



WIRRAL BOROUGH COUNCIL

HOUSING STANDARDS

ENFORCEMENT POLICY

2025

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1.0 EXECUTIVE SUMMARY

- 1.1 Wirral Borough Council ("the Council's) Housing Standards Team aims to protect and promote the health of occupants and tenants living in private sector housing within the Wirral Borough, by advising and supporting responsible landlords whilst taking enforcement action against landlords who are not meeting their responsibilities or obligations and operate their letting business unlawfully outside the legal framework.
- 1.2 The policy supersedes the Housing Standards enforcement policy of 2019 and should be read in conjunction with the Council's overarching Corporate Enforcement Policy of July 2024.
- 1.3 The aim of the Council's housing enforcement work is to protect its residents and communities by enforcing the relevant legislation efficiently and effectively without imposing unnecessary burdens upon property owners and occupiers. The Council, in developing this policy, have taken into consideration the principles of effective enforcement in accordance with the 'Regulators Code,' the 'Enforcement Concordat' and the Crown Prosecution Code for Crown Prosecutors.
- 1.4 The Council endeavours to work with landlords, letting and management agencies and owners to ensure lawful compliance in their private sector housing responsibilities and obligation but when there are instances of non-compliance the Council will take the appropriate enforcement action and when it does, it will follow the following principles:
 - **Targeted:** Examples of properties that the Council will seek to target for enforcement include those that pose the greatest risk, or nuisance.
 - **Proportionate:** When deciding what enforcement action to take, the Council will take actions that are proportionate given the breach. The Council will avoid actions which may provide a perverse incentive for non-compliance (for example conducting costly works in default where it is difficult for the Council to recover its costs).
 - **Fair and objective:** Decisions will be based on the situation and all available facts fully considered.

- **Transparent:** The Council will endeavour to clearly define its policies and procedures to ensure that they can be easily understood and as far as possible, provide full details upon demand. The Council will give clear reasons to a person against whom enforcement action is being taken.
- **Consistent:** Whilst Officers exercise their judgement in each individual case, the Council will have arrangements in place to promote consistency, including liaison with other authorities and agencies. Council officers will be trained to promote consistency in the interpretation and enforcement of legislation and consult with other local authorities, regional and national to recognise and deliver best effective practice.
- **Accountable:** The Council will seek to consult landlords, tenants, third party partnership agencies and others with an interest in the private housing sector; where possible and appropriate.

- 1.5 All enforcement action taken will be proportional to the risk any situation presents and will always be in accordance with statutory Codes of Practice, Council procedures and protocols, and official guidance from central government.
- 1.6 This Housing Standards Enforcement Policy, with associated appendices for the banning orders and civil penalties, describes the Council's approach to enforcement, including serving statutory notices, making orders, issuing financial penalties, carrying out works in default and pursuing enforced sales, compulsory purchase and prosecution.
- 1.7 This policy aims to detail the protections of tenants in private rented accommodation and the responsibilities of both tenants and landlords in relation to their obligations within the Deregulation Act 2015, particularly those relating to retaliatory evictions, which would also be the starting point for The Council's enforcement procedures.
- 1.8 Note – In this Policy, the term “landlords” also includes “property agents”, “managing agents” and “letting agents” unless otherwise specified.

2.0 GUIDANCE AND LEGISLATION

- 2.1 The Council has a number of enforcement and legislative functions to call upon when compliance by landlords has not been met. The Housing Standards Enforcement

Policy and the associated appendix 1 on civil penalties, has been developed with specific regard to:

- The Housing Act 2004;
- The Housing and Planning Act 2016;
- Civil penalties under Housing and Planning Act 2016 guidance for Local Housing Authorities published 2017;
- Statutory guidance under Schedule 13A of the Housing Act 2004 and Schedule 9 of the Housing and Planning Act 2016;
- The Smoke and carbon Monoxide Alarm (England) Regulations 2015;
- The Electrical Safety Standards in the Private Sector (England) Regulations 2020

2.2 The Council will work closely with other third-party agencies including, HMRC and other law enforcement partners, local and national Police, Trading Standards, Gangmasters and Labour Abuse Authority and the Home Office in relation to human trafficking and forced labour and will strive to work collaboratively with these Agencies through joint enforcement measures whilst taking into account their policies and guidance.

2.3 The Council aims to have comprehensive information and guidance for both Tenants and Landlords available on an easy to navigate corporate website detailing responsibilities and obligations regarding property safety and appropriate accommodation and amenity standards.

2.4 Any complaint against the service will follow the Council's formal complaint procedure, which is easily accessible to all service users on the Council website and also explains the rights of complaint and appeal, including the likely timescales involved. Where the Council has instigated enforcement action against a person, the complaints process will not be available as a means of a challenge to such action, but the appeals process relevant to the type of enforcement action being taken will be clearly stated where appropriate.

3.0 INTRODUCTION

3.1 The Council is committed to improving standards in private sector housing, bringing long-term empty homes back into residential use and ensuring that all private rented

accommodation is well managed, properly maintained, energy efficient and safe for accommodation.

- 3.2 The Council has statutory powers and duties to regulate private sector housing, and these are assisted by a number of legislative enforcement actions including, statutory nuisance, the Housing Health and Safety Rating System (HHSRS), the Mandatory Licensing of Houses in Multiple Occupation and, in designated parts of the borough, the Selective Licensing of houses.
- 3.3 The Council has support from residents and landlords, but there is evidence to suggest that there are a number of criminal and irresponsible landlords who knowingly rent out accommodation that is unsafe, unlicensed or substandard. The good and responsible landlords want the Council to robustly deal with criminal landlords who flout the law and their responsibilities and obligations to try and maximise their profit from their non-compliance.
- 3.4 The Council acknowledges the anticipated legislation proposed in the 'Renters Rights Bill' and the Council is committed to using any powers to improve standards in Wirral's private rented sector.

4.0 **PURPOSE OF THE HOUSING STANDARDS ENFORCEMENT POLICY**

- 4.1 The purpose of the policy is to provide details of the procedures and processes the Council will take where there is non-compliance, and the policy aims to ensure that the Council meets its statutory obligations in relation to private housing by achieving the following outcomes:
- Tenants of private landlords and registered social landlords live in homes that are free from unacceptable hazards and risks to their health and safety and landlords comply with their duties in relation to gas, electrics, and energy performance certificates, etc.;
 - All Houses in Multiple Occupation are safe and professionally managed, and all relevant Management Regulations are adhered to;
 - All Houses in Selective Licensing designated areas are safe and well maintained and managed;

- All licensable Houses in Selective licensed designated areas and Multiple Occupation properties hold a current licence, and all licensing conditions are met;
- Private housing is not left empty for an unreasonable amount of time and/or becomes an eyesore and nuisance to neighbouring properties;
- Privately owned property and land does not present a statutory nuisance to other landowners and does not directly or indirectly present an unacceptable risk to the occupier, public health, safety, or the environment;
- Lettings and property management businesses have registered with a government approved redress scheme and comply with relevant legislation and codes of practice; and

4.2 This policy is designed to ensure transparency, consistency, and fairness in which decisions are made in relation to the appropriate sanction to impose for unlawful and non-compliant landlord behaviour. It provides guidance as to when the Council will prosecute or to impose a civil financial penalty and sets the size of each civil penalty following an approved process that considers culpability, harm, appropriate punishment level and deterrent for future behaviour. This is detailed in **appendix 1** Civil Penalty Policy.

5.0 PRINCIPLES OF EFFECTIVE ENFORCEMENT, COMPLIANCE AND REGULATION

- 5.1 When completing its functions and duties in relation to Private Sector Housing, the Council will consider the principles of good enforcement detailed within:
- Part 2 of the legislative and Regulatory Reform Act 2006; and
 - The Regulators Code.
- 5.2 The Council will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers and will consider the impact on tenants. In doing so, it will have regard to the role of inspections, compliance visits and advice and guidance, and the principles underpinning its advisory and regulatory activities.
- 5.3 Following statutory guidance issued pursuant to the Deregulation Act 2015, except in emergency circumstances, tenants of the private rented property requesting to make complaints of disrepair in their property, are required to inform their landlord or responsible person. This should be in writing, allowing them 14 days opportunity to

respond to the complaint setting out what they intend to do to remedy the problem and providing a reasonable timeframe for doing so. Should the complainant be dissatisfied with the response or the planned action, then the Council will commence investigations to remedy the alleged disrepair or poor condition of the property. This is to allow the responsible person reasonable opportunity to correct any conditions in the property that may raise risks of harm or injury to occupying tenants or persons visiting the property without the involvement of the Council to achieve this.

- 5.4 Effective and correct communication between the occupant or person making the complaint in relation to the property condition to the responsible person, within the required timeframes would also protect the occupant. This protection would be for a period of 6 months, from the landlord serving a Section 21 Housing Act 1988 notice to regain possession of the property, if there are notices served to require a category 1 hazard to be reduced or removed. This is commonly referred to as a retaliatory eviction.
- 5.5 Once the Council have become aware of the unsatisfactory response by the landlord, The Council will inform the landlord of its intention to inspect the property with a view to the landlord or responsible person making a commitment to work with the tenant to remedy of repair concerns prior to any Council property inspection visits.
- 5.6 Should the landlord or responsible person fail in their obligation to ensure the property is free of any serious hazards, then the Council will be robust in its response to this non-compliance and enforcement action will take place.
- 5.7 The Council will triage the requests made to the Council on a risk basis and will prioritise to attend those complaints which would evidence a higher risk to the occupants.
- 5.8 The Housing Standards team will also undertake proactive property inspections, based on risk and intelligence, and ensure that its resources are targeted at the higher risk properties first including, for example, licensable Houses in Multiple Occupation that are operating without a licence.
- 5.9 The Council will aim to reduce the number of empty properties and, where resources allow, will target those properties that are a blight on the neighbourhood with an aim to increase the supply of good quality and affordable housing that meets the increasing needs of local people.

- 5.10 Where resources allow, the Council will engage with owner occupiers who are vulnerable in addressing the disrepair of their homes, where it may be more appropriate in offering available conditional financial assistance grants and loans to improve heating, insulation, and other elements of independent living, subject to qualifying criteria. If there are any disrepairs that result in assessed hazards, the owner would be issued with a hazard awareness notice to inform them of the deficiencies in the property. This advice may take a more formal approach if the disrepair is assessed to be an imminent risk for example, falling elements, structural collapse or dangerous gas or electrical supply. In such circumstances, emergency measures by the Housing Standards team or other enforcement agency for example Building Control will be considered.
- 5.11 The Council will investigate complaints from tenants residing in registered social housing not owned or managed by the Council, providing that the complainant has exhausted the repairs and complaints process within their own landlord organisation which has resulted in an unsatisfactory outcome with disrepair and hazards still evident within the property. The Council will take the necessary action which may include enforcement measures, to ensure the housing providers compliance in repairing the property and removing or mitigating hazards in the property.
- 5.12 The Council strives to improve landlords' awareness of their duties. It is responsible for the administration and enforcement of HMO licensing, and ensuring that individuals, businesses and organisations comply with their legal obligations in relation to housing conditions, overcrowding, energy efficiency, illegal eviction, harassment and aspects of public health. The Council will work with other enforcement agencies including Police, Fire and rescue, Trading standards and Environmental Health to achieve this.
- 5.13 All the Officers in the Housing Standards Team will be fully trained, competent, and authorised by The Council. Authorised Officers will carry an Identity Card (displaying their name and photograph) and, where appropriate, a Warrant Card (displaying their name, job title and a list of the legislation in respect of which they are authorised to act).
- 5.14 The Housing Standards Team may use all available powers to achieve its objectives. These may include The Environmental Protection Act 1990 and The Building Act 1984 amongst other powers to achieve powers of entry, the power to require a person to

produce documents and/or information about their identify and interest in property or land, and the power to require certificates regarding gas and electrical safety.

6.0 WIRRAL COUNCIL'S HOUSING STANDARDS FUNCTION AND APPROACH TO NON-COMPLIANCE.

Housing, Health, and Safety Rating System (HHSRS)

6.1 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a risk-based assessment that is used to determine the level of risk that residential property poses to the health and safety of the occupants and visitors.

6.2 There are two categories of hazards:

- Category 1 hazards represent a serious risk to health and safety. The Council has a legal duty to take appropriate action to deal with these.
- Category 2 hazards represent a lesser risk and, although it has no legal duty to take action, the Council will exercise its discretionary power to reduce category 2 hazards where appropriate.

6.3 In many cases, the Council will follow a pre-formal process in which it will seek to collaborate with landlords to reduce hazards. However, it may be necessary for the Council to instigate immediate formal action in the event of imminent risks of severe harm or death. The Council has discretion to take informal or formal actions.

6.4 When considering what action should be taken in relation to Category 2 hazards, the Council will have regard to national guidance and consider whether there are also any Category 1 hazards present. It will also consider the presence of two or more Category 2 hazards which, when taken together, amount to neglect of the property or disregard for the tenant's health, safety, and wellbeing.

6.5 Where the responsible person has a history of failing to comply with previous enforcement advice or action, this will be considered when determining an appropriate course of action.

6.6 Reasonable charges will be made for any formal enforcement action that the Council takes under Part 1 of the Housing Act 2004, as provided for by section 49 of that Act.

Houses in Multiple Occupation (HMOs)

6.7 Wirral has over 2000 HMOs, properties that are occupied by more than one household and share at least one facility. As HMOs are higher risk than single family homes, the conditions, facilities, and management are regulated. Around 165 of these HMOs are subject to mandatory licensing:

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

- 6.8 The Council does not currently have an additional designated area requiring small HMO's to be licenced but should circumstances change within the areas of poor-quality housing, an additional licensing designation may be approved and enacted after the appropriate consultation and Council decision. Additional HMO licences would be required for HMOs that are situated in the Additional HMO area, are occupied by 3 or 4 unrelated persons who are sharing facilities or are self-contained units that are not compliant with Building Regulations 1991 or later.
- 6.9 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 6.10 It is a criminal offence if a person controlling or managing a licensable HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.
- 6.11 The Council aims to issue a new licence within 26 weeks from the date of application. Issuing a licence within this period is dependent on the landlord supplying the required information and payment within timescales and that the landlord makes no representations. Where information or payments are late, or representations made, then the processing time will be longer. Tacit consent, in accordance with section 19 of the Provision of Services Regulations 2009, does not apply given that the council must check that the HMO meets the prescribed standards including an inspection of the property to confirm it is suitable for licensing. In the interest of public safety, the Council will give full consideration to each licence application before it is approved or rejected.

Licensable HMOs operating without a licence

- 6.12 The Council has an intelligence-led, targeted approach to housing enforcement and the identification of licensable HMOs that are operating without a licence. It will work to safeguard and improve the living conditions of the occupiers and ensure that properties are appropriately licensed and that the conditions are suitable. It will also pursue anyone

who is controlling or managing a licensable HMO without a licence and, where appropriate, it will prosecute them or impose a civil penalty.

- 6.13 The Council will consider any representations that are received from landlords in relation to exceptional circumstances that may have resulted in a 'duly made' HMO licence application not being submitted on time. If a licence applicant responds quickly to the Council's notification that an HMO requires an HMO licence and they co-operate fully with the Council to ensure that the HMO is licensed as soon as practicable, the Council may decide (at its sole discretion) to issue a lower value financial sanction in accordance with the civil penalty policy in appendix 1. Each case will be determined on its individual merits and circumstances.
- 6.14 Where a licensable HMO is operating without a licence, any eviction notice that is served on the tenants under Section 21 of the Housing Act 1988 will be invalid. Such notices will continue to be invalid for as long as the HMO remains unlicensed. Details of the service of the section 21 notice will be referred to the Council's Housing Advice team who may advise the affected tenant further. When the responsible person is sanctioned for operating without the required HMO licence, the Council must apply to the First Tier Tribunal for a Rent Repayment Order if the affected tenant is in receipt of housing related benefits and may assist other tenants in applying for their Rent Repayment Order as detailed in Appendix 3.

Renewal of HMO Licences

- 6.15 It is the responsibility of the landlord to renew their HMO licence on time. Failure to do so may result in prosecution or the imposition of a civil penalty. As part of the renewal process for HMO licences, and in addition to its routine inspection programme, the Council may undertake further inspections of the property. Where changes to legislation, or the Council's amenity standards have changed, landlords may be asked to undertake additional works or reduce the occupancy numbers. The existence of an HMO licence does not guarantee the renewal of the licence on identical terms.

HMO Licence Fees

- 6.16 The HMO licence fees cover the administration and enforcement of the licensing schemes and are subject to regular review. For further information, please refer to the Wirral Council Fees and Charges Scheme [here](#).
- 6.17 The Council currently licenses their mandatory HMOs for a period of three years. The period of the licence may be reduced to an appropriate lesser period, where the following may apply:

- To allow time for the owner to resolve outstanding planning or building control matters before landlords can use the property as an HMO.
- Where there are concerns that the proposed management arrangements may not be satisfactory, and evidence is required to show that management is satisfactory before a longer licence period can be agreed.
- Where it is necessary to remove any advantage that the applicant might gain over those licence holders who applied at the appropriate time.
- Where a scheme, for example, an additional or selective HMO licensing requirement, is time limited by law.

6.18 Once an HMO licence has expired, a new application and fee will be required.

The 'Fit and Proper Person' test

- 6.19 In deciding to grant an HMO licence, the Council must be satisfied that the proposed licence holder is a 'fit and proper person' to be the licence holder, the proposed manager of the HMO is a 'fit and proper person' to be the manager of the HMO, and everyone involved in the management of the property is a 'fit and proper persons' to be involved in its management.
- 6.20 This requirement is to ensure that those responsible for operating the licence and managing the HMO are of sufficient integrity and good character to be involved in the management of the residential property and as such they do not pose a risk to the welfare or safety of persons occupying the property. The Council will only accept property managers that are resident in the UK.
- 6.21 The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a 'fit and proper person'. When making this decision, the Council will consider their fitness to hold the licence or to manage the property.
- 6.22 When considering whether a person is 'fit and proper', the Council will consider each case on its merits and must have regard to whether the applicant has:
- Previous convictions involving fraud or other dishonesty, violence, drugs, or sexual offences;
 - Practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the conducting of any business;

- Been served with a Banning Order in accordance with Part 2, Chapter 2 of the Housing and Planning Act 2016, or any amendment thereof;
- Contravened any provision of housing or landlord and tenant law; or
- Acted otherwise than in accordance with an approved code of practice regarding the management of HMOs or of excepted accommodation.

6.23 When considering whether a person is 'fit and proper', the Council must also have regard to the following:

- The nature of any convictions and the relevance of those convictions to the management of the HMO. (Convictions relating to fraud, running unlicensed HMOs or violence, for example, may affect someone's 'fit and proper' status, and a conviction based on the existence of a Category 1 hazard would give an indication of an applicant's approach to health and safety in a property); and
- The seriousness of any convictions. (An administrative breach of the HMO Management Regulations, such as not displaying the Code of Good Management Practice, is unlikely to affect a person's 'fit and proper' status).

6.24 When considering whether a person is 'fit and proper' the Council may also take into account whether any person associated or formerly associated with the applicant, licence holder or manager has done any of the things identified in 6.23 and 6.23, if it considers this information relevant.

6.25 The Council is entitled to consider other factors as far as they are relevant to the fitness and propriety of the relevant person. It would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be a 'fit and proper person.'

6.26 The Council may review a person's 'fit and proper' status at any time. Removal of the status, by the Council or any other relevant authority may lead to a refusal and/or revocation of the HMO licence(s).

6.27 The Council will also share information with other authorities in determining the 'fit and proper person' status of licence holders and managers or allowing other authorities to make such a determination.

HMO Management Regulations

6.28 The HMO Management Regulations place obligations on landlords and managers of HMOs to maintain and manage the HMOs they run. The Regulations also place obligations

on occupiers of HMOs to not obstruct or interfere with the management and maintenance of the HMO.

6.29 There are three sets of Regulations:

- The Management of Houses in Multiple Occupation (England) Regulations 2006;
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007; and
- The Licensing of Housing in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.

6.30 The regulations cover the following:

- Duty of the manager to provide information to occupier;
- Duty of the manager to take safety measures;
- Duty of the manager to maintain water supply and drainage;
- Duty of the manager to supply and maintain gas and electricity;
- Duty of the manager to maintain common parts, fixtures, fittings, and appliances;
- Duty of the manager to maintain living accommodation;
- Duty to provide waste disposal facilities; and
- Duties of occupiers of HMOs.

6.31 Breaching any of the Regulations is an offence under section 234 of the Housing Act 2004, which carries an unlimited fine or the imposition of a civil penalty of up to £30,000 for each breach.

6.32 If the HMO is licensed, the Council will inform the landlord and/or manager of the breaches of the HMO Management Regulations and provide them with a reasonable amount of time to remedy the breaches, having regards to the risk to the tenants. Formal enforcement action will then be considered if the breaches are not remedied. Each incident of breach will be assessed on its merits for a financial sanction. If the HMO is unlicensed, or there is an assessed imminent risk of harm or injury to the occupants, the Council may consider formal enforcement action immediately.

Overcrowding

6.33 Overcrowding is a complicated issue to deal with because, unlike other hazards, there is often very little that the landlord can do to resolve the problem. When a tenancy expires, the Housing Standards team may, by issuing an overcrowding notice, prohibition notice or

enforcing conditions in relation to the Licensing of Housing in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018, require the landlord to reduce or limit the number of people living in the property when it is re-let.

Empty Properties

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

Illegal Eviction and Harassment of Tenants

- 6.36 The Council is committed to enforcing tenants' rights under the Protection from Eviction Act 1977, and it will work proactively to prevent illegal evictions and harassment, assist in reinstating tenants who have been evicted illegally and, where tenants are unable to return, investigate alleged offences.
- 6.37 Depending on their tenant's security of tenure, most landlords are required to give notice and obtain a court order for possession after the notice has expired.
- 6.38 Illegal eviction occurs when the tenant is unlawfully prevented from entering all or part of their accommodation. Examples include:
- The use of violence (or threats of violence) to force the tenant to leave;
 - Preventing the tenant from entering accommodation they have the right to occupy;
 - Changing the locks while the tenant is out; or
 - Evicting a tenant before the proper legal procedures have been followed.
- 6.39 Harassment occurs when a landlord (or someone acting on their behalf) does something that is likely to interfere with the tenant's peace and enjoyment or persistently withdraws or withholds services that the tenant reasonably requires for the occupation of the premises in the knowledge that this is likely to cause them to leave the property or refrain from exercising their tenancy rights. Examples include:
- Forcing the tenant to sign agreements which take away their legal rights;
 - Removing or restricting essential services such as hot water or heating or failing to pay bills in order that these services are cut off;

- Constant visits to the property (especially if late at night or without sufficient or reasonable notice;
- Entering the accommodation when the tenant is not there, or without the tenant's permission; and
- The use of violence or threats of violence.

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

Charging for Enforcement Actions

- 6.41 The Housing Act 2004 allows local housing authorities to make a reasonable charge to recover administrative and other expenses incurred when taking certain enforcement action. Other legislation allows them to recover the cost of Officers' time and expenses incurred when determining what works need to be carried out as works in default.
- 6.42 The Housing Standards Team will recover all costs and fees when formal action is taken, and it is satisfied that it is reasonable for the responsible person to bear the cost. The full costs (Officers' time, expert reports, and overheads, etc) will be charged and, in some cases – where it is reasonable and proportionate – the enforced sale of the property will be considered in order to recover costs and reconcile a registered debt.

7.0 DECIDING WHAT LEVEL OF ENFORCEMENT ACTION IS APPROPRIATE

- 7.1 The criminal standard of proof is required to be met to justify either the imposition of a civil penalty or a prosecution in the Magistrates' Court for a relevant housing offence. This means that, before taking formal action, the Council needs to satisfy itself beyond reasonable doubt that, if the case were to be prosecuted in the Magistrates' Court, a person's conduct amounted to a relevant housing offence.
- 7.2 To achieve a conviction in Court, the Council must be able to prove beyond reasonable doubt that the accused has committed a relevant housing offence. The same principle applies in respect of civil penalties issued in accordance with section 249A and Schedule 13A of the Housing Act 2004 so, where a civil penalty is imposed and an appeal is subsequently made to the First-Tier Tribunal Property Chamber, the Council will need to be able to prove to the Tribunal that the relevant housing offence has been committed beyond a reasonable doubt.

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

7.4 **Escalated Sanction Examples and measures to ensure compliance.**

7.4.1 **No Action**

Where formal action may not be appropriate. In such cases, customers may be directed to other sources of advice and support.

7.4.2 **Informal Action and Advice**

Where it may be appropriate to deal with the issues through informal action and advice. In such cases, the pre-formal stage of the HHSRS may be followed, with the Council collaborating with responsible landlords and owners to address and resolve any problems.

7.4.3 **Hazard Awareness Notice**

Where a landlord or owner has agreed to take remedial actions and the Council is satisfied that the work will be completed within a reasonable time, where the Council considers this to be a reasonable response to less serious hazards, or where improvement or prohibition of use may not be practicable or reasonable in the circumstances These notices are advisory only, but do not prevent the Council from taking further action later if an unacceptable hazard remains.

7.4.4 **Enforcement Notices**

Enforcement Notices are appropriate in the following circumstances where:

- a person refuses or fails to carry out works through the pre-formal HHSRS process;
- there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach;

- there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc);
- standards are extremely poor, and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements;
- the person has a history of non-compliance with the Council and/or other relevant regulators;
- the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management);
- it is necessary to safeguard and protect the occupiers' future health and safety; and
- it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.

7.4.5 Request Information or Documents

Information or documents will be requested where:

- it is necessary for information to be provided to enable Officers to carry out their powers and duties;
- it is necessary for documents to be provided to enable Officers to carry out their powers and duties under the Housing Act 2004;
- it is necessary to prove the tenancy of a property, bank statements, rent books or equivalent;
- it is necessary to determine the relationships of tenants, for example, birth certificates, passports, marriage certificates etc.;
- it is necessary for electrical certificates, gas safety certificates, fire risk assessments and fire detection certificates to be provided in relation to HMOs;
- it is necessary for insurance documents and energy performance certificates to be provided in relation to privately rented properties; and
- it is necessary for any person with an interest in a property to provide details about its ownership, management and occupation, etc.

7.4.6 Emergency Remedial Action /Prohibition Order

Emergency Remedial Action or a Prohibition Order is appropriate where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises

7.4.7 Works in Default for Failing to comply with a Notice.

Where works are required – in accordance with a Notice – to address a serious hazard, but these are not carried out within the permitted time, the Council may undertake these works as works in default, independently to the consideration of any other action, such as civil penalties or prosecution.

7.4.8 Injunctive Action

Injunctive action is appropriate where:

- the situation is dangerous and/or there is significant public detriment, and the offenders have repeatedly been found guilty of similar offences;
- it is necessary to prevent further offences; and
- it is necessary to prevent the harassment of tenants, witnesses, or other people.

7.4.9 Revocation of an HMO License

Revocation of an HMO License is appropriate where

- the Licence Holder, or the named Property Manager is not a “fit and proper person;” and
- there are serious breaches of the licensing conditions and/or serious management offences.

7.4.10 Civil Penalties

Civil penalties are appropriate where:

- an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public;
- an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged;

- an individual or company has deliberately or persistently ignored written warnings or formal notices / orders, or no reasonable progress has been made in relation to the carrying out of the requirements; and
- the alternative means of achieving compliance (works in default, for example) are considered inappropriate; the defendant has obstructed an Officer in the course of their duties or provided false information.

7.4.11 Simple Caution

Where an offence is less serious and the person who has committed the offence has admitted their guilt. In such cases, a Simple Caution may be offered (as an alternative to Court or Civil Penalty action, and on the understanding that the Council's costs will be paid by the offender) where it is likely that they will heed a warning about their behaviour and the legal consequences if they commit further offences. The Council may consider Simple Cautions where:

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

If the defendant agrees to receive a Simple Caution, the Council will seek to recover the costs of the investigation as part of the Simple Caution process. If they do not agree to receive a Simple Caution, the Council will consider prosecution or Civil Penalty.

7.4.12 Prosecution

Prosecution will be considered where:

- the offence is not covered by applying a Civil Penalty;
- an individual or company has endangered the health, safety or wellbeing of occupiers, visitors, or members of the public;
- an individual or company has deliberately, negligently, or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged;

- an individual or company has deliberately or persistently ignored written warnings or formal notices / orders, or no reasonable progress has been made in relation to the carrying out of the requirements;
- a simple caution is considered inappropriate, or the defendant has refused to accept a simple caution; and
- the defendant has obstructed an Officer in the course of their duties or provided false information.

7.4.13 When deciding whether to instruct legal services to prosecute, the Council must take account of the Code for Crown Prosecutors and be satisfied that there is sufficient, admissible, and reliable evidence beyond all reasonable doubt that an identifiable individual company or representative of that company has committed an offence. It must also be satisfied that there is a realistic prospect of conviction.

7.4.14 The Code also requires that the Council must decide as to whether a prosecution would be in the public interest. Where there is evidence, Officers will consider prosecution and, as part of their investigation, they will consider, amongst other things, the following:

- Any reasonable explanation provided by the individual or company.
- Evidence that the individual or company intends to prevent any recurrence of the problem.
- An individual's state of health.
- The offender's attitude to the offence.
- The interactions between the Council and the offender during the investigation of the offence

7.4.15 Any initial decision to prosecute will initially be considered at a case conference attended by the Officers and relevant senior officers from Housing Standards. If a prosecution is deemed appropriate, then the case will be fully prepared and referred to the Council's legal service. Legal services will consider the evidence and take into account the Code for Crown Prosecutors before making any final decision as to whether or not to prosecute.

7.4.16 Prosecutions will be brought without delay and generally there is a requirement to lay an Information for summary only offences at the Magistrates' Court within six months of the Council being aware and proof of the offence being committed.

7.5 Powers of Entry

7.5.1 In certain circumstances, Powers of Entry into a property are provided to authorised Officers in accordance with the legislation. In general, the powers will allow an Officer at any reasonable time to:

- Enter a property to carry out an inspection;
- Take any other persons with them (to assist the officer during their visit);
- Take equipment or materials with them (to assist the officer during their visit);
- Take measurements, photographs or make recordings;
- Take samples of articles or substances found on the premises; and
- Sometimes carry out works, or to facilitate works undertaken by contractors working for the Council, for example, fitting smoke alarms, or arranging specialist inspections and works to electrical installations

7.5.2 In many cases, prior notice will be given to owners and to occupiers. Although the notice will normally be given in writing or by e-mail, it may sometimes be given verbally, depending on the relevant statutory notice. The amount of notice given will depend on the specific requirements of the legislation being enforced. There are circumstances where the Council is not required to provide prior notification of entry. These include but not exclusively the licensing and management of houses in multiple occupation.

7.5.3 Powers of Entry can be enforced with a Warrant, obtained from a Magistrate. Police and/or other regulatory agencies, including but not limited to Planning Enforcement, the Immigration Service, the Fire Service, the Gangmasters & Labour Abuse Authority and Trading Standards, will often accompany Council Officers when they enforce Power of Entry.

7.5.4 It is an offence to obstruct an Officer in the course of their duty. Officers exercising their Power of Entry will carry identification and details of their signed authorisation to carry out their action.

7.6 Works in Default

7.6.1 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so or carry out emergency remedial action where there is imminent risk to occupants.

7.6.2 In most circumstances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.

7.6.3 The full cost of the works will be recovered in accordance with the relevant statutory provisions. A Charge will be placed on the property and the debt will be pursued if timely payment is not made. If interest can be charged while the debt remains unpaid, this will be added to the debt. (For further information, see the Housing Standards Fees & Charges Policy). The Council is not obliged to carry out works in default and reserves the right not to do so in certain circumstances.

7.7 Revocation of HMO and Selective licences or Approvals

7.7.1 The Council may revoke an HMO or Selective licence or the approval of those licences in the following circumstances:

- Breach(es) of licence condition(s), or that the structure of the HMO is such that a new or renewal application would not be granted on similar terms as the existing licence;
- Breaches of the selective license conditions that would put the occupants at a risk of injury or harm;
- Where the licence holder and/or the manager are no longer considered 'fit and proper' person(s);
- By agreement with the license holder because, for example, they have disposed of their interest in the property;
- Where the property licensed ceases to be an HMO; and
- Where the Selective Licensed property use deems an exemption from the licensing regime e.g. the property now occupied by family members.

7.8 Management Orders

- 7.8.1 If the Council is satisfied that there is no reasonable prospect of a licensable HMO being licensed (with appropriate conditions) in the near future, or if it is necessary to take immediate steps to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity, it must make an Interim Management Order in respect of the HMO. These Orders also enable the Council to take any other appropriate steps to ensure the management of a licensable HMO.
- 7.8.2 The Council must also make an Interim Order if it has revoked an HMO licence, but that revocation has been appealed or not yet come into force and, if it were in force, there will be no reasonable prospect of the house being licensed in the near future or if it would necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity if it were in force.
- 7.8.3 Although the Council may delegate the management of the HMO to another agency or partner – and there are provisions to vary, revoke and appeal against an Interim Management Order – an Interim Management Order will be in force for 12 months or until an HMO licence is granted if this happens within 12 months.
- 7.8.4 An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect rent and to use that rent to pay for work to the property.
- 7.8.5 Where the Council is satisfied that a significant and persistent problem of anti-social behaviour in an area is attributable, in full or in part, to the anti-social behaviour of an occupier of an HMO or other privately rented dwelling and that the landlord is failing to take appropriate action to combat the problem and the making of a Special Interim Order will lead to its reduction or elimination, it can apply to the First Tier Tribunal for a Special Interim Management Order for that dwelling.
- 7.8.6 The Council must also be satisfied that a Special Interim Order is necessary for protecting the health and safety or welfare of persons occupying, visiting or otherwise engaging in lawful activities in the vicinity of the house before making an application to the Tribunal. These orders operate in the same manner as an interim order.

7.8.7 If the Council is satisfied (on the expiry of any Interim Management or Special Management Order) that the HMO still requires a licence, but it is still not able to grant the HMO a licence, it must make a Final Management Order in order to secure the proper management of the house on a long-term basis in accordance with a management scheme.

7.8.8 A Final Management Order is similar to an Interim Management Order in that there are provisions to vary, revoke and appeal against a Final Management Order, the Council may delegate the Management of the HMO to another agency or partner, and the Council continues to manage the property with many of the rights of the landlord. However, it must review the arrangements from time to time, but Final Orders may last up to 5 years. If the conditions that led to it being made still apply, then the Council may have to make a new Final Order for another maximum period of 5 years.

CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016 AND THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

1.0 Introduction

- 1.1 This guidance outlines Wirral Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.
- 1.2 The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties (a) know how the Council will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly. The further objectives of using financial penalties as a means of enforcing the above offences are explained below.
- 1.3 The Council is mindful that despite its best efforts, many landlords may operate unlawfully for a significant period of time without detection, and only a proportion of landlords committing relevant offences will be discovered. The Council is, therefore, mindful that when deciding to impose a Civil Penalty, it should create an environment where it is clear to the offender and others that operating unlawfully as a landlord will be financially disadvantageous when compared to operating lawfully.
- 1.4 The Council intends to create an environment where landlords engage with the Council's requests and demands fulsomely, openly and honestly. This helps create a level playing field which supports the aims of transparency and consistency. No landlord should be able to financially benefit from withholding information the Council deems relevant that is, or should be, in their control to disclose. It is expected that fulsome and complete supporting evidence is provided to support any Written Representations received in response to a Notice of Intent.

2.0 Explanation of Terms

- 2.1 In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms 'House of Multiple Occupation' or 'HMO' are defined by the Housing Act 2004.

3.0 Civil Penalty Legislation relevant to Housing Standards

- 3.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 provide The Council with the power, through the insertion of section 249A Housing Act 2004, to impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:
- Failure to comply with 1.1an Improvement Notice [section 30];
 - Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 [section 72];
 - Offences in relation to the Selective Licensing of 'houses' under Part 3 [section 95];
 - Failure to comply with an Overcrowding Notice [section 139];
 - Failure to comply with a management regulation in respect of an HMO [section 234];
- 3.2 Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 provides local authorities with the power to impose a civil penalty in respect of breaches of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 3.3 In addition, section 23 of the Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.
- 3.4 The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at the same property, a separate civil penalty can, and usually will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.

4.0 Statutory Guidance

- 4.1 The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled "Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities". The Council has regard to this guidance in the exercise of their functions in respect of civil penalties.
- 4.2 Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:
- Severity of the offence.** The more serious the offence, the higher the penalty should be.
 - Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or

their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

- c. **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d. **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 demonstrate the consequences of not complying with their responsibilities.
- e. **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f. **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

- 4.3 The factors detailed in the statutory guidance and policy aims will be considered by the Council when deciding where, within the Civil Penalties matrix below, a particular offence and penalty fall.

5.0 Civil Penalties Matrix

- 5.1 In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account **aggravating** and **mitigating** factors the Council deems significant including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.

- 5.2 In deciding what level of penalty to impose, officers will conduct the following four stage process:
- 1st, they will consider the seriousness of the relevant housing offence to identify a starting level of the penalty.
 - 2nd, an assessment of the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property will be considered, which may have the effect of increasing or decreasing the penalty.
 - 3rd, aggravating and mitigating factors that may relate to a number of factors including, but not limited to, culpability, track record and harm will be considered, which may have the effect of increasing or decreasing the penalty.
 - 4th, if any of the discounts, as set out below, apply, the penalty will be decreased.
- 5.3 Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table below with the headings 'Seriousness of offence' and 'Starting level [£]'. Consideration of the number and type of rental properties controlled or owned or managed may adjust the penalty.
- 5.4 To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased in excess of a total of £5000. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty in excess of £5000. The presence of numerous mitigating factors will not automatically be considered as exceptional circumstances.
- 5.5 The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might give rise to mitigation.
- 5.6 To ensure that any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factors will rarely result in the penalty being increased in excess of £5000. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £5000. The presence of numerous aggravating factors will not automatically be considered as exceptional circumstances.
- 5.7 The Council may, exceptionally, including for the reason given above, increase the penalty by more than £5000 on account of aggravating factors or, again exceptionally, decrease it by more than £5000 on account of mitigating factors. In order to meet the objectives of this policy, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £5000 on account of aggravating or mitigating factors in exceptional circumstances only excluding any Discounts as set out below. The Council will consider on a case-by-case basis whether any such circumstances exist.

Seriousness of offence	Starting level [£]
Mild	2500
Moderate	7500
Serious	12500

Very Serious	17500
Severe	22500
Very Severe	27500

6.0 Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

6.1 Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004

6.1.1 *Maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice - Unlimited*

6.1.2 An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

6.1.3 In some cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

6.1.4 The seriousness of the offence of failing to comply with an improvement notice is regarded by the Council as being a **Severe** matter, attracting a financial penalty with a starting level of **£22500**.

6.1.5 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £17500.

6.1.6 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22500.

6.1.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £27500.

6.1.8 *Aggravating features/factors specific to non-compliance with an Improvement Notice*

- The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the

health and/or safety of the occupant[s] in the property or their guests would justify an increase in the level of the civil penalty.

6.1.9 *Generic aggravating features/factors*

The Council will have regard to general factors in determining the final level of the civil penalty including, but not limited to:

- A previous history of non-compliance would justify an increased civil penalty. Non-exhaustive examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], receipt of financial penalties, rent repayment orders, works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- A failure to cooperate with a Council investigation. Non-exhaustive examples of failure to cooperate would include failing to comply with a s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with a s.235 Housing Act 2004 notice, failing to provide a substantive response to a letter of alleged offence.
- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after relevant correspondence was sent by the Council.
- The number of residents placed at risk.
- Offending over an extended period of time i.e. 3 months or longer.
- Whether any vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.

6.2 **Failure to License offences**

6.2.1 ***Failure to license a Mandatory 'HMO' – Section 72(1) of the Housing Act 2004***

6.2.2 ***Maximum Court fine following prosecution that can be levied for failure to license an HMO or Part 3 House – Unlimited***

6.2.3 Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority. HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

- 6.2.4 The Council regards the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.
- 6.2.5 This seriousness of the offence is regarded by the Council as being a **Very Serious** matter, attracting a financial penalty with a starting level of **£17500**.
- 6.2.6 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.
- 6.2.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.
- 6.2.8 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.
- 6.2.9 *Aggravating features/factors specific to failure to licence offences*
- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
 - Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.
- 6.2.10 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.
- 6.3 Failure to license a property under the Council's Selective Licensing Scheme – Section 95(1) of the Housing Act 2004**
- 6.3.1 *Maximum Court fine following prosecution that can be levied for failure to license a privately rented property in a Selective Licensing Area – Unlimited*
- 6.3.2 The Council has also exercised their powers under section 80 Housing Act 2004 and has designated certain areas as being subject to selective licensing. Under this scheme, which came into force on 1 April 2024 and expires on 31 March 2029, privately rented homes within the designated areas which do not fall under the Mandatory HMO licensing scheme are required to have a property licence. Through the Selective Licensing

scheme, the Council intends to improve the professionalism of private landlords and drive-up property standards.

- 6.3.3 The Council regards the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.
- 6.3.4 This seriousness of the offence is viewed by the Council as being a **Serious** matter, attracting a financial penalty with a starting level of **£12500**.
- 6.3.5 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.
- 6.3.6 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.
- 6.3.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.
- 6.3.8 *Aggravating features/factors specific to non-licensing offences*
- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, a property that required a Selective Licence and was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
 - Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.
- 6.3.9 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.

6.4 Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004

- 6.4.1 *Maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice – Unlimited*
- 6.4.2 Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

- 6.4.3 The Council regards the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.
- 6.4.4 The seriousness of the offence is regarded by the Council as being a **Very Serious** matter, attracting a financial penalty with a starting level of **£17500**.
- 6.4.5 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.
- 6.4.6 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.
- 6.4.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.
- 6.4.8 *Aggravating features/factors specific to non-compliance with an Overcrowding Notice*
- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty.
- 6.4.9 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.
- 6.5 Failure to Comply with a Banning Order – Section 21 of the Housing And Planning Act 2016**
- 6.5.1 *Maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.*
- 6.5.2 The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:
- Letting housing
 - Engaging in letting agency work
 - Engaging in property management work
- 6.5.3 Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect

of a breach of a Banning Order, this would normally be set at the maximum level of **£30,000** to reflect the severity of the offence.

Commented [EF1]: Should this be in the table 5.7 as the max fine in the table is £27k

6.6 Failure to Comply with The Management of Houses in Multiple Occupation [England] Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

6.6.1 *Maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation - unlimited*

6.6.2 The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- 6.6.2 Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

6.6.3 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 in respect of:

- Providing information to occupiers [regulation 4]
- Taking safety measures, including fire safety measures [regulation 5]
- Maintaining the water supply and drainage [regulation 6]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [regulation 7]
- Maintaining common parts [regulation 8]
- Maintaining living accommodation [regulation 9]
- Providing sufficient waste disposal facilities [regulation 10]

6.6.4 It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

6.6.5 Failure to comply with the duty of manager to provide information to occupier

The Council regards the seriousness of the offence of failing to comply with the duty of the manager to provide information to occupier as a **Mild** matter, attracting a financial penalty with a starting level of **£2500**.

6.6.6 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

6.6.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

6.6.8 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

6.6.9 *Aggravating features/factors specific to Management Regulation breach offences*

- The number and/or nature and/or extent of the management regulation breach(es) and/or the deficiencies within each regulation.

6.6.10 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.7 ***Duty of manager to take safety measures***

6.7.1 The Council regards the seriousness of the offence of failing to comply with the duty of the manager to take safety measures as a **Very Serious** matter, attracting a financial penalty with a starting level of **£17500**.

6.7.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

6.7.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

6.7.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

6.7.5 *Aggravating features/factors specific to Management Regulation breach offences*

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

6.7.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.8 ***Duty of manager to maintain water supply and drainage***

6.8.1 The Council regards the seriousness of the offence of failing to comply with the duty of the manager to maintain the water supply and drainage as a **Serious** matter, attracting a financial penalty with a starting level of **£12500**.

6.8.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no

other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

- 6.8.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.
- 6.8.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.
- 6.8.5 *Aggravating features/factors specific to Management Regulation breach offences*
As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.
- 6.8.6 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.

6.9 Duty of manager to supply and maintain gas and electricity

- 6.9.1 The Council regards the seriousness of the offence of failing to comply with the duty of the manager to maintain the gas and electricity supply as a **Serious** matter, attracting a financial penalty with a starting level of **£12500**.
- 6.9.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.
- 6.9.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.
- 6.9.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.
- 6.9.5 *Aggravating features/factors specific to Management Regulation breach offences*
As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.
- 6.9.6 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.

6.10 Duty of manager to maintain common parts, fixtures, fittings and appliances

- 6.10.1 The Council regards the seriousness of the offence of failing to comply with the duty of the manager to maintain the common parts, fixture, fittings and appliances as a **Moderate** matter, attracting a financial penalty with a starting level of **£7500**.
- 6.10.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.
- Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.
- 6.10.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.
- 6.10.4 *Aggravating features/factors specific to Management Regulation breach offences*
As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.
- 6.10.5 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.

6.11 Duty of manager to maintain living accommodation

- 6.11.1 The Council regards the seriousness of the offence of failing to comply with the duty of the manager to maintain the living accommodation as a **Moderate** matter, attracting a financial penalty with a starting level of **£7500**.
- 6.11.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.
- 6.11.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.
- 6.11.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.
- 6.11.5 *Aggravating features/factors specific to Management Regulation breach offences*
As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

6.11.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.12 *Duty to provide waste disposal facilities*

6.12.1 The Council regards the seriousness of the offence of failing to comply with the duty of the manager to provide waste disposal facilities as a **Moderate** matter, attracting a financial penalty with a starting level of **£7500**.

6.12.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

6.12.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

6.12.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

6.12.5 *Aggravating features/factors specific to Management Regulation breach offences*

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

6.12.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.13 Breach of licence conditions – Section 72(3) Housing Act 2004

6.13.1 *Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited*

6.13.2 All granted HMO licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property.

6.13.3 It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with licence conditions related to:

- ***Signage or the provision of information for tenants***
- ***Provision of written terms of occupancy for tenants***
- ***Procedures regarding complaints***
- ***Procedures regarding vetting of incoming tenants***
- ***Compliance with deposit protection legislation***

- *The recording and provision of information regarding rent payments*
- *Procedures relating to rent collection*
- *The provision of information regarding occupancy of the property*
- *The provision of information regarding change of managers or licence holder details*
- *The provision of information related to changes in the property*
- *The provision of information relating to a change in mortgage provider*
- *Requirements relating to the sale of the property*
- *Attending training courses*
- *Requirements to hold insurance*
- *The provision of insurance documentation*
- *The provision of or obtaining of suitable references*
- *The provision of keys and alarm codes*
- *Security provisions for access to the property*
- *The provision of suitable means for occupiers to regulate temperature*
- *The provision of a national insurance number or date of birth*

6.13.4 The Council would view the seriousness of the offence of failing to comply with a licence condition relating to the bullet points above as a ***Mild*** matter, attracting a financial penalty with a starting level of **£2500**.

6.13.5 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

6.13.6 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

6.13.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

6.13.8 *Aggravating features/factors specific to Licence Condition breach offences*

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.13.9 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.14 ***Failure to comply with licence conditions related to:***

- ***Procedures and actions regarding Inspections***
- ***Procedures regarding Repair issues***
- ***Maintenance and use of common parts (including gardens, outbuildings and property exterior) and living areas***
- ***Safeguarding occupiers and minimising disruption during works***
- ***The provision of information regarding alterations and construction works***

- ***Procedures regarding emergency issues***
- ***Waste and waste receptacles, pests, minor repairs, alterations or decoration.***
- ***Giving written notice prior to entry***
- ***Allowing access for inspections***
- ***Minimising risk of water contamination***
- ***The compliance of furnishings or furniture with fire safety regulations***

6.14.1 The Council regards the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a **Moderate** matter, attracting a financial penalty with a starting level of **£7500**.

6.14.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

6.14.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

6.14.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

6.14.5 *Aggravating features/factors specific to Licence Condition breach offences*

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.14.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.15 Failure to comply with licence conditions related to:

- ***The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances***
- ***Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status***
- ***Procedures and actions regarding ASB***

16.15.1 The Council would view the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a **Serious** matter, attracting a financial penalty with a starting level of **£12500**.

16.15.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

16.15.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

16.15.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

16.15.5 Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

6.16 Failure to comply with licence conditions related to:

- **Minimum floor areas**
- **Occupancy rates**
- **Occupancy of rooms or areas that are not to be used as sleeping accommodation**
- **Limits on number of households allowed to occupy the property or part of the property**

6.16.1 The Council regards the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a Very Serious matter, attracting a financial penalty with a starting level of **£17500**.

6.16.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

6.16.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

6.16.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

6.16.5 Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.16.6 Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

6.17 Failure to comply with licence conditions related to:

- ***The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations and appliances, fire detection or other fire safety features or requirements***
- ***The prevention including provision of safe means of escape***

6.17.1 The Council would view the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a Severe matter, attracting a financial penalty with a starting level of £22500.

6.17.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £17500.

6.17.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22500.

6.17.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £27500.

6.17.5 Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.17.6 Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

6.18 Breach of licence conditions – Section 95(2) Housing Act 2004

6.18.1 Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited

6.18.2 All granted property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property.

6.18.3 It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with licence conditions related to:

- **Signage or the provision of information for tenants**
- **Provision of written terms of occupancy for tenants**
- **Procedures regarding complaints**
- **Procedures regarding vetting of incoming tenants**
- **Compliance with deposit protection legislation**
- **The recording and provision of information regarding rent payments**
- **Procedures relating to rent collection**
- **The provision of information regarding occupancy of the property**
- **The provision of information regarding change of managers or licence holder details**
- **The provision of information related to changes in the property**
- **The provision of information relating to a change in mortgage provider**
- **Requirements relating to the sale of the property**
- **Attending training courses**
- **Requirements to hold insurance**
- **The provision of insurance documentation**
- **The provision of keys and alarm codes**
- **Security provisions for access to the property**
- **The provision of suitable means for occupiers to regulate temperature**
- **Payments related to the licence fee**

6.18.4 The Council regards the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a **Mild** matter, attracting a financial penalty with a starting level of **£2500**.

6.18.5 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

6.18.6 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

6.18.7 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

6.18.8 Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.18.9 Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

6.19 Failure to comply with licence conditions related to:

- **Procedures and actions regarding Inspections**
- **Procedures regarding Repair issues**

- ***Maintenance and use of common parts (including gardens, outbuildings and property exterior) and living areas***
- ***Safeguarding occupiers and minimising disruption during works***
- ***The provision of information regarding alterations and construction works,***
- ***Procedures regarding emergency issues***
- ***Waste and waste receptacles, pests, minor repairs, alterations or decoration.***
- ***Giving written notice prior to entry***
- ***Allowing access for inspections***
- ***Minimising risk of water contamination***

6.19.1 The Council regards the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a **Moderate** matter, attracting a financial penalty with a starting level of **£7500**.

6.19.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

6.19.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

6.19.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

6.19.5 *Aggravating features/factors specific to Licence Condition breach offences*

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.19.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.20 Failure to comply with licence conditions related to:

- ***The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances***
- ***Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status***
- ***Procedures and actions regarding ASB***
- ***Limits on number of households allowed to occupy the property or part of the property***

6.20.1 The Council would view the seriousness of the offence of failing to comply with a licence conditions relating to the bullet points directly above as a **Serious** matter, attracting a financial penalty with a starting level of £12500.

6.20.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

6.20.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

6.20.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

6.20.5 *Aggravating features/factors specific to Licence Condition breach offences*

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.20.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.21 Failure to comply with licence conditions related to:

- ***The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations and appliances, fire detection or other fire safety features or requirements; and***
- ***The prevention including provision of safe means of escape***

6.21.1 The Council regards the seriousness of the offence of failing to comply with a licence condition relating to the bullet points directly above as a **Very Serious** matter, attracting a financial penalty with a starting level of **£17500**.

6.21.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

6.21.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

6.21.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

6.21.5 *Aggravating features/factors specific to Licence Condition breach offences*

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

6.21.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.22 **Failure to Comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 impose duties on private landlords in relation to electrical installations. Regulation 3 is detailed below.

Duties of private landlords in relation to electrical installations:

- (1) A private landlord who grants or intends to grant a specified tenancy must—
 - (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
 - (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
 - (c) ensure the first inspection and testing is carried out—
 - (i) before the tenancy commences in relation to a new specified tenancy; or
 - (ii) by 1st April 2021 in relation to an existing specified tenancy.
- (2) For the purposes of sub-paragraph (1)(b) "at regular intervals" means—
 - (a) at intervals of no more than 5 years; or
 - (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.
- (3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—
 - (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
 - (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;
 - (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;
 - (d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
 - (e) supply a copy of the most recent report to—
 - (i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and
 - (ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.
- (4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work,

the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—

- (a) 28 days; or
- (b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.

(5) Where paragraph (4) applies, a private landlord must—

- (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—
 - (i) the electrical safety standards are met; or
 - (ii) further investigative or remedial work is required;
- (b) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and
- (c) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.

(6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

(7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person—

- (a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;
- (b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
- (c) makes an offer, whether oral or written, to rent those premises.

It is important that a private landlord complies with all aspects of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, however, the Council recognises that a failure to comply with certain aspects of Regulation 3 is likely to have a much bigger impact on the safety and comfort of residents than others.

6.23 Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (3)(b), 3(d), 3(e)

6.23.1 The Council regards the seriousness of the offence of failing to comply with (3)(b), 3(d) or 3(e) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a **Mild** matter, attracting a financial penalty with a starting level of **£2500**.

6.23.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

6.23.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

6.23.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

6.23.5 *Aggravating features/factors specific to Electrical Safety Regulations breaches of duty*

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation.
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

6.23.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.24 Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b), (5)(c)

6.24.1 The Council regards the seriousness of the offence of failing to comply with (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) or (5)(c) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a **Serious** matter, attracting a financial penalty with a starting level of **£12500**.

6.24.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

6.24.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

6.24.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

6.24.5 *Aggravating features/factors specific to Electrical Safety Regulations breaches of duty*

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation.
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

6.24.6 *Generic aggravating features/factors*

As set out under 'Failure to comply with an Improvement Notice' above.

6.25 Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (4), (5a), (6)

- 6.25.1 The Council regards the seriousness of the offence of failing to comply with (4), (5a) or (6) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a **Very Serious matter**, attracting a financial penalty with a starting level of **£17500**.
- 6.25.2 Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.
- 6.25.3 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.
- 6.25.4 Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.
- 6.25.5 *Aggravating features/factors specific to Electrical Safety Regulations breaches of duty*
- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation.
 - Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.
- 6.25.6 *Generic aggravating features/factors*
As set out under 'Failure to comply with an Improvement Notice' above.

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

- 7.1 Before imposing a financial penalty on a person, the Council will give the person a Notice of Intent.
- 7.2 A person who is given a Notice of Intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28-day period, this period starting the day after the date on which the Notice of Intent was given. As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from the Civil Penalties Matrix and guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide fulsome and cogent evidence to support the existence of any such circumstances when they make representations in response to the notice.
- 7.3 In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further

persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.

- 7.4 After the end of the period for representations the Council will:
- (a) Decide whether to impose a financial penalty on the person; and
 - (b) If it decides to impose a financial penalty, decide the amount of the penalty.
- 7.5 In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any written representations received in the appropriate time period and will also consider the totality principle.
- 7.6 Furthermore, an offender's compliance with the identified breach during the representation period would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate. However, compliance at that stage may be relevant with respect to any mitigating factors that could decrease the amount of any imposed financial penalty.
- 7.7 If, following the receipt of written representations and/or the expiry of the time period to make written representations, the Council decides to impose a financial penalty on the person, it will give the person a Final Notice imposing that penalty.
- 7.8 The Final Notice will set out and summarise:
- a) The amount of the financial penalty,
 - b) The reasons for imposing the penalty,
 - c) Information about how to pay the penalty,
 - d) The period for payment of the penalty,
 - e) Information about rights of appeal, and
 - f) The consequences of failure to comply with the notice

8.0 Discounts

- 8.1 The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:
- A discount of 15% of the original calculated financial penalty will be deducted from the penalty imposed in the Final Notice should the penalty be paid within a specified time period (normally 28 days).

Illustrative example

The landlord of a Mandatory HMO property fails to obtain a licence. They only operate two HMO properties and there are no other relevant factors or aggravating features. The offence is regarded as a Very Serious matter. Upon receipt of the 'Notice of Intent' to impose a £17500 financial penalty. Written representations are made to the Council.

On account of the written representations received by the landlord, the council imposes a financial penalty of £16000. In the event the landlord pays within the specified period a 15% discount is given so that the landlord makes a discounted payment of £13600.



APPENDIX 2

Banning Order Policy and Procedure

This policy explains how Wirral Council will use the powers under the Housing and Planning Act 2016 to ban landlords from renting out property in the private rented sector

1.0 Introduction

- 1.1 Chapter 2 of the Housing and Planning Act 2016 enables Local Authorities to apply to the First Tier Tribunal to impose a banning order on a landlord following conviction for a banning order offence¹. In order to make use of banning order powers the Council is required to have in place its own policy on when to pursue a banning order and to decide which option it wishes to pursue on a case-by-case basis in line with this policy.
- 1.2 This policy takes account of the non-statutory guidance issued by the Government² which makes clear that banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government's expectation that banning orders will be used for the most serious offenders.
- 1.3 In this policy the term 'landlords' also includes property agents, letting agents and property managers defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016.

2.0 Effect of a banning order

- 2.1 A landlord subject to a banning order is prevented from
 - Letting houses in England
 - Engaging in English letting agency work
 - Engaging in English property management work
 - Doing two or more of those things
- 2.2 Where a banning order is made, the individual will be determined not to be 'fit and proper' to hold a licence under Part 2 or 3 of the Housing Act 2004 and any licences in force under those parts will be revoked.
- 2.3 It is a Criminal Offence to breach a banning order.

3.0 A banning order offence

¹ [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)

² [Guidance for Local authorities for Banning Order Offences under the Housing and Planning Act 2016](#)

- 3.1 A 'relevant housing offence' is a conviction for any of the following offences on or after 6 April 2018:
- (a) Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977 or;
 - (b) Any of the following offences under the Housing Act 2004:
 - i) Offences in relation to licensing of Houses in Multiple Occupation (HMOs) (section 72);
 - ii) Offences in relation to licensing of houses under Part 3 of the Act (section 95);
 - iii) Allowing a HMO that is not subject to licensing to become overcrowded (section 139);
 - iv) Failure to comply with management regulations in respect of HMOs (section 234).
 - v) Failure to comply with a Prohibition or Emergency Prohibition Order under sections 20, 21 and 43 of the Housing Act 2004;
 - (c) If a person has committed a serious criminal offence they must have been sentenced in the Crown court to be regarded as a banning order offence
 - (d) Spent Convictions should not be taken into account
 - (e) If a landlord receives an absolute/conditional discharge for a relevant housing offence then that offence cannot be regarded as a banning order offence.

4.0 Length of a banning order

- 4.1 The Council is not able to determine the length of a banning order but can make a recommendation to the First-tier Tribunal as to how long the banning order should be imposed for.
- 4.2 A banning order must be for a minimum period of 12 months
- 4.3 There is no statutory maximum period

5.0 Decision making

- 5.1 As recommended by the Government's guidance, 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
 - Previous convictions/rogue landlord database
 - Harm caused to the tenant
 - Punishment of the offender
 - Deterrence to the offender from repeating the offence
 - Deterrence to others from committing similar offences

5.2 The Seriousness of the Offence

All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself.

5.3 Previous convictions/rogue landlord database

A local housing authority should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any 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.

- 5.4 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 and will take into account the following:

5.5 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)

5.6 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.

5.7 Deterring 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

5.8 Deterring 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.

- 5.9 Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Officer Group (as defined in the procedure below) who will also be responsible for considering any representations

made by a landlord served with a notice of intention and for the decision to make an application for a banning order, including the recommended duration of the ban.

6.0 Banning Order application process

- 6.1 The process for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016.
- 6.2 Prior to making an application the Council must give the landlord a notice of its proposal to apply for a banning order. This is called a 'notice of intent'
- 6.3 The notice of intent must be served within 6 months of the landlord being convicted of the offence
- 6.4 The landlord has a right to make representations to the Council during the period of the notice of intent. A landlord must be given 28 days from the date of the notice to make representations
- 6.5 The Council must consider any representations made by the landlord and will not apply for a banning order until the 28 day period has expired
- 6.6 If after the 28 days the Council decides to proceed with a banning order then they make their application to the first tier tribunal.

7.0 Requests for Information

- 8.1 Section 19 of the Housing and Planning Act 2016 provides that a local housing authority (the Council) can require a landlord to provide information for the purpose of enabling the Council to decide whether to apply for a banning order. This can include requiring the landlord to provide information on all the properties that the landlord owns.
- 8.2 It is an offence to ignore a request for further information unless the landlord can provide a reasonable excuse.
- 8.3 It is also an offence to provide false and misleading information
- 8.4 Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine

9.0 Publicity following a banning order

- 9.1 Subject to the Governments guidance and guidance provided by the Ministry of Justice details of all banning order offences will be published and held on a national register. Also subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/ any business (managing or lettings agency). The Council will also consider making information on banned landlords available on request by a tenant.

BANNING ORDER PROCEDURE

This procedure explains how the Council will use their powers under the Housing and Planning Act 2016 to consider applying for a Banning Order to the First-tier Tribunal.

10.0 Introduction

- 10.1 *Officer Group* to convene and consider should the local authority apply for a banning order in respect of a landlord or property agent being convicted of a banning order offence³ under the powers set out in The Housing and Planning Act 2016 ("the Act").
- 10.2 The *Officer Group* to consist of:
- i) the case officer,
 - ii) senior housing standards officer
 - iii) the case officer's line manager,
 - iv) representative from Legal Services (for advisory purposes only)
- 10.3 At least three members need to be present to reach an agreement that the local authority is correct to apply for a banning order. A Legal Services representative is there to provide legal advice only.
- 10.4 In advance of the *Officer Group* meeting, the Case Officer will complete and circulate a '*banning order evidence sheet*' (referred to as *evidence sheet*) to all *Officer Group* members, at least 7 days before the meeting. This sheet to include background information on the case being considered and the Case Officer's recommendation to the *Officer Group*, including the reasoning used to make recommendation.
- 10.5 At the *Officer Group* meeting the Case Officer will present the contents of the '*evidence sheet*'.
- 10.6 The *Officer Group* must have regard to the guidance document⁴ when considering whether or not to make an application to the First-tier Tribunal for a banning order. The officer group must consider the following:
- i) **The seriousness of the offence.** All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should 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. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a banning order.
 - ii) **Previous convictions/rogue landlord database.** A local housing authority should check the rogue landlord database in order to establish whether a

³ [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#)

⁴ [Banning Order Offences under the Housing and Planning Act 2016](#)

landlord has committed other banning order offences or has received any 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. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance could also be taken into account.

10.7 The *Officer group* should 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;

- i) **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).
- ii) **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.
- iii) **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.
- iv) **Deter others from committing similar offences.** An important part of deterrence is the realisation that the local authority is proactive in applying for banning orders where the need to do so exists.

10.8 The *Officer Group* may also have regard to the following before considering applying for a banning order:

- i) **Class of landlord in terms of scale of operation**

Is the landlord considered to be a 'professional' landlord, having a portfolio of at least 3 properties for rent. This class of landlord is more likely to derive a reasonable income from his/her properties and be operating as business. Whereas a landlord having only 1 or 2 dwellings is less likely to be operating as a business and may well have a main income from employment elsewhere.

ii) **Previous history and dealings with the Council.**

Has the landlord had previous dealings with the Council in terms of the legislation applicable to the potential banning order offences? If yes, was the landlords deemed to be cooperative?

Has the Council taken previous enforcement action against the landlord? If yes, was the landlord compliant?

Is this a first offence?

No history or a record of previous co-operation – strengthens case for a banning order offences

History of previous enforcement action, poor co-operation, prosecution and/or unspent conviction – strengthens case for consideration to add their details to the rogue landlord's database.

- 10.8 The *Officer Group* can consider other matters deemed to be relevant to the case being discussed and these will be added to the *evidence sheet* following the meeting.
- 10.9 Upon considering the above, the *Officer Group* will decide the most appropriate action; this will include the reasons taken into account in arriving at the decision. The decision must be recorded on the *evidence sheet* submitted by the Case Officer, along with a record to show that all matters previously mentioned have been considered and other relevant matters. The completed *evidence sheet* to be signed by the group members and a copy kept against the property record (relevant worksheet on M3 Public Protection or alternative system being used at the time of the decision) for reference and made available to the First-tier Tribunal. A copy of the *evidence sheet* will form part of the evidence to support the action taken.
- 10.10 If a decision is made to proceed and apply for a banning order, the Case Officer will first issue a 'Notice of Intent' to the landlord. The Notice of Intent will invite *the landlord* to make representations within a period specified in the notice (*the notice period*). The *Officer Group* must consider any representations made within the notice period by the landlord. Where representations are made the Officer Group must consider these and decide whether to pursue a banning order on the basis of any representations received. The decision and additional information must be entered on the *evidence sheet*, and *this* must be signed by the group members and a copy kept against the property record and for reference and made available to the First-tier Tribunal. A copy of the completed evidence sheet will form part of the evidence to support the action taken.

10.11 The local authority must wait until the notice of intent period has ended before applying for a banning order to the First-tier Tribunal. Should the local authority proceed they will apply to the First-tier Tribunal who have the power to make the banning order.

10.12 Definitions

'**Landlord**' also relates to the term property agent

'**banning order offences**' are described in 'The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.



APPENDIX 3

Policy on deciding whether to apply for a Rent Repayment Order

1. Introduction

- 1.1 Upon a successful prosecution, simple caution or Civil Penalty award, whichever is appropriate, the case officer will decide whether or not it may be appropriate to apply for a Rent Repayment Order. If appropriate an *Officer Group* will be convened and consider whether or not to apply for a Rent Repayment Order. This *Officer Group* will consist of the original case officer and both a Housing Standards Officer and a Senior Officer, not originally in either *Officer Groups (1) or (2)* referred to in the policy for deciding whether to Prosecute, offer a Simple Caution or apply for a Civil Penalty. The original case officer will attend the Officer Group to provide background information only and will not be involved in the final decision whether or not to proceed with the Rent Repayment Order. A record of the meeting will be kept including the names of officers in attendance, date meeting is held, details of the case being discussed and the meeting outcome

2.0 Legislation

- 2.1 It should be noted that an application for a RRO can only be made in relation to certain offences as follows:

2.2 Housing Act 2004 Parts 2 or 3:

Landlord of a property has failed to obtain a licence for a property that was required to be licenced, specifically in relation to Sections 72(1) and 95(1)

2.3 Housing and Planning Act 2016 extended the range of offences where a RRO can be applicable:

- (a) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004
- (b) Failure to comply with a prohibition Order under Section 32 of the Housing Act 2004

(c) Breach of a banning order made under Section 21 of the Housing and Planning Act 2016

(d) Using violence to secure entry to a [property under section 6 of the Criminal Law Act 1977 and

(e) Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

2.4 If the Council has secured a successful prosecution, or a simple caution has been accepted and signed in relation to one of the above offences and where;

(a) the landlord has been in receipt of rent through either Housing Benefit or Universal Credit, the *Officer Group* may submit an application for a RRO to recover the maximum of 12 month's rent OR

(b) the tenant has paid their own rent, the *Officer Group* may consider supporting a tenant to apply for a RRO where the tenant is willing to pursue an application.

2.5 If the Council has secured a Civil Penalty in relation to any of the following offences;

(a) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004

(b) Offences in relation to licensing of Houses in Multiple Occupation (Housing Act 2004 Section 72(1))

(c) Offences in relation to licensing of houses underpart 3 of the Housing Act 2004 (Section 95 (1))

3.0 Decision Making

3.1 the *Officer Group* may

(a) submit an application for a RRO to recover the maximum of 12 month's rent OR

(b) the tenant has paid their own rent, the *Officer Group* may consider supporting a tenant to apply for a RRO where the tenant is willing to pursue an application. This may include the issue of advice to the tenant.

3.2 In deciding whether or not to apply for a RRO the Officer Group will take into account:

(a) For civil penalty cases only:

The culpability and harm category applied by the officer group that determined the level of Civil Penalty. It may not be deemed to be appropriate to pursue a RRO in cases in the low culpability harm categories 1, 2 and 3, unless the officer group considers that there are mitigating factors applicable

(b) For prosecution cases, it will have been previously determined that there will be either

- (i) a greater chance of harm(s) to health and/or
- (ii) a history of previous enforcement, poor co-operation, prosecution or unspent convictions and/or
- (iii) larger professional landlord

3.3 Unless there are mitigating circumstances an application for a RRO should be made in all cases involving prosecution.

3.4 This decision will include the reasons taken into account in arriving at the decision and will be recorded against the property record (relevant worksheet on M3 Public Protection, or, alternative system being used at the time of the decision) for reference.

3.5 If a decision is made to apply for a Rent Repayment Order, the case officer will issue a Notice of Intended Proceedings on the person who has committed the offence (referred to as *the landlord*). This Notice of Intended Proceedings will invite *the landlord* to make representations within a period specified in the notice (*the notice period*). Any representations made by *the landlord* within *the notice period* will be considered by the *Officer Group 2*. *The landlord* will subsequently be made aware in writing of the decision reached following consideration of any representations made.

3.6 If no representation is made within *the notice period* or, where a representation is made by *the landlord* and a decision is reached by the *Officer Group*, to proceed with an application for a Rent Repayment Order, the case officer will make a formal application for a Rent Repayment Order.

