

**NORTH YORKSHIRE COUNCIL**

**Housing Standards Enforcement Policy**

**20 August 2024**

## 1.0 Introduction

- 1.1 As a Local Housing Authority, North Yorkshire Council has various duties to ensure landlords, property owners and lettings/management agents comply with the law. This policy outlines our approach to meeting these duties. In particular, the policy explains how we make use of the different mandatory and discretionary powers available to us to ensure that landlords manage homes effectively and undertake the necessary repairs and improvements to their properties to keep their tenants safe.
- 1.2 Our aim is to improve housing conditions throughout North Yorkshire and to ensure that our residents live in safe and healthy homes. We try and achieve this by working in partnership with property owners, landlords, agents and tenants. Whilst an informal approach is often the most effective way of improving housing standards, we recognise that when housing conditions fail to comply with statutory minimum standards and where there is non-compliance with legislation and regulations or poor management practices by landlords, then enforcement action is needed to protect the public and the environment.
- 1.3 This policy incorporates best practice and sets out the principles we follow. It describes the range of enforcement activities we use and why we use them. It sets out the service standards we adhere to and highlights our wider commitment to partnership working.
- 1.4 As well as highlighting the enforcement duties and powers available to the council under the Housing Act 2004, the policy also highlights a non-exhaustive range of wider miscellaneous powers and duties, including discretionary actions we reserve the right to take (**Appendix A**).
- 1.5 The policy also outlines our approach to the use of financial penalties under:
  - i. the Electrical Safety Regulations (**Appendix B**)
  - ii. Civil Penalties as a potential alternative to prosecution (**Appendix C**)
  - iii. the Minimum Energy Efficiency Standards (**Appendix D**)
  - iv. the Smoke and Carbon Monoxide Alarm Regulations (**Appendix E**)**and**
  - v. the use of Rent Repayment Orders (**Appendix F**)These are set out within their own separate policies, but each sits within the 'umbrella' of this Housing Standards Enforcement policy.
- 1.6 In addition this policy also sets out approach to fees and charges and penalties where enforcement action is needed (**Appendix G**).
- 1.7 In developing this policy we have looked at a wide range of housing and environmental health legislation as well as good practice guidance. We have also had regard to the Governments Enforcement Concordat Good Practice Guide to regulation, the Regulators Code (2014). This code sets out the guiding principles we are committed to achieving when undertaking enforcement action, these include:

- **Openness** - We will provide accessible information and advice on the legislation we enforce, wherever possible in plain language and in languages understood by those affected. We will be open about how we work and why it may be necessary to take enforcement action.
- **Helpfulness** - We believe that prevention is better than cure and we will actively work to advise and assist to achieve compliance with the law. Our staff will be courteous and efficient, identify themselves by name where appropriate, and carry an identity card with a photograph. We will offer a contact point, telephone number and email address for further help.
- **Clarity** - We will work with our customers to help them meet their legal obligations without incurring unnecessary expense. Advice will be put clearly and simply, confirmed in writing on request, explaining what is necessary, why and when, together with the implications of non-compliance. Legal requirements will be clearly distinguished from best practice advice.
- **Consistency** - We will carry out our duties in fair and consistent ways. We have arrangements in place to promote consistency, including liaison with other Local Authorities and agencies e.g. The Police, Fire Service, Health & Safety Executive, Trading Standards, etc., particularly where we may share an enforcement role.
- **Suitable action** - Every case is unique and must be considered on its own facts and merits. When making decisions on the actions we will take, we will always take account of our service standards.
- **Human Rights** - We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).
- **Equal Opportunities and Diversity** - We believe in openness and equality in the way we provide services and that every individual is entitled to dignity and respect. When making enforcement decisions we aim to ensure that there will be no discrimination against any individual on the basis of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

## 2.0 A Balanced Approach to Enforcement

- 2.1 The main purpose of housing enforcement work is to protect the public and the environment by making sure that legal requirements are met. This does not just mean taking formal action but includes a wide range of measures, such as providing guidance, help, advice and support to landlords and property owners.

- 2.2 We recognise that most business owners, including landlords and letting/management agents, want to comply with the law and operate responsibly. As such, whilst we must sometimes take firm action from the outset, we generally try to support businesses and individuals to meet their legal obligations before considering enforcement action. To achieve this we:
- Make available information and advice on the law relating to housing standards in various formats.
  - Publicise good practice initiatives and highlight changes to the law.
  - Provide informal guidance to landlords on how to improve property conditions including signposting to any financial support or funding opportunities available, for example energy efficiency measures.
  - Run various engagement sessions with landlords including landlord forums in various localities across the county.
  - Work in close partnership with the National Residential Landlords Association (NRLA) to disseminate good practice initiatives along with accreditation and training opportunities.
  - Work with partner agencies where appropriate to co-ordinate enforcement activities for the benefit of our communities and where a more effective resolution can be found.

### **3.0 Property Inspections**

- 3.1 Where we are notified by tenants of disrepair issues and/or poor housing standards within their homes, prior to our involvement, we generally expect that tenants will have told their landlord of the issues and given their landlord reasonable opportunity to sort the problem out. We also recommend that tenants keep records of these complaints to protect themselves from any future risk of retaliatory eviction.
- 3.2 Depending on the nature of the complaint received we will generally undertake a reactive inspection to understand what the issues are and decide what the most appropriate course of action is depending on the hazards identified.
- 3.3 The majority of these inspections are carried out in line with our duties under Part 1 of the Housing Act 2004 using the Housing Health and Safety Rating System (HHSRS). The HHSRS is a system for assessing the health and safety risks in dwellings. The inspection is comprehensive as it checks for a wide range of potential hazards including fire safety, excess cold, damp and electrical safety.
- 3.4 Following an inspection, we risk rate any hazards identified. Hazard scores fall into one of two broad categories: Category 1 or Category 2 hazards. Category 1 hazards are more serious, and we have a duty to take enforcement action to address the hazard(s). Category 2 hazards are generally less serious, and we have discretionary powers as to whether enforcement action should be taken and in what form.

- 3.5 Where we undertake a housing standards inspection, we will normally give the owner and occupier of the property 24 hours' notice and will also ask the landlord to be in attendance.
- 3.6 In certain situations we have the power to gain entry to a building without giving notice of entry to the owner or occupier. This would typically be taken where we suspect there may be an imminent risk of harm to the occupiers, or where it is suspected that a property is operating as an unlicensed HMO, or where it is suspected that an HMO is operating in breach of its license conditions. Similarly, when dealing with Statutory Nuisances, we have a right of entry to land or premises at any reasonable time. In the case of residential premises 24 hours-notice of entry will be issued if the occupier refuses or is likely to refuse entry.
- 3.7 Where access to a property is required but an owner or occupier refuses permission or where access is denied we would generally apply to the Courts for a warrant to ensure admission, by force if necessary.
- 3.8 As well as powers under the Housing Act 2004, inspecting officers also have a much wider range of tools at their disposal including powers under the **Environmental Protection Act 1990** to deal with statutory nuisance (such as problems with rubbish accumulations, drainage issue and filthy and verminous properties); powers under the **Town and Country Planning Act 1990** to deal with properties whose appearance is detrimental to the amenity of an area and powers under the **Building Act 1984** to deal with drainage problems as well as dangerous or dilapidated buildings and structures, as well legal powers under other legislation.
- 3.9 We work in close partnership with North Yorkshire Fire and Rescue Service. We may undertake joint inspections with them and often consult with them on matters of fire safety. The Fire Service also has a number of duties and powers in relation to residential properties and enforces the **Regulatory Reform (Fire Safety) Order 2005** and other similar legislation. As both we and the Fire Authority have different legal duties regarding fire safety, we have an agreed joint protocol with them to ensure effective joint working arrangements locally.
- 3.10 In addition to undertaking joint inspections with the Fire Service, we also reserve the right to undertake joint inspections with other agencies. These could include the Police, Trading Standards, Community Safety teams or Social Services where needed.
- 3.11 In addition to undertaking reactive inspections, triggered by a complaint, we also undertake planned proactive inspections. These may include inspections of properties whose owners have a history of poor management practice and where previous enforcement action has been needed. We may also need to target specific property types or areas where we have evidence of non-compliance.

3.12 Planned and routine inspections are carried out in licensed **Houses in Multiple Occupation (HMOs)** and to rented homes within areas designated for **Selective Licencing** to check compliance against licence conditions.

3.13 We consider that owner occupiers are usually in a position to make informed decisions concerning maintenance or safety issues to properties that they own and reside in. We would generally view such properties a lower risk and only inspect where there is the likelihood of a serious risk to the health and safety of occupants or the wider public. Where hazards are identified within owner occupied properties, we reserve the right to take enforcement action depending on the circumstances.

#### **4.0 Enforcement Action**

4.1 On completion of an inspection, where issues are identified, be they 'hazards' under HHSRS, breaches of Management Regulations or wider issues, the officer will establish the most appropriate course of action to address the hazards, taking account of the severity, any history or poor management practices and/or non-compliance by the landlord, and where we lack confidence in the landlord to resolve the issues identified. They will be given a reasonable period of time in which to resolve the issues. We may also use this as an opportunity to provide a written warning. Landlords shall be advised of the consequences of not complying with the works required and asked to confirm that they are prepared to undertake the work needed within the time specified.

4.2 We initially aim to offer advice and support to tenants to empower them to contact their landlord and get repairs rectified without the need for an inspection from the council.

4.3 Formal action is needed where the initial approach has not been successful or in situations where the hazards identified present a risk to the health and safety of the occupants or visitors to a property.

4.4 We reserve the right to commence formal action from the outset where a landlord has a history of poor management practices and or non-compliance and where we lack confidence in the landlord to resolve the issues identified.

4.5 We must ensure that action is taken by landlords to resolve the most serious category one hazards. In addition, the Council will generally also require landlords to reduce category two hazards to an acceptable level.

4.6 Where works are being recommended to resolve issues identified, we have regard to relevant Government and other guidance. For example, in relation to fire safety matters, we use national Guidance (LACORS) to help provide the baseline in terms of the level of works required.

4.7 Whilst we will often recommend to landlords the work needed to resolve issues identified, the responsibility to ensure works are undertaken to a satisfactory standard sits wholly with the landlord. We do not have the

capacity to provide on-going advice or support to landlords to help them bring properties up to a certain standard. The onus sits with the landlord to ensure that all identified works are undertaken by competent tradesman to a suitable standard, in compliance with legal requirements and schedules of works issued by the Council. It is also the responsibility of a landlord to ensure that any wider regulations, such as matters relating to Building Control, Listed building or planning issues are also met. Where specialist advice is needed it is anticipated that landlords will source this directly.

- 4.8 Where we resort to formal action, Notices may be served requiring landlords or property owners to remedy the issues identified. Again, a reasonable period of time will be given to enable these issues to be put right, taking into account the seriousness of the issue identified and the scope of weeks needed.
- 4.9 Failure to comply with a statutory notice will usually result in prosecution or a civil penalty. Consideration of whether to prosecute or whether to impose a fine for any offence will be based on the Council's own policies, practices and procedures and the Code for Crown Prosecution Guidance.
- 4.10 In certain circumstances, where a statutory Notice served by the Council in respect of a property has not been complied with or where emergency works are required and we consider there is no reasonable prospect of works being undertaken by the landlord or owner, we may need to carry out emergency remedial action or works in default directly and recover our cost of doing so.
- 4.11 Depending on the issue there are a range of other powers that may be used; these include:
- Improvement Notice
  - Prohibition Orders including Emergency Prohibition where required.
  - Undertaking Emergency Remedial Action and works in default.
  - Issuing formal cautions.
  - Making management orders.
  - Prosecution.
  - Issuing Financial/Civil penalties as an alternative to prosecution.
  - Issuing Financial Penalties for failure to comply with electrical safety standards.
  - Issuing Financial Penalties for failure to comply with the landlords Redress scheme requirements.
  - Rent repayment orders.
- 4.12 Where we do resort to the use of formal enforcement action, landlords shall always be notified of their rights of appeal. The majority of appeals regarding private rented housing matters are heard by the First Tier Property and Upper Tier Tribunal service; however procedures may vary depending on the powers being used.
- 4.13 Where we do resort to formal enforcement action, we may make charges against landlords and property owners to cover its expenses. A demand for

payment of the charge will be served on the person we seek to recover it from. All outstanding charges remain as land charges and accrue interest until paid in full. We may also progress debts through county court judgements as these may have a greater impact and affect the ability of businesses and individuals to acquire loans.

## **5.0 Reviewing the Policy**

5.1 This policy will be reviewed in line with any significant changes in legislation, guidance or case law. Separate to this it will be reviewed every three years.

5.2 Minor alterations to the Housing Standards Enforcement Policy can be made by the Assistant Director of Housing in consultation with the portfolio holder.



## Appendix A – Miscellaneous Powers and Duties

This is not an exhaustive list of powers and duties, and other relevant legislation and regulations relevant to local authority powers can and will be utilised by the Housing Standards team if considered appropriate in the circumstances.

### 1.0 Unlawful Eviction and Harassment

- 1.1 It is a criminal offence for landlords to, unlawfully evict and/or harass tenants or try to force tenants out of a property without following proper procedures. Landlords who are prosecuted for such offences risk prison and unlimited fines. Under the **Protection from Eviction Act 1977** we have the power to investigate allegations of unlawful eviction and harassment.
- 1.2 Where we receive allegations of unlawful eviction we will generally liaise with a landlord and take steps to try and help tenants remain in or return to their accommodation. We may give formal cautions to landlords and depending on the circumstances make referrals to the Police for other related issues that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.
- 1.3 In order to take forward prosecution for either unlawful eviction or harassment we need evidence and will often require statements from tenants and may ask tenants to keep diary records of what has happened.

### 2.0 Empty Homes

- 2.1 As part of our overall housing strategy we recognise that empty homes are wasted homes and contribute to increased demand for housing overall. We do therefore encourage property owners to bring them back into use to help meet housing demand. We will work with landlords to look at options to bring empty homes back into use, including the use of any grant funding or loans that may be available.
- 2.2 Generally we find that where homes are empty it is because they are in the process of being bought or sold, subject to probate or are in the process of being renovated. There are occasions however when empty homes have a detrimental impact, either because they are in a poor state of repair, are dilapidated or are attracting anti-social behaviour. In these instances, where homes are vacant and where the owners or persons responsible for maintaining the buildings are not taking the necessary action needed to either improve their appearance or bring them back into use, we will consider using enforcement powers to resolve the issue. Typically, this would be via the service of an improvement or abatement notice requiring the owners to undertake works.
- 2.3 Where owners do not undertake required works themselves, we may undertake works in default and depending on the nature of works a charge against the property shall be levied. This charge shall include both the costs of the work undertaken and our costs in relation to the service of any Notice.

- 2.4 Where a debt has been registered as a Local Land Charge against a property, enforced sale enables the Council to convert the charge to a substantive charge registered with the Land Registry; this being an option available to the council. If used this allows us to sell or force the property to be sold in order to recover these charges.
- 2.5 Prior to sale, the owner is given the opportunity to repay the debt. If the debt is not repaid within a specified period of time, we can serve a demand for the debt to exercise a power of sale, then the property will normally be sold by the council at auction. Alternatively, the owner may be forced to sell the property themselves. On the sale of the property all debts are repaid, and the balance of the sale is then made available for the owner to claim. Any unclaimed money is usually paid to the court.
- 2.6 The power referred to above shall only be used where:
- The property is an empty home.
  - It has been empty for two years or more.
  - The owner has demonstrated a failure to deal with the property's conditions.
  - The Council has had to resort to the service of a statutory enforcement notice or notices(s) to tackle the problems associated with the property.
  - The owner of the property has failed to comply with the requirements of that notice and the Council have undertaken works in default.
  - Where works have been undertaken in default, the statutory notice served allows for a charge to be registered against property as a Local Land Charge.
  - A minimum debt of £500 will have been registered.
  - That debt is less than 12 years old.
  - The owner has been given reasonable opportunity to repay the debt.

### **3.0 Community Protection Notices and Fixed Penalty Notices**

- 3.1 Under the **Anti-Social Behaviour Crime and Policing Act 2014** we have the power to serve Community Protection Notices (CPNs) and to levy fines via Fixed Penalty Notices (FPNs) where CPNs are not complied with.
- 3.2 Whilst dealing with complaints regarding problems we may resort to the use of CPNs where the conduct of individuals is having a “detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable” we may need to use CPNs to deal with anti-social behaviour issues such as the dumping of waste on private land, overgrown gardens and issues such as feeding gulls/pigeons.
- 3.3 Where we serve a CPN it will generally require works or actions needed to address the conduct of the individual or body. In the event of non-compliance we may issue a fixed penalty notice (£100) or seek a prosecution via the Courts. In these instances, issuing a Fixed Penalty Notice (FPN) shall generally be the preferred option and is generally sufficient to resolve the issue. Further FPN's may be issued if the anti-social behaviour continues.

3.4 We may also use any of the other powers referred to in the Anti-Social Behaviour Crime and Policing Act 2014 if we consider it appropriate in the circumstances.

#### **4.0 Landlord Redress Schemes**

4.1 Under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 all private lettings and management agents need to be registered with an approved redress scheme. These schemes are important as they provide an independent means of resolving disputes between landlords and tenants. There are presently two recognised redress schemes operating nationally.

4.2 Councils have the power to fine letting agents and property managers for not belonging to an approved redress scheme. In these instances, we may serve penalty notices up to a maximum of £5,000.

4.3 In the first instance a Notice of Intent will be served, and the letting agent and/or property manager has the right to make representations and objections to us within 28 days. Further to being reviewed, should the Notice of Intent be upheld then we will serve a Final Notice to impose a penalty on the letting agent and/or property manager. They then have the right of appeal to the First Tier Tribunal.

4.4 It is our view that the requirement to belong to a redress scheme does not place an excessive burden on letting agents and property managers. It is our policy ordinarily to fine the maximum of £5,000 for any breach of this legislation, but each case will be considered before the amount of the fine is determined. £5,000 is the standard amount charged in line with the legislation, however a discount of 50% is offered if the person/company immediately becomes a member of a redress scheme, **and** if payment is made within 14 days of the Final Notice and charge being issued. This discount shall not apply when:

- The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
- The person / company has previously received a penalty charge under this legislation.

## Appendix B – Electrical Safety Regulations Financial Penalties Policy

### 1.0 Electrical Safety standards

- 1.1 **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** place a requirement on landlords to undertake safety checks (by a qualified person) at least every 5 years but sooner if the inspection report recommends a lesser period. Landlords must provide a copy of the certificate to the local authority within 7 days of a written request, existing tenants within 28 days of the inspection, new tenants before they occupy the property and prospective tenants within 28 days of them receiving a request.
- 1.2 Landlords who do not comply with these regulations put their tenants at risk serious of injury and death. Under these regulations Councils have a duty to serve remedial notices, the power to arrange remedial action and urgent remedial action directly if the regulations are not complied with and the power to impose financial penalties up to a maximum of £30,000. All costs for remedial action will be recovered by the local authority.
- 1.3 A landlord has the right to make written representations to us within 21 days of receiving a remedial notice, which suspend the notice under the representations have been considered. We will consider representations and confirm the outcome.
- 1.4 We may impose a financial penalty up to a maximum of £30,000 for a breach of the regulations. Before imposing a financial penalty, we must serve the landlord with a Notice of Intent. A landlord has the right to make representations to us against a Notice of Intent to serve a Penalty Notice. Any request must be submitted to us within 28 days of the Notice of Intention to serve a Penalty Notice. We will review the representations and decide whether to withdraw the notice of intent, reduce the amount specified or serve a penalty notice.
- 1.5 In cases where we have decided to serve the penalty notice, the landlord may then appeal to the First Tier Tribunal against that decision. If a landlord does not pay a financial penalty imposed on them, we may take the relevant steps to recover the money.
- 1.6 We have 6 months to serve the notice of intent, from the first day that the authority is satisfied there has been a breach. The following table will be used to calculate the level of financial penalty:

Duty breached	Charge	Notes	Mitigations	Penalty charge amount
1. Failing to ensure that the first inspection and testing is carried out before the tenancy commenced in relation to a new specified tenancy. Regulation 3 (1) (c) (i)	Up to £2500 – If report received was carried out after specified tenancy started  Up to £5000- No report received after requesting under Reg 3 (3)c and Remedial Notice served		The landlord provided a report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b>  The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b>  The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b>	
2. Failing to ensure that the first inspection and testing was carried out before the tenancy commenced by 1 April 2021 in relation to an existing specified tenancy. Regulation 3 (1) (c) (ii)	Up to £2500 – If report received was carried out after 1st April 2021 in relation to an existing tenancy.  Up to £5000 - No report received after requesting under Reg 3 (3)c and Remedial Notice served (if report is dated before date of the Remedial Notice only charge £2500)	This covers all tenancies from 1st April 2021.	The landlord provided a report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b>  The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b>  The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b>	
3. Failing to ensure that electrical safety standards at the property during a specified tenancy are met. Regulation 3 (1) (a)	Up to C1 £7500 C2 £4500 FI £2500	After a Remedial Notice has been served and the Local Authority carries out the inspection and test and identifies C1, C2 or F1, charge according to the charge column.  If a report is received from the landlord within 28 days after the	Evidence to demonstrate that the defect was as a result of tenant damage. <b>100% reduction</b>  The landlord provided a report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b>	

		Remedial Notice is served and has identified C1, C2 or F1, the landlord has a further 28 days to complete the works, unless specified to be completed sooner – If the landlord complies with these requirements no charges added under this section. If the landlord fails in this duty then use point 4.	<p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	
4. Failing to complete further investigative or remedial works within 28 days of the date of the inspection and test report or sooner if specified. Regulation 3 (4) (a) (b) and 4 (a) (b) (c)	Up to C1 £7500 C2 £4500 FI £2500	Failing to provide confirmation that the necessary works are completed within 28 days or specified period on the report if less than 28 days.	<p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	
5. Failing to ensure that every electrical installation in the premises is inspected and tested at regular interval by a qualified person. Regulation 3 (1) (b)	Up to £5000	<p>If a landlord fails to carry out an inspection and test report within the time period specified on the last report.</p> <p>This section would be used to ensure the landlord is keeping up to date with inspection and test reports, please note point 3 and 4 may be applicable should necessary works be identified.</p>	<p>The landlord provided report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b></p> <p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	

<p>6. Failing to provide a copy of the inspection and test report after the local authority have requested it in writing (7 days). Regulation 3 (3) (c)</p>	<p>Up to £1000</p>	<p>This section is used to request a copy of an existing inspection and test report. Failure to supply the Local Authority within 7 days an existing inspection and test report will result in a penalty charge.</p> <p><b>Please be aware that this breach only applies where an inspection and test report is in existence. If no inspection and test report has been carried out, please go to point 1 or 2 and do not issue a charge under this section.</b></p>	<p>The landlord provided report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b></p> <p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	
<p>7. Failure to provide the existing tenant with a copy of the inspection and test report. Regulation 3 (3) (b)</p>	<p>Up to £1000</p>	<p>Please note this applies when an inspection and test report has been completed.</p>	<p>The landlord provided report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b></p> <p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	
<p>8. Failing to retain a copy of the inspection and test report until the next inspection and test report and supply a copy to the person carrying out the inspection and test. Regulation 3 (3) (d)</p>	<p>Up to £1000</p>	<p>Please note this applies when an inspection and test report has been completed.</p>	<p>The landlord provided report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b></p> <p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p>	

			The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b>	
9. Failing to supply any new tenant with a copy of the inspection and test report before the tenant occupies the premises. Regulation 3 (3) (e) (i)	Up to £1000	Please note this applies when an inspection and test report has been completed.	<p>The landlord provided report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b></p> <p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	
10. Failing to supply a copy of the inspection and test report to any prospective tenant within 28 days of receiving a request in writing for it from the prospective tenant. Regulation 3 (3) (e) (ii)	Up to £1000	Please note this applies when an inspection and test report has been completed.	<p>The landlord provided report which is dated before the formal request under regulation 3 was served but after the date by which the regulations required the reports to be completed. <b>20% reduction</b></p> <p>The landlord has not been subject to any other enforcement action by Housing Standards. <b>20% reduction</b></p> <p>The landlord can demonstrate difficulties in access with appropriate documentation. <b>20% reduction</b></p>	
Additional Notes which apply to all breaches	<b>Repeat offenders will receive 200% civil penalties</b>			
			<b>TOTAL PENALTY</b>	£



1.7 If the penalty is paid within the 21 days required there will be a reduction of 1/3 of the financial penalty.

**1.8 What factors should a local housing authority take into account when deciding on the level of civil penalty?**

Local housing authorities have the power to impose a civil penalty of up to £30,000. They should develop and document their own policy on determining the appropriate level of civil penalty in a particular case. Generally, we would expect the maximum amount to be reserved for the very worst offenders. 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. Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) Severity of the offence. The more serious the offence, the higher the penalty should be.
- b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a 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 housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the 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.

## **Appendix C – Civil Penalties Policy**

### **1.0 Civil Penalties**

1.1 This policy should be read in conjunction with The North Yorkshire Council's Housing Standards Enforcement Policy (the Enforcement Policy) published by the Council and the Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Authorities published by the Department of Communities and Local Government (DCLG).

### **2.0 Introduction and Procedure**

2.1 The Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. Section 249A of the Housing Act 2004 establishes the legal basis for imposing civil penalties as an alternative to prosecution for the following specific offences under the 2004 Act:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of HMO
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO
- Section 21 - breach of a banning order

2.2 The Government has laid out statutory guidance as to the process and the criteria that needs to be considered when determining civil penalties. These are:

- The culpability and track record of the offender
- The level of harm caused to the tenant
- The severity of the offence
- Aggravating Factors
- Mitigating Factors
- Penalty to be fair and reasonable but should remove any financial benefit the offender may have obtained as a result of committing the offence
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing similar offences

2.3 The statutory guidance indicates that a Council should ensure that the civil penalty acts as a punishment, takes into account any previous patterns of offending and no offender should benefit as a result of committing the offence.

2.4 The law allows a maximum financial penalty of £30k per offence. In determining the level of any penalty a Council will have regard to local circumstances, the relevant local enforcement policy and the relevant Government guidance detailing the factors to take into account, as shown above.

2.5 The overriding principle of when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation.

### **3.0 Burden of proof for a Civil Penalty**

3.1 The proof is the same as set out previously for the offences under the Housing Act 2004. For a criminal prosecution the Council must satisfy itself that it can show beyond reasonable doubt that the landlord has committed the offence and that if heard in a magistrates' court there would be realistic prospect of conviction.

3.2 The Council will have consideration of the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions when considering the evidence. The Council will consider:

- Does it have sufficient evidence to prove beyond reasonable doubt that an offence has been committed by the landlord? – see Evidentiary Stage of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions
- Is there a public interest in imposing a Civil Penalty on the landlord in respect of the offence? – Public Interest Stage of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions
- Has the Council taken into account its own Enforcement Policy when deciding to impose the civil penalty including the alternative option of prosecuting for the offence?

3.3 All decisions as to determining whether or not to pursue a civil penalty will be in accordance with the Enforcement Policy covering Housing Standards furthermore before deciding whether or not to issue a CPN the case will first be referred to legal and democratic services to ensure, if the case was prosecuted there would be a realistic prospect of conviction. Only if Legal Officers advise that this threshold is met will there be an option to issue a CPN.

### **4.0 Process for Imposing a Civil Penalty**

4.1 Where it has been determined by the Council that a financial penalty is the most appropriate action as an alternative to prosecution, the Council will follow the process set out below.

4.2 A "Notice of Intent" will be served on the person suspected of committing the offence. The Notice will specify:

- a. The amount of any proposed financial penalty
- b. The reasons for proposing the financial penalty
- c. Information about the right to make representation to the Council.

4.3 The person to whom the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty.

Representations can be made against an element of the proposed action. If the landlord challenges the level of the civil penalty, it will be for them to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence will mean that the Council will not be able to consider any representation against the level of penalty imposed.

- 4.4 Representations can only be made by the recipients served with a Notice of Intention. No other parties have an automatic right to make representations; the Council will consider any such information on a case-by-case basis.
- 4.5 Following the 28 day period the Council will decide whether it receives representation or not:
  - a. Whether to impose a financial penalty on the person, and
  - b. The value of any such penalty imposed.
- 4.6 If a Council decides to impose a financial penalty, a final notice will be issued imposing that penalty. The final notice will specify:
  - 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 (28 days from the date of the final notice)
  - e. information about rights of appeal to the First Tier Tribunal
  - f. the consequences of failure to comply with the notice.
- 4.7 The Council can at any time withdraw either the Notice of Intent or Final Notice or reduce the level of penalty imposed. This will be in the form of a written notice to the person on whom the notice has been served. If the Council decides to withdraw a civil penalty, it has the right to pursue a prosecution against the landlord for the original offence for which it was imposed. Each case will be considered on its merits and be in the public interest.
- 4.8 The person who has been served a Final Notice has the right of appeal to a First Tier Tribunal. In the event of an appeal against the council decision the penalty would be suspended until the decision has been determined.
- 4.9 Payment of the civil penalty will be within 28 days of the date of the Final Notice, unless appealed. Where appealed and the decision to serve the Notice upheld it will be for the Tribunal to specify the period in which the landlord is to pay any fine imposed.
- 4.10 There is a reduction of a third of the penalty if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. This is in line with the Sentencing Guidelines and will only be available for the first offence and will not be less than the minimum level of penalty. Any subsequent offence will not be subject to any reduction. A reduction will only be implemented if the level of gain is below the civil penalty. If the level of gain is above the reduction but less than the calculated

penalty the reduction will be the level of gain plus £2,000 or 10% whichever is the greater.

- 4.11 The discount will only be applied to the landlord following service by the Council of the Notice of Intent and the following the criteria outlined at stage 3 below. At any point after 28 days of service of the Notice of Intent there will be no further offer of any reduction in the level of penalty.
- 4.12 If the financial penalty imposed is not paid within the appropriate time period, either 28 days from the date of the Final Notice or within such time as determined by the First Tier Tribunal, the Council will commence proceedings to recover the debt owed. This will include the recovery of any additional costs to the Council from having to undertake such action. This process will be the Council's existing recovery policy and procedures for the collection of such debt including pursuance of the debt via the county courts if appropriate.
- 4.13 In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to a Council such data relevant to his financial position as this will enable it to assess and determine what they can reasonably afford to pay.
- 4.14 Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. This may include the inference that the offender can pay any financial penalty. However when considering the level of any financial penalty the final determining factor will always be the level of financial gain as a result of the landlord's failure to comply with the relevant legislation.

## **5.0 Consequences of a Civil Penalty**

- 5.1 Financial Penalties are an alternative to criminal proceedings and unless withdrawn and the Council determines that in the public interest a prosecution for the ordinal offence is the preferred option, then a landlord cannot be prosecuted for the same offence once the penalty has been paid and the matter concluded.
- 5.2 When a civil penalty has been imposed on a landlord it will not automatically prevent the Council from granting a licence under Part 2 or 3 of the Housing Act 2004. The Council will consider each case on its merits including the reasons for the penalty and the extent of the person's involvement in any property under consideration.
- 5.3 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, a Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, a

Council will have regard to any guidance issued by the Secretary of State and best practise available.

## **6.0 Determining the Level of the Civil Penalty**

6.1 When considering the severity of any offence Section 143(1) Criminal Justice Act 2003 states “In considering the seriousness of any offence the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably caused” It also considers harm as encompassing those offences where harm is caused but also those where neither individuals nor the community suffer harm but a risk of harm is present. In order to set the level of the penalty the following steps will be considered by the Council:

Stage 1 – Setting the initial determination. The Council will determine the level of penalty based on:

- the culpability and track record of an offender (step A); and
- the level of harm to the tenants (step B)

Stage 2 – Adjustments to the initial determination. The Council will make adjustments to the initial determination of that level of penalty having regard to:

- any aggravating or mitigating circumstances (severity
- the totality of that level
- that the level is fair and proportionate but in all instances act as a deterrent and removes any gain

Stage 3 – Representations/Reviews prior to the Final Notice. The Council will make adjustments to the final determination should the offender provide written information/proof to demonstrate the impact of the level fine would be unfair and disproportionate. The Council will also consider reducing the financial penalty by 1/3 under certain specified circumstances.

## **7.0 Setting the initial determination**

### **7.1 Step A - Culpability and track record of an offender**

The level of culpability of a person will depend upon a number of factors. The below examples are not exclusive and other factors may be taken into account when considering the level of culpability.

#### **High level of culpability**

A person will be deemed to be highly culpable when they intentionally, recklessly or wilfully disregard the law. Instances may include one or more of the following examples:

- They have a history of non-compliance
- Despite a number of opportunities to comply they have failed to do so
- Have been obstructive as part of the investigation

- Are a member of a recognised landlord/letting agency association or accreditation scheme
- Are a public figure who should have been aware of their actions
- Are an experienced landlord/agent with a portfolio of properties failing to comply with their obligations
- Serious and/or systematic failure to comply with their legal duties

### **Medium level of culpability**

A person commits an offence through an act or omission which a person exercising reasonable care would not commit. Instances may include one or more of the following examples:

- It is a first offence – with no high level culpability criteria being met i.e. a member of an accreditation scheme
- Failure is not a significant risk to individuals
- The landlord/agent had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.

### **Low level of culpability**

A person fails to comply or commit an offence with little fault. Instances may include one or more of the following examples:

- No or minimal warning of circumstances/risk
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

## **7.2 Step B - Level of harm to the tenant**

When considering the level of harm both the actual, potential and likelihood of the harm will be considered. The below examples are not exclusive and other factors may be taken into account when considering the level of harm.

### **High**

A high level of harm could constitute:

- Serious effect on individual(s) or widespread impact
- Harm to a vulnerable individual
- High risk of an adverse effect on an individual
- Serious level of overcrowding
- A number of category 1 hazards present

### **Medium**

A medium level of harm could constitute:

- Adverse effect on an individual – not high level of harm
- Medium risk of harm to an individual
- Low risk of a serious effect
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Low

A low level of harm could constitute:

- Low risk of harm or potential harm
- Little risk of an adverse effect on individual(s)

## 8.0 Vulnerable Individuals

8.1 The statutory guidance states that the harm caused, and vulnerability of the individual are important factors in determining the level of penalty.

8.2 The Housing Act 2004 defines a vulnerable individual(s) as one who is at greater harm and therefore the penalty should be greater when vulnerability is an issue. The following is not an exhaustive list or examples of vulnerable households and other factors may affect vulnerability, but examples would include the elderly, households that include people with a physical or mental disability, households with young children or households at higher risk of exploitation including people with a history of homelessness or migrant workers, and those who have difficulty in understanding, speaking or reading English.

## 9.0 Determination of the initial level of penalty

9.1 The statutory guidance makes it clear that it is for each Council to determine the level of fine imposed under the Housing and Planning Act. The table below shows the initial starting level of fine for each level of culpability and harm, including the minimum level of fine which will be imposed for each classification. The Council may go outside the level of fine band if it thinks it appropriate to do so. The level of fine shall be adjusted depending on mitigating and aggravating factors and the investigative charge up to a maximum of £30,000 (see below).

9.2

<b>DETERMINATION OF CIVIL PENALTY LEVEL</b>				
<b>LEVEL OF CULPABILITY</b>	<b>LEVEL OF HARM</b>			<b>MINIMUM FINE LEVEL</b> (when considering mitigating factors)
	<b>HIGH</b>	<b>MED</b>	<b>LOW</b>	
<b>HIGH</b>	£25,000	£15,000	£7,500	£6,000
<b>MED</b>	£15,000	£10,000	£5,000	£4,000
<b>LOW</b>	£7,500	£5,000	£2,500	£2,000

## 10.0 Stage 2 - Adjustments to the Initial Determination

10.1 In order to determine the final penalty the Council will consider both aggravating and mitigating factors in each case. These will adjust the initial level of the penalty based on these factors. Below is a non-exhaustive list of both aggravating and mitigation factors which will be considered as part of the determination. The list is not exhaustive and other factors may be considered depending on the circumstances of each case.



## 10.2 Aggravating factors could include:

- Previous convictions having regard to the offence to which that action applies and time elapsed since the offence (cannot be included if there is high culpability as this has already been taken account of).
- Motivated by financial gain
- Obstruction of the investigation (cannot be included if there is high culpability as this has already been taken account of).
- Deliberate concealment of the activity/evidence
- Record of letting substandard accommodation
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

When considering previous offences regard should be given to the guidance on Banning Orders as well as any relevant offence such as trafficking etc.

## 10.3 Mitigating factors could include:

- Cooperation with the investigation e.g. attends PACE interview
- Voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- Health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence
- Good character and/or exemplary conduct

10.4 We will look at the aggravating and mitigating factors of each financial penalty on a case by case basis. Ordinarily for each aggravating or mitigating factor the level of fine will be adjusted by 5% of the initial fine, up to the maximum £30,000 or to the minimum fine for each determined level of culpability and harm as shown in the table above. However the officer (determining the amount of the penalty) has the discretion to increase each and any mitigating and/or aggravating factor up to 20% if the circumstances of such are considered significant, and only after consultation with the Housing Standards Manager. If so, the officer will provide written reasons for the increase up to 20% in the Decision Record, the Notice of Intent and the Final Notice.

## 11.0 Totality Principle

11.1 If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour. Where the offender is issued with more than one financial penalty, the Council will consider the following guidance from the definitive guideline on Offences

Taken into Consideration and Totality. The total financial penalty is inevitably cumulative.

- 11.2 The Council will determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Council. The Council should add up the financial penalties for each offence and consider if they are just and proportionate.
- 11.3 If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved.

For example:

- Where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.
  - Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- 11.4 Where separate financial penalties are passed, the Council must be careful to ensure that there is no 'double counting'.

## **12.0 Fair and Proportionate**

- 12.1 A third determinate of any civil penalty **MUST** be the general principle:  
**The civil penalty should be fair and proportionate but, in all instances, should act as a deterrent and remove any gain as a result of the offence.**
- 12.2 The statutory guidance states that a guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed must never be less than what it would have cost the landlord to comply with the legislation in the first place.
- 12.3 When determining any gain as a result of the offence the Council will take into account the following issues:
- Cost of the works required to comply with the legislation

- Any licence fees avoided
- Any other factors resulting in a financial benefit – potential cost of re-housing any tenants by the Council
- As penalty to act as a deterrent
- the cost to the Council of their investigation.

12.4 To ensure that the penalty both removes any gain obtained from the offence and punishes the offender and deters from future offending, the eventual level of the civil penalty should not be less than the amount of financial gain made from the offence, plus £2,000 or 10% of the penalty, whichever is greater (subject to the statutory maximum penalty of £30,000).

### **13.0 Stage 3 – Representations/Reviews prior to the Final Notice**

13.1 After receipt of a Notice of Intent, the landlord has 28 days to make representations to the council and provide any documentary or other evidence in support. They may wish to advise the council of the impact:

- of the financial penalty on the offender's ability to comply with the law
- of the penalty on third party – employment of staff, customers etc.
- on the offender – is it proportionate to their means – loss of home etc.

13.2 It must be remembered that as property owners if they claim the inability to pay and show their income is small then there can always be consideration to the property/properties they own which can be sold or refinanced.

13.3 The council will also review the proposed penalty and Notice of Intent and decide whether to impose a financial penalty and the amount of any penalty to be imposed. The council will issue a Final Notice imposing the Financial Penalty, which can be appealed to the First-tier Tribunal.

13.4 Prior to serving the Final Notice imposing the Financial Penalty, the council will establish whether a reduction of 1/3 of the amount of the proposed penalty should be applied. A reduction of 1/3 of the penalty will be applied if:

- the If in his/her written representations to the Council following receipt of the Notice of Intent, the landlord admits guilt of the relevant Housing Act 2004 offence; and
- immediately remedies outstanding issues; and
- it is a first offence; and
- the reduced amount is not less than the minimum level of penalty; and
- the payment is made within 28 days of the date of the Notice of Intent; and
- the payment is made in full.

13.5 This reduction will only be implemented if the level of gain is below the civil penalty. If the level of gain is above the reduction but less than the calculated penalty the reduction will be the level of gain plus £2k or 10% whichever is the greater.

- 13.6 Subject to an admission of guilt and/or breach of regulations by the landlord in the written representations by the landlord as referred to above, the 1/3 reduction will be made after the Council has determined the amount of the Final Financial Penalty; this being after the Council has considered and, where appropriate, reduced the amount of the Financial Penalty following receipt of written representations by the landlord. The Final amount of the Financial Penalty will be referred to in the Final Notice of the Financial Penalty served on the landlord.
- 13.7 At any point after 28 days of service of the Notice of Intent there will be no further offer of any reduction in the level of penalty.

#### **14.0 Recording the decision**

- 14.1 A record of each decision, the reasons for imposing the financial penalty and how the amount of penalty was obtained will be made by an officer. This will be reviewed and signed off by a Housing Standards Team Leader or Manager or Head of Service. The review of representations will be recorded and signed off by a Housing Standards Team Leader or Manager or Head of Service.

#### **15.0 Works in default**

- 15.1 The powers and penalties provided by the Housing and Planning Act 2016 do not affect the powers contained within the Housing Act 2004 relating to undertaking works in default, therefore this option is left open for the LHA to pursue.

## Appendix D – Minimum Energy Efficiency Standards Policy

### 1.0 Minimum Energy Efficiency Standards

- 1.1 The **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended)** place a legal requirement on landlords regarding the use of Energy Performance Certificates (EPCs) and sets a minimum standard of energy efficiency that properties must meet in order to be used as private rented accommodation.
- 1.2 An EPC is awarded to a property following an assessment by a qualified and accredited Domestic Energy Assessor (DEA). This certificate awards the property a rating of A to G (A shows the property has a high energy efficiency rating and G shows it has a low rating). The EPC report gives property owners details on how they can improve the property's energy efficiency and indicates how much it may cost to install energy efficiency measures and how much the works could save in fuel bills.
- 1.3 Since 2008 an EPC is required when a landlord advertises a property to rent, sell or if they have altered the property in a particular way. Since 1 April 2018 it has become unlawful for a property with an EPC rating of F or G to be let to a private tenant unless a valid exemption has been submitted on the PRS Exemptions Register. From 1 April 2020 this applied to all existing tenancies that commenced from 1 October 2008.
- 1.4 It is vital that Landlords understand whether their property is legally required to have an EPC. If there is any doubt, advice can be sought from the local authority Housing Standards or Trading Standards teams.
- 1.5 Landlords must obtain an EPC when legally obliged to do so. Since 1 October 2008 the trigger point for an EPC is when the property is re-let, put up for sale or modified. An EPC is valid for 10 years and a brand-new EPC is not required each time there is a change of tenant, provided the earlier EPC is less than 10 years old. When the EPC expires, there is no need to obtain a new one unless a trigger point is reached.
- 1.6 A landlord must supply any new tenant with a copy of the property's EPC at no cost to the tenant. Should the EPC have a rating of F or G, the landlord must make energy efficiency improvements to the property to improve the property to a minimum of an E rating and then either instruct an assessor to do a new EPC or complete an exemption on the PRS Exemptions Register.
- 1.7 Since 1 April 2020 landlords must not continue to let a property or renew a tenancy with an EPC rating of F or G, as this is a sub-standard property. Should the landlord for any reason not be able to increase the property's energy efficiency, they must search for a valid exemption on the PRS Exemptions Register and provide the evidence required to have that exemption authorised.

- 1.8 Landlords are only obliged to make energy efficiency improvements that are recommended on the EPC. Where a landlord has registered a valid exemption, this exemption will expire after 5 years. After that time, the landlord must improve the property to meet the minimum standard or register a new exemption.
- 1.9 When we become aware of a privately rented domestic property with an EPC of F or G, which does not meet the minimum energy efficiency standard, in the first instance we check the PRS Exemptions Register. We then have discretion to serve a Compliance Notice to request information from the landlord that will help us to decide whether there has been a breach. This Notice shall include a request for copies of the EPC, the tenancy agreement and any other relevant information needed. We may serve a Compliance Notice to a landlord up to 12 months after a suspected breach. This means that a person may be served with a Compliance Notice after they have ceased to be the landlord of a property. The Compliance Notice may also require the landlord to register an exemption on the PRS Exemptions Register.
- 1.10 Where there is a breach of the regulations, we may serve a Penalty Notice and levy fines against the landlord. We may also impose a Publication Penalty in relation to a Penalty Notice under the Regulations. This means we publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The information will remain on the register for a minimum of 12 months.
- 1.11 Where breaches are identified the following financial penalties apply:
- a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, we may impose a financial penalty of £2,000 and may impose the publication penalty.
  - b) Where the landlord has let a sub-standard property in breach of the Regulations for 3 months or more, we may impose a financial penalty of £4,000 and may impose the publication penalty.
  - c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, we may impose a financial penalty of £1,000 and may impose the publication penalty.
  - d) Where the landlord has failed to comply with the compliance notice, we may impose a financial penalty of £2,000 and may impose the publication penalty.
- 1.12 Under the regulations we may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. In addition, if two or more Penalty Notices apply, the combined maximum per property per breach will be £5,000. The maximum penalty amounts apply per property and per breach of the Regulations. However, if after having been previously fined up to £5,000 for having failed to satisfy the

requirements of the Regulations and a landlord proceeds to unlawfully let a sub-standard property on a new tenancy, we may again levy financial penalties of up to £5,000 in relation to the new tenancy.

- 1.13 A landlord has the right to ask for a Penalty Notice to be reviewed. Any request must be submitted to us within one calendar month of the Penalty Notice being served. Requests for a review after the prescribed time will be considered at the Council's discretion.
- 1.14 Whilst a Penalty Notice is under review, in exceptional circumstances the Council may waive the penalty, allow the landlord additional time to pay or substitute a lower financial penalty where one has already been imposed.
- 1.15 In cases where we have decided to uphold the penalty notice, the landlord may then appeal to the First Tier Tribunal against that decision. If a landlord does not pay a financial penalty imposed on them, we may take the relevant steps to recover the money.

## **Appendix E – Smoke and Carbon Monoxide Alarm Regulations Policy**

### **1.0 Smoke and Carbon Monoxide Alarms – Statement of Principles**

- 1.1 The **Smoke and Carbon Monoxide Alarm (England) Regulations 2015** and **The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022** place legal requirements on all landlords to ensure that smoke alarms are fitted within properties (one per storey on which there is a room used wholly or partly as living accommodation) and that these alarms are checked and in working order when new tenancies begin. The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 place legal requirements on landlords requiring that Carbon Monoxide Alarms are fitted in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers). Smoke and carbon monoxide alarms must be repaired or replaced by the landlord once they are informed and found that they are faulty.
- 1.2 Where we believe that these regulations are being breached, we will serve on the landlord a Remedial Notice detailing the actions that must be taken to comply with the Regulations.
- 1.3 If after 28 days, the Notice has not been complied with, then we will arrange for remedial action to be taken. We may also impose a Penalty Charge of up to £5,000 on the landlord.
- 1.5 It is our view that the provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on landlords and the lack of compliance directly impacts the safety and security of tenants, especially those that are vulnerable and those with families. Whilst we will consider the facts of all cases individually it will generally be our policy to fine the maximum of £5,000 for any initial non-compliance of a Remedial Action Notice. This is the standard amount charged in line with the legislation, however a discount of 50% is offered on payment within 14 days of the charge being issued. This discount shall not ordinarily apply when:
- The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
  - The person / company has previously received a penalty charge under this legislation.
- 1.6 A discount shall also only apply to the first non-compliance if a number of remedial notices have been served covering a number of premises under the persons / company control.
- 1.7 The landlord has a right to seek a review of the penalty charge notice by writing to the Council within 28 days of the Notice being issued.
- 1.8 On consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This decision is confirmed by



issuing a decision notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to the First Tier Tribunal. If a landlord does not pay a financial penalty imposed on them, we may take the relevant steps to recover the money.

## Appendix F – Rent Repayment Orders

### 1.0 Rent Repayment Orders

- 1.1 A rent repayment order is an order made by the First Tier Tribunal requiring a landlord to repay a specified amount of rent.
- 1.2 The Housing Act 2004 introduced rent repayment orders to cover situations, including where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs.
- 1.3 Rent repayment orders were extended through the Housing and Planning Act 2016 to cover a much wider range of offences including the failure to comply with an Improvement Notice and the failure to obtain a licence for a property within a designated Selected Licensing area.
- 1.4 Rent repayment orders can be granted to either the tenant or the Council. If the tenant paid their rent themselves, then the rent repayment must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent repayment must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent repayment should be repaid on an equivalent basis.
- 1.5 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 1.6 We will consider a rent repayment order after a person is the subject of a successful civil penalty or prosecution and, depending upon the circumstances, we will consider helping a tenant by making an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. We also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid rent themselves.
- 1.7 Where we decide to apply for a repayment order a Notice of Intent will be served on the person suspected of committing the offence. The Notice will specify:
  - a. The amount of any proposed order
  - b. The reasons for proposing the financial penalty
  - c. Information about the right to make representations to the Council.
- 1.8 The person to whom the notice relates will be given 28 days (beginning on the day after that on which the notice was given) to make written representation to us about the proposal to impose a repayment order. If the landlord challenges either the proposal to impose a civil penalty or the level of the order, they should where appropriate provide relevant and satisfactory documentary evidence to support their representations.

## Appendix G – Enforcement Charges

Charges will be calculated/reviewed on an annual basis, and will be based on actual officer time, up to a maximum amount per notice. Charges will be based on recovering the full costs associated with an officer's time.

<b>Service of an Improvement Notice</b>	Charge based on actual officer time, up to a maximum amount per notice
<b>Service of a Prohibition Order</b>	Charge based on actual officer time, up to a maximum amount per notice
<b>Service of an Emergency Prohibition Order</b>	Charge based on actual officer time, up to a maximum amount per notice
<b>Emergency Remedial Action</b>	Charge based on actual officer time, up to a maximum amount per notice plus the cost of the works required
<b>Works in Default</b>	Charge based on actual officer time, up to a maximum amount per notice plus the cost of the works required
<b>Demolition Order</b>	Charge based on actual officer time, up to a maximum amount per notice plus the cost of the works required
<b>Investigative Surveys (Drainage)</b>	Charge based on actual officer time plus the cost of survey works required
<b>Hazard Awareness Notice</b>	No Charge
<b>Penalty Charge for Non-Compliance with The Smoke and Carbon Monoxide Alarm (England) Regulations 2015</b>	£5,000 for any initial non-compliance of a Remedial Action Notice. This is the standard amount charged in line with the legislation, a discount of 50% is offered on payment within 14 days of the charge being issued ( <b>see Appendix E</b> )
<b>Penalty Charge for non-compliance with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</b>	£30,000 maximum penalty as per the legislation ( <b>see the Electrical Safety Standards policy at Appendix B</b> )
<b>Penalty Charge for non-compliance with the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended).</b>	<p>Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months a £2,000 penalty and for 3 months or more a £4000 penalty.</p> <p>Where the landlord has registered false or misleading information on the PRS Exemptions Register a £1,000 penalty.</p> <p>Where the landlord has failed to comply with the compliance notice we may impose a financial penalty of £2,000 (<b>see the Energy Efficiency policy at Appendix D</b>)</p>

<b>Prosecution</b>	The Council will seek to fully recover all its full costs inclusive of enforcement officer time based on actual time taken.
<b>Civil Penalties</b>	Penalties up to the maximum of £30,000 as per the legislation, calculated depending on the level of harm caused and the culpability of the offender <b>(see the Civil Penalties Policy at Appendix C)</b>
<b>Landlord Redress Scheme</b>	£5,000 maximum penalty as per the legislation <b>(See Appendix A)</b>

### Multiple Notices

- Charges relate to actual time taken per notice.
- There may be occasions where the Council needs to serve x2 different forms of notice relating to the same issue. For example, the service of an improvement notice, followed by service of a prohibition order where the conditions within the property deteriorate during the notice period. In these instances separate charges shall apply to both notices (based on actual time taken on each notice).
- When copies of the same the same notice are served on more than one responsible person (for example x2 owners of the same property) the total cost is split between both parties.

### Recovery

- Demands for recovery of expenses shall be sent as a matter of course in relation to enforcement costs occurred.
- Where a charge is made for enforcement action, the debt will be registered as a local land charge against the owner's property. This means that, when the property is sold, the whole debt (including the interest that has accrued) will have to be repaid.

### Appeal

- The Council shall consider appeals against costs levied. Appeals in these instances will only consider the validity and accuracy of the charge levied and not the underlying notice.
- Appeals should be submitted in writing with 28 days of receipt of the demand.
- Appeals against costs can also be made to the First Tier Tribunal where the underlying notice is appealed.