords to comply; but in the event of non-compliance, it is not enough to recover the cost of completing the works as this in itself would not deter inaction. Therefore, a financial penalty should be set at an amount to ensure those few landlords that fail to comply with the law are sufficiently penalised. However, penalties would only be served where appropriate, with the aim of ensure the safety of the tenants and not as a way of generating revenue.

The amount of financial penalty is set at £1000 plus costs for the first offence; £3000 plus cost for the second offence and the maximum fine of £5000 for the third offence; including where it can be established that the landlord has been issued with a penalty charge notice from another local authority under the same regulations.

The additional costs are the financial implications that the council would incur for officer time and for the cost of providing and installing the required amount of smoke and/or carbon monoxide alarms.

<b>Offence</b>	<b>Fine</b>	<b>Costs</b>
First	£1000	£542 plus £70 for every alarm fitted.
Second	£3000	£542 plus £70 for every alarm fitted.
Third	Maximum fine of £5000	Cost incorporated

### **Mitigating Factors**

The council agrees to reduce the amount of the penalty charge notice in the following circumstances:-

(a) Early payment

Where a relevant landlord issued with a penalty charge notice makes payment within 14 days of the service date, the financial penalty will be reduced by 50%.

(b) Discretion by Director of Housing

A landlord may under regulation 10 serve on the council a written request to review the penalty charge notice. The request must include information as to why the landlord should not be required to pay the penalty charge. The Director of Housing must consider the landlords representations and then confirm, vary or withdraw the penalty charge notice.

## Appendix C: Framework for deciding whether to apply for a banning order and the recommended length of time for the ban

### Step 1

Consider the seriousness of the offence as either high, medium or low.

When considering the seriousness of offence, officers shall have regard to:

#### Seriousness of offence (may include but not limited to)

##### High

- Serious Criminal Offences, as set out in Annex A of the [Ministry of Housing, Communities & Local Government's Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Housing Authorities.](#)
- Serious housing offences, where the offence arose from dangerous property conditions.
- The offence(s) posed a serious risk or resulted in serious harm to individual(s).
- Serious and/or systematic failure to comply with their legal duties.

##### Medium

- The offence(s) posed a medium risk or resulted in medium harm to individual(s).
- Less severe housing offences (where the offence did not arise from dangerous property conditions) and immigration offences as set out in the list of Banning Order Offences under Schedule 1 of the Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017].

##### Low

- The offence(s) posed a low risk or resulted in low harm to individual(s).

When considering the seriousness of the offence, officers should also consider the sentence imposed by the Court in respect of the banning order offence itself. The more severe the sentence, the more appropriate it will be for a banning order to be made.

### Step 2

Consider the culpability (including previous convictions) of the offender as either high, medium or low.

When considering culpability officers shall have regard to:

##### High

- A track record of serial offending and failing to comply with their obligations as demonstrated by a history of convictions and/or receipt of numerous civil penalties.
- The offender has committed the offences over a prolonged period of time.

- An entry has been made onto the National Rogue Landlord Database in respect of the individual.
- Where the offender knew they were in breach of their responsibilities – intentionally, recklessly breach or wilful disregard the law.
- The offender has not altered their compliance behaviour since committing a banning order offence.

**Medium**

- The offences were committed through an act or omission a person exercising reasonable care would not commit.
- Individual has several previous convictions or has previously received several financial penalties.
- Are an experienced or professional landlord/property manager.
- Are a public figure and should have been aware of their actions.

**Low**

- Offence(s) were isolated occurrences.
- The individual committed the offence(s) with little fault.
- The offender has changed their compliance behaviour since committing the banning order offence.

Consideration of the severity of offence and culpability will determine the initial length of time of the ban.

<b>Culpability and serial offending</b>	<b>Low severity of offence</b>	<b>Medium severity of offence</b>	<b>High severity of offence</b>
Low	No ban	2 years	5 years
Medium	2 years	5 years	5 years
High	5 years	5 years	10 years or more

Following this the officer should consider the following to determine

whether the initial length of time is appropriate or whether a longer/shorter time should be recommended, or whether a ban is appropriate at all. This will vary on a case-by-case basis and will be down to officer discretion (and agreed by the review panel). All decisions to vary the length of time must be recorded and justified on the evidence sheet.

**Step 3:**

Consideration of the harm caused to the tenant. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).

**Step 4:**

Consideration of the punishment of the offender. The length of the ban should be proportional. It is therefore important that it is set at a high enough level to remove the worst offenders from the sector.

Consideration of the effect of the banning order on the person and anyone else who may be affected by the order.

Will the ban have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Consideration of whether the length of time is appropriate in order to deter the individual or others from committing similar offences in the future (for example, whether the individual is in control of properties in multiple LA areas).

## Appendix D: Framework for deciding whether to make an entry onto the rogue landlord and the length of time of the entry

### Step 1:

Consider the severity of the offence as either high, medium or low.

When considering severity of offence officers shall have regard to:

#### High

- Serious Criminal Offences, as set out in Annex A of the [Ministry of Housing, Communities & Local Government's Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Housing Authorities.](#)
- Serious housing offences, where the offence arose from dangerous property conditions.
- The offence(s) posed a serious risk or resulted in serious harm to individual(s).
- Serious and/or systematic failure to comply with their legal duties.

#### Medium

- The offence(s) posed a medium risk or resulted in medium harm to individual(s).
- Less severe housing offences (where the offence did not arise from dangerous property conditions) and immigration offences as set out in the list of Banning Order Offences under Schedule 1 of the Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017].

#### Low

The offence(s) posed a low risk or resulted in low harm to individual(s).

### Step 2

Consider the culpability and any serial offending of the offender as either high, medium or low.

When considering culpability/serial offending, officers shall have regard to:

#### High

- A track record of serial offending and failing to comply with their obligations as demonstrated by a history of convictions and/or receipt of numerous civil penalties.
- The offender has committed the offences over a prolonged period of time.
- Where the offender knew they were in breach of their responsibilities – intentionally, recklessly breach or wilful disregard the law.
- The offender has not altered their compliance behaviour since committing a banning order offence.

### Medium

- The offences were committed through an act or omission a person exercising reasonable care would not commit.
- Individual has several previous convictions or has previously received several financial penalties.
- Are an experienced or professional landlord/property manager.
- Are a public figure and should have been aware of their actions.

### Low

- Offence(s) were isolated occurrences.
- The individual committed the offence(s) with little fault.
- The offender has changed their compliance behaviour since committing the banning order offence.

Consideration of the severity of offence and culpability/serial offending will determine the initial length of time of the entry.

<b>Culpability and serial offending</b>	<b>Low severity of offence</b>	<b>Medium severity of offence</b>	<b>High severity of offence</b>
Low	No entry	2 years	5 years
Medium	2 years	5 years	5 years
High	5 years	5 years	10 years or more

### Step 3:

Consideration of any mitigating factors that may warrant a shorter period of time or which justify a decision not to record a person's details on the database.

Mitigating factors may include:

- Health reasons prevented reasonable compliance resulting in the offences.
- The individual was experiencing a bereavement at the time of the offences.
- The individual is vulnerable where their vulnerability is linked to the commission of the offence(s).

### Step 4:

Consideration of whether the length of time is appropriate in order to punish the offender and deter the individual or others from committing similar offences in the future (for example, whether the individual is in control of properties in multiple LA areas).

