

Report to Cabinet
21 June 2017
Report of Head of city development services
Subject Private sector housing enforcement policies

Item

6

Purpose

To seek approval for the updated private sector enforcement policy and a new policy on the use of financial penalties as an alternative to prosecution.

Recommendation

To approve the private sector enforcement policy and civil penalty notice policy.

Corporate and service priorities

The report helps to meet the corporate priority 'a healthy city with good housing'

Financial implications

The policies set out the council's approach to charging for enforcement and the imposition of civil penalties. It is difficult to estimate the potential annual income from these activities; this is dependent on the level of compliance with our requirements and the seriousness of any offence. Civil penalties are intended to have a deterrent effect which, if successful, would reduce any ongoing income.

Ward/s: All Wards

Cabinet member: Councillor Herries – Safer, stronger neighbourhoods

Contact officers

Paul Swanborough, strategic housing manager 01603 212388

Andy Watt, head of city development services 01603 212691

Background documents

None

Report

1. The current strategic housing enforcement policy was adopted in 2006. Since then there have been a number of changes to legislation and enforcement guidance, notably the introduction of the Regulators' Code and recently introduced powers to impose civil penalties as an alternative to prosecution.

Private sector housing enforcement policy:

2. This is attached at Appendix 1. It reiterates the principles of good regulation that we are already working to but has been rewritten to reflect the more recent Regulator's Code rather than the Enforcement Concordat which forms the basis of the current policy. In addition it addresses a range of new powers that have been introduced by recent legislation:

Civil penalties

3. The Housing and Planning Act 2016 gives local housing authorities the power to impose a civil penalty on landlords or agents who fail to comply with an improvement notice, breach of licensing requirements or who fail to comply with management regulations applying to houses in multiple occupation. A civil penalty is a financial penalty.
4. Penalties of up to £30,000 per offence can be imposed directly by the council as an alternative to prosecution and those penalties can be retained provided that they are used to support private sector housing enforcement activities.
5. These new powers have the potential to bring-about a significant improvement in the condition of homes in the privately rented sector. Prior to their introduction the council could only contemplate prosecuting a small number of the worst offenders because of the length and cost of the legal process. In addition, fines imposed by the courts are typically low. Seen together, these two problems have meant that there has been little to deter landlords from letting sub-standard homes and it is primarily this situation that the new legislation is intended to address.
6. The imposition of a civil penalty as an alternative to prosecution means that landlords who let sub-standard and poorly-managed properties are much more likely to face substantial financial loss. This is the clear intention of the new legislation and guidance states that councils are expected to take a robust approach to the use of the new powers with the intention of 'disrupting the business model' of offending landlords.
7. There is also potential to effectively deal with low-level offending, such as failure to maintain gardens and yards in a reasonable condition, which previously could not justify the expense of a prosecution. However, it should be noted that, in every case, we will additionally consider whether imposing a civil penalty is in the public interest so these should not be considered as 'on the spot fines'.
8. There will also be some serious cases where a prosecution is a more appropriate approach, for example where a banning order is required to prevent a person from operating as a landlord.

9. The proposed methodology for calculating the level of the penalty in each case is contained in the Financial Penalty Policy which is attached at Appendix 2.

Penalty charges in relation to smoke detectors etc.

10. Similar powers to impose a financial penalty of up to £5,000 for failure to install adequate smoke and carbon monoxide detectors and for failure to join a redress scheme have been introduced by recent legislation. The council is required to publish a statement of principles on the use of these powers and this is included within the enforcement policy.

Charging for enforcement

11. We have existing powers to charge for certain enforcement activities as defined in the Housing Act 2004. Currently we make a nominal charge of approximately £270 in each case where we serve an improvement notice but waive that if a landlord co-operates fully with our requirements. This has worked well to avoid the expense and work involved in forcing landlords to comply. A small number of charges are recovered annually where landlords do not co-operate.
12. The proposal is to continue to waive the charge for landlords who co-operate but to make a full-cost recovery, based on time-recorded activity, for those who don't. We would expect to impose these charges in all cases of failure to comply with an improvement notice, even where a civil penalty is not imposed.

Other new powers

13. The Housing and Planning Act 2016 also introduced a range of new powers and tools to improve the effectiveness of enforcement action in the case of sub-standard conditions in the private rented sector. These are addressed in the enforcement policy and include:
 - Extended powers to seek rent repayment orders to recover housing benefit in the case of certain offences
 - Banning orders preventing criminal landlords from letting residential property
 - The introduction of a national database of criminal landlords and property agents

Consultation

14. There is no requirement to consult before approving these policies. However, informal consultation with the representatives of local landlords and managing agents through our landlord reference group has indicated support for the proposed approach to the use of civil penalties. Professional landlords and agents who comply with the law are currently disadvantaged, through unfair competition and reputational damage, by the activities of a small number of individuals and companies who do not.

Integrated impact assessment



NORWICH
City Council

The IIA should assess **the impact of the recommendation** being made by the report

Detailed guidance to help with completing the assessment can be found [here](#). Delete this row after completion

Report author to complete

Committee:	Cabinet
Committee date:	21 st June 2017
Director / Head of service	Dave Moorcroft
Report subject:	Private sector housing enforcement policies
Date assessed:	19 th May 2017
Description:	Policies relating to enforcement action against private sector landlords who let sub-standard dwellings

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Potential income from financial penalties and increased recovery of enforcement costs
Other departments and services e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
ICT services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Implementation of the new policy will use existing systems although some updating may be required
Economic development	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The policy has been welcomed by local landlord representative bodies since it will help to remove unfair practices by landlords that disadvantage those who comply with the law
Financial inclusion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The policy is designed to improve living conditions and to force out of business criminal landlords who exploit vulnerable tenants
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>S17 crime and disorder act 1998</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Human Rights Act 1998	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Health and well being	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The policy is designed to improve living conditions and reduce hazards to health in the privately rented sector

	Impact			
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advancing equality of opportunity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Natural and built environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Waste minimisation & resource use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Pollution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments

	Impact			
Risk management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Recommendations from impact assessment				
Positive				
Adoption of the policy will enable the council to be far more effective when taking action against landlords who let sub-standard homes. It will also increase the resource available to carry out this work.				
Negative				
Neutral				
Issues				

Norwich City Council
City Development Services

Private Sector Housing Enforcement Policy

June 2017

1. Introduction

- 1.1. This policy has been written to meet the requirements of the Legislative and Regulatory Reform Act 2006 and the Regulators' Code.
- 1.2. The council has a duty to follow the principles of good regulation specified in the Act and to have regard to the code when setting policies or principles that determine how it carries out its regulatory activities.
- 1.3. The Regulators' Code is available online at
<https://www.gov.uk/government/publications/regulators-code> .
- 1.4. The functions of Norwich City Council covered by this policy include: -
 - Taking action to remove hazards in privately-owned housing
 - Regulating the management of houses in multiple occupation
 - Licensing of privately rented accommodation
 - Taking action to bring empty homes back into use
 - Regulating the functions of landlords and managing agents
 - Working with other regulating bodies having a responsibility for privately-owned accommodation (e.g. the Health and Safety Executive, the Fire and Rescue Service, Trading Standards etc.)
 - Any other regulatory function arising from the condition or management of residential premises (e.g. the Building Act 1984, the Environmental Protection Act 1990 and the Protection from Eviction Act 1977)
- 1.5. The overall aim of these functions is to:
 - Prevent, detect and control risks to the health, safety and well being of the occupants of privately owned houses and their neighbours.
 - Reduce the adverse impact of empty and poorly maintained dwellings on neighbourhoods

2. The principles of good regulation

- 2.1. The Legislative and Regulatory Reform Act requires regulatory activities to be carried out in a way which is transparent, accountable, proportionate and consistent. It also states that regulatory activities should be targeted only at cases in which action is needed.

Transparency

- 2.2. We will publish and regularly update advice and guidance about our requirements and how to meet them on our website.
- 2.3. We will also ensure that we engage with landlords, managing agents and tenants to allow them to offer views and contribute to the development of our policies and service standards. This may be through working groups, forums, surveys, consultations or the council's complaints, compliments and comments process.

Accountability

- 2.4. We will always explain why we are taking enforcement action, or carrying out an investigation.
- 2.5. Any complaints or comments about our actions or the conduct of our officers will be taken seriously and investigated. The council has an established compliments, comments and complaints process which can be easily accessed either online or by telephone.
- 2.6. In addition, there is usually a statutory right of appeal to formal enforcement action and we will always ensure that those rights are fully explained.

Proportionality

- 2.7. We will ensure that any action we require or take is proportionate to the seriousness of the breach and the risk to health, safety and welfare or the effect on the local neighbourhood.
- 2.8. The most serious formal action will be for serious breaches of the law where there is a significant risk to health and safety and welfare or where there has been a flagrant disregard for the requirements of the law.
- 2.9. We will seek to create an environment in which those we regulate feel able to seek advice without fear of triggering enforcement action. However, in some circumstances we will be under a duty to take action if we become aware of a breach of a failure to comply with the law or the existence of a hazard.
- 2.10. We will provide the opportunity for response to any proposed enforcement action unless that action is required to prevent or respond to a serious breach, where immediate action is required or where doing so would defeat the purpose of the proposed action. In practice this means:

2.11. We will give reasonable notice of inspections

2.12. We will consult interested parties before serving notices or orders

Consistency

2.13. We will do the following to ensure a consistent approach to our enforcement decisions.

- We will discuss and compare enforcement decisions both within the department, and also externally through liaison and in benchmarking with other local authorities and enforcement bodies.
- All staff undertaking enforcement duties will be suitably trained, qualified and authorised to ensure that they are fully competent to undertake their enforcement duties.
- We will have regard to statutory guidance, tribunal decisions, case law and current research.

Targeting

2.14. We will target our enforcement action primarily towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organized breaches of the law.

2.15. Other factors also determine priorities for enforcement activity, including government targets and priorities, new legislation, national campaigns and public concerns.

2.16. Targeting will be based on available evidence including:

- Regular stock condition surveys and modelling. For example, inspections may be targeted at premises based on their age, size or other characteristics that may make the existence of a hazard more likely.
- Previous performance. For example, where a landlord or managing agent lets premises which do not comply with the law then the inspection of these and other premises owned or managed by them may be prioritised in the future.
- Membership of voluntary good-practice schemes. For example, we are less likely to target premises that are registered with the council's property registration scheme or which are managed by members of a professional lettings and management body.
- Complaints from tenants or members of the public.

3. Investigation

The council's duties

- 3.1. The Housing Act 2004 places a duty on the council to keep housing conditions in its district under review. This is normally achieved through regular stock condition surveys, stock modelling (based on a wide range of nationally-collected data) and targeted inspections.
- 3.2. The council also has a duty to inspect residential premises where appropriate to determine whether or not a hazard to health exists. In practice this means
- 3.3. Individual premises where the occupant or someone acting on their behalf has notified us that there is a potential hazard
- 3.4. Types of premises shown to be at a high risk of being hazardous (e.g. houses in multiple occupation, accommodation above restaurants)
- 3.5. Individual premises owned or managed by people who have a record of letting other hazardous premises

Complaints about privately rented accommodation

- 3.6. We believe that most complaints about housing conditions can and should be resolved between tenants and landlords without our direct intervention. However, we recognise that not all tenants are aware of their rights or understand the best way to approach their landlord.
- 3.7. Our normal procedure for dealing with complaints is to request tenants to make the first approach to their landlord. We help with this by providing advice and a 'toolkit' including letter templates. We will also contact landlords, at the tenant's request, to let them know that there has been a complaint and to offer advice.
- 3.8. We will normally contact complainants after an appropriate period of time to see if they have managed to resolve their problem and may choose to inspect at that point if it should appear to be necessary.
- 3.9. Where there appears to be an imminent risk of harm or where a tenant can show that requesting their landlord to remedy a problem has had no effect then the council may arrange an inspection immediately.
- 3.10. Anonymous complaints can be difficult to deal with fairly and practically and so will be investigated at our discretion.

The Deregulation Act 2015

- 3.11. The Deregulation Act affects a landlord's right to evict tenants where a complaint has been made to them in writing about the premises and where the council has served a notice. Because of this, if a tenant making a complaint to us can show that they have given their landlord 14 days written notice of the problem, and that there has been no adequate response, then we will normally arrange an inspection immediately.

Arranging an inspection

- 3.12. We are usually required to give at least 24 hours' notice of entry to the owner and occupier of the premises. However, when investigating compliance with licensing requirements or the management of houses in multiple occupation we may visit the premises without notice.
- 3.13. Access may be at any reasonable time which, in most cases, means normal working hours between Monday and Friday. Normally we expect to give more than 24 hours' notice and any appointment will be by agreement with the occupants and the owner of the premises. We will re-arrange inspections if given a good reason and sufficient notice.
- 3.14. Our officers will always carry their council identification and a copy of their authorisation which they will show on request.
- 3.15. An officer who is authorised to enter may:
- Take other persons with them
 - Bring equipment or materials
 - Take measurements, photographs or make recordings
 - Leave recording equipment on the premises for later collection
 - Take samples of any articles or substances found on the premises
- 3.16. We do not have the power to force entry to premises, even after service of a notice. However, if any person refuses entry without a good reason then they may be prosecuted for obstruction. We may also seek a court warrant which could allow us to enter by force if necessary.

Covert Surveillance

- 3.17. We will not generally use covert (hidden) techniques to investigate breaches of the Housing Act 2004 and related legislation.
- 3.18. If such techniques are considered necessary then they will be carried out in accordance with the Code of Practice on Covert Surveillance and Property Interference and the requirements of the Regulation of Investigatory Powers Act.

4. Action following investigation

Remedying Hazards

General principles

- 4.1. Housing hazards will be identified and assessed using the Housing Health and Safety Rating System published by central government. Hazards are banded from A to J with A being the most serious. Bands A, B and C are known as category 1 hazards with the rest being category 2.
- 4.2. The aim of enforcement action is to remove the hazard or reduce it to a reasonable level. In most cases, we will consider a reasonable level to be band G or lower.
- 4.3. We will refer to relevant published guidance, codes of practice and case law when deciding upon the most appropriate course of action.
- 4.4. We will normally allow 14 days to discuss the proposed content of a notice or order with the intended recipient. This will allow that person to make alternative suggestions and to agree suitable time scales for any works to be carried out.
- 4.5. We may be required to inform interested persons (e.g. joint owners or mortgagees) about the action being proposed.
- 4.6. You can expect a notice to state what is wrong and what needs to be done to put things right.
- 4.7. Where immediate action is needed, an explanation of why such action is required will be given at the time and confirmed in writing in most cases within 5 working days and in all cases within 10 working days. This explanation may be contained within the notice or by separate letter.
- 4.8. Details of the rights of appeal against formal action will be included in any correspondence.

Category 1 hazards

- 4.9. Where a category 1 hazard to health has been identified, the Housing Act 2004 requires us to take formal action.
- 4.10. The action taken will depend upon the severity of the hazard or offence, the most appropriate remedy and the urgency of the need for action to be taken. It must be one of the following:
 - Serving an improvement notice
 - Making a prohibition order
 - Serving a hazard awareness notice
 - Taking emergency remedial action
 - Making an emergency prohibition order
 - Making a demolition order
 - Declaring the area in which the premises are situated to be a clearance area

Category 2 hazards

- 4.11. We may also take action for lesser (category 2) hazards although we will generally only do so for those that fall within bands d, e and f of the housing health and safety rating system.
- 4.12. We will usually do this formally rather than through an informal letter. This is to ensure that there is no delay to works being carried out, to prevent any ambiguity about what the council requires and to provide the recipient with a formal right of appeal. The formal actions that we are able to take are:
- Serving an improvement notice
 - Making a prohibition order
 - Serving a hazard awareness notice
 - Making a demolition order
 - Declaring the area in which the premises are situated to be a clearance area

Deregulation Act 2015

- 4.13. If we carry out an inspection in response to a complaint to which the Deregulation Act applies (see above) we may need to serve a notice without allowing the usual 14 days for consultation. This is to ensure that any rights that the tenant may have to protection from eviction are put in place without delay.

Failure to comply

Formal interview

- 4.14. A person who is believed to have committed an offence may be formally interviewed. This will be to establish the facts of the case, the person responsible for any offence and whether there are any circumstances that would influence a decision to prosecute or to impose a civil penalty.
- 4.15. Any formal interview will normally take place at the council offices and will be conducted under the rules of the Police and Criminal Evidence Act 1984. It will be recorded and the person being interviewed will have the right to be accompanied by a legal representative.
- 4.16. Where a formal interview takes place elsewhere then it will be written down in the officer's notebook and the person being interviewed will be asked to sign it.
- 4.17. We may also write to you requesting information about the offence.
- 4.18. Where a formal interview takes place, or a written request for information relating to an investigation is issued, the following caution will be given:

'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence'

Civil penalties under the Housing and Planning Act 2016

4.19. A civil penalty is a financial penalty, up to a maximum of £30,000, imposed by the council on an individual or organisation as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an improvement notice (section 30)
- Offences in relation to licensing of houses in multiple occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of houses in multiple occupation (section 234)

4.20. We will consider the use of civil penalties in all cases where we are satisfied beyond reasonable doubt that an offence has been committed. In each case, we will additionally consider whether the imposition of a civil penalty is in the public interest.

4.21. Whilst this will usually include all cases of failure to comply with a notice, or more serious breaches of the management regulations, it could include relatively minor breaches, for example failing to keep a garden belonging to a house in multiple occupation in a tidy condition where this is having a detrimental impact on the amenity of the area.

4.22. The level of the penalty will be determined in each case having regard to current government guidance and case law.

4.23. Our policy for imposing financial penalties will be published on our website and may be revised at any time following approval by the Director of Regeneration and Development under the council's scheme of delegations.

Prosecution

4.24. Prosecution may be considered where there has been a failure

- to license a property where required
- to comply with a licence condition
- to comply with regulations applying to houses in multiple occupation
- to comply with a notice or order served to remedy a hazard
- to provide information when required
- to comply with other relevant legislation

4.25. We will normally impose a civil penalty as an alternative to prosecution where that is an option available to us.

4.26. We will decide whether or not a prosecution is appropriate by consideration of the following factors: -

- The seriousness of the offence

- The severity and scale of potential or actual harm
 - The previous history of the premises or persons concerned
 - Whether the offence was a flagrant breach of the law
 - The explanation/defence offered by the company or individual
 - Whether false information has been supplied wilfully or there has been the intent to deceive
 - Whether inspectors were intentionally obstructed in the lawful course of their duties
 - Whether other action would be more appropriate or effective
 - Whether the landlord's behaviour is such that it would be appropriate to apply for a banning order (which requires a conviction in court)
- 4.27. Investigating officers will inform the Private Sector Housing Team Leader at the start of any investigations that may result in prosecution. All such cases will be regularly reviewed.
- 4.28. Anyone faced with being prosecuted will have the opportunity to put any matters to us that they consider may contribute to the prosecution decision being reversed.
- 4.29. The Courts will decide any penalty but, in the case of a successful prosecution, we will make a claim for the reasonable costs of bringing the case.

Simple Cautions

- 4.30. A simple caution may be issued as an alternative to prosecution where there is no option to issue a civil penalty. The purpose of this is to deal quickly and simply with less serious offences, to divert less serious offences away from the courts, and to reduce the chances of repeat offences.
- 4.31. We will follow the Ministry of Justice guidance on Simple Cautions for Adult Offenders and the Conditional Cautioning Code of Practice and associated annexes issued by the Crown Prosecution Service. In particular, the following conditions will be fulfilled before a caution is administered: -
- The offender must be aged 18 or older
 - There must be sufficient evidence of the offender's guilt to give a realistic prospect of conviction
 - The offender must admit the offence; and
 - The offender must understand the significance of the caution and agree to being cautioned.
- 4.32. If a person declines the offer of a simple caution then we may prosecute instead

Works in default

- 4.33. Where someone has failed to comply with a notice requiring works, we may carry out those works using our own contractors. We will then be able to recover the costs of doing so, including reasonable administration costs.

- 4.34. Works in default can usually only be carried out after a further notice has been served by us explaining our intentions (the exception is where emergency remedial action is required although that will be followed by a notice to allow the recipient to appeal)
- 4.35. If you have been given notice that we intend to do works in default, you may be prosecuted for obstruction if you then do the works yourself
- 4.36. Details of the rights of appeal against formal action will be included in any correspondence.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 4.37. These regulations allow us to impose penalty charges up to £5,000 for failure to comply with a remedial notice relating to the provision of smoke and carbon monoxide detectors in rented accommodation.
- 4.38. When deciding the amount of the penalty charge, we have to have regard to a set of principles that are shown in the Appendix.
- 4.39. The statement of principles may be revised at any time following approval by the Director of Regeneration and Development under the council's scheme of delegations.

Property Redress Schemes

- 4.40. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.)(England) Order 2014 (SI 2014 No. 2359) requires letting agencies to join a redress scheme for dealing with complaints.
- 4.41. We are under a duty to enforce that requirement and may impose a penalty of up to £5,000 on any letting agency that doesn't comply.
- 4.42. Current Government guidance states that a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. Our policy therefore is to impose the maximum £5,000 penalty for failure to comply.

The Proceeds of Crime Act

- 4.43. In some cases, the proceeds of Crime Act 2002 allows us to seek a court order to recover the benefits of criminal behaviour which includes failure to comply with the Housing Act and similar legislation enforced by the private sector housing team.
- 4.44. In practice this means that a landlord may be liable to pay back all the rent collected for the premises during the time that the breach was occurring. This is in addition to any fine or other penalty that may be imposed.

Rent Repayment Orders

- 4.45. The Housing and Planning Act 2016 allows a council or a tenant to apply to the first tier tribunal for a rent repayment order where the landlord has been convicted, or has received a civil penalty, in relation to the following housing related offences:
- The use of violence for securing entry to a premises
 - Illegal eviction or harassment of occupiers
 - Failure to comply with an improvement notice
 - Failure to comply with a prohibition order
 - Control or management of an unlicensed house or house in multiple occupation
 - Breach of a banning order
- 4.46. Where a tenant makes an application, the first tier tribunal can order the landlord to repay up to 12 month's rent minus any universal credit or housing benefit. The council is able to apply for the universal credit or housing benefit element of the rent.
- 4.47. We will normally expect to apply for a rent repayment order where there has been a payment of universal credit or housing benefit to tenants of the premises. Where we believe that a tenant may be entitled to make a claim, we will assist them in doing so.

Banning Orders

- 4.48. From October 2017, Part 2 of the Housing and Planning Act 2016 will allow councils to seek a banning order against a landlord who has been convicted of a banning order offence. A banning order will prevent a person from property letting and management, and from holding a licence for at least 12 months.
- 4.49. Banning order offences have yet to be defined but are likely to relate to more serious offences.
- 4.50. Where we consider that a landlord's behaviour is such that a banning order would be appropriate we may prosecute where an offence has been committed in preference to imposing a civil penalty.

Database of rogue landlords and property agents

- 4.51. Where a person has been
- convicted of a banning order offence or;
 - received two financial penalties in relation to a banning order offence in a 12 month period
- 4.52. we will consider adding them to the rogue landlords and property agents' database which is expected to become operative from October 2017.

- 4.53. The purpose of the database is to enable councils to identify landlords who have been convicted elsewhere in the country to inform decisions about the imposition of financial penalties, prosecutions or whether the person is a fit and proper person for the purposes of holding a licence.

5. Charging for enforcement

- 5.1. Section 49 of the Housing Act 2004 gives us the right to make such reasonable charge as we consider appropriate as a means of recovering certain administrative and other expenses incurred by us in:
- Serving an improvement notice
 - Making a prohibition order
 - Serving a hazard awareness notice
 - Taking emergency remedial action
 - Making an emergency prohibition order
 - Making a demolition order
 - Declaring the area in which the premises are situated to be a clearance area
- 5.2. Administrative expenses that may be charged for include:
- Determining the appropriate course of action (including inspecting the premises)
 - Identifying actions to be specified in a notice
 - Serving the notice
 - Reviewing suspended improvement notices and prohibition orders
- 5.3. The charge will be calculated on the basis of the actual time spent on the case multiplied by the hourly rate for the officer carrying out the work.
- 5.4. Enforcement costs may be reduced or waived depending on the circumstances of the case, at the discretion of the Director of Regeneration and Development.

Procedure for charging:

- 5.5. Where a serious category 1 hazard is identified requiring the immediate service of an improvement notice, prohibition order or the taking of emergency action we will seek to recover our full costs
- 5.6. In other cases where the existence of a hazard would warrant the service of a relevant notice or order, the person on whom it would be served will be sent a report within 14 days clearly indicating:
- the hazard;
 - the proposed remedy;
- 5.7. That person will then be given 14 days to indicate in writing what actions will be taken to remedy the hazard (a 'proposal').

- 5.8. If a proposal is received it will be assessed using the following criteria:
- Proposed time scale
 - Likelihood that the actions will effectively remedy the hazard
 - The effect that the proposal would have on any resident
- 5.9. If the proposal is not acceptable then a full charge will be made.
- 5.10. If the proposal is accepted an improvement notice or prohibition order which accommodates the proposals will be served and no charge will be made.
- 5.11. If, however, the notice or order is subsequently not complied with then a full charge will be made.
- 5.12. If no proposal is received within 14 days then the relevant notice or order will be served and a full charge made.
- 5.13. The sum charged will be a local land charge on the premises and, if not paid within one month, will be recovered in accordance with the powers available under the Law of Property Act 1925 which include the power to appoint a receiver.

Recovery of Costs

- 5.14. We have a wide range of powers to recover payment of civil penalties, the cost of works in default and enforcement charges. These include:
- Action in the County Court
 - Use of a debt recovery agency
 - Enforced sale of the premises in question
 - Appointing a receiver

6. Working with other enforcement bodies

- 6.1. During the course of an investigation an officer may become aware of breaches of legislation that is enforced by other bodies such as the Police, Fire Service, Trading Standards or the Health and Safety Executive or other departments within the Council such as Planning Enforcement or Environmental Health.
- 6.2. In such cases we will inform the appropriate body of the breach so that they may carry out their own investigations if they feel that to be appropriate.
- 6.3. We will liaise with other enforcement bodies and departments within the council to ensure effective coordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.
- 6.4. Any information shared will be in accordance with the requirements of the Data Protection Act 1998 and the Norfolk Community Safety Partnership protocol for

the exchange of information for the purpose of the reduction of crime and disorder.

7. Civil Claims

- 7.1. Our enforcement action is completely separate and distinct from civil claims made by individuals against their landlord. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.
- 7.2. Upon request and, where appropriate, on payment of a fee, we will provide individuals who are pursuing a civil claim a factual report detailing our investigation and involvement in the case.
- 7.3. In some cases (e.g. in the case of illegal eviction) we may assist in the process of making a civil claim or will refer the person wishing to make such a claim to a third-party (e.g. Shelter).

Appendix

Penalty Charges under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Summary of Duties Under the Regulations

1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires landlords of residential premises to:
 - Provide a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
 - Provide a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
 - Carry out checks to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
2. Norwich City Council has a duty under the regulations to serve a remedial notice on a landlord where it has reasonable grounds to believe that one or more of the landlord's requirements has been breached.
3. If a landlord fails to comply with a remedial notice, the council has a further duty under the regulations to arrange for the works to be carried out by an authorised person. Those works must be carried out within 28 days of the council becoming aware of the failure to comply with the notice.

Penalty for failure to comply with a remedial notice

4. Where a landlord fails to comply with a remedial notice the council has the power to impose a penalty charge of up to £5,000.
5. In order to do this, the council must serve a penalty charge notice on the landlord within six weeks of it becoming aware of the failure to comply.
6. The council has the power to reduce the penalty charge if it is paid within 14 days of the date of the penalty charge notice
7. Landlords may request a review of a penalty charge notice and may appeal to the residential property tribunal
8. The council may take proceedings to recover the penalty charge in the same way as if it were payable under a court order

Statement of Principles

9. The council has a duty to publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. It must have regard to those principles when determining the amount of a penalty charge.
10. The following is the council's statement of principles which it proposes to follow in determining the amount of a penalty charge:
 - i. The charge will consist of a recovery element and a punitive element set to encourage compliance.
 - ii. The total penalty charge will not exceed £5,000.
 - iii. The recovery element will be equal to the cost of carrying out the remedial action including administrative and ancillary costs.
 - iv. The punitive element will be determined as follows:
 - a. The baseline charge will be £3,500. It is set at this level to encourage compliance and in recognition of the fact that the recipient will have had a number of opportunities to remedy any breach and thus avoid a penalty charge. It also provides scope for increasing the penalty where there are aggravating factors.
 - b. Aggravating factors include:
 - i. Where action has previously been taken against the recipient for failure to comply with the regulations including action that did not result in a penalty charge
 - ii. Obstruction of officers and workmen in the carrying out of their duties under these regulations
 - iii. Where there is a direct connection with other illegal activity, for example overcrowding, leading to an increased risk to the occupants from fire
 - c. Where there are aggravating factors, the punitive element will be increased to bring the total penalty charge to the maximum of £5,000.
 - v. The penalty charges will be reviewed from time to time to assess their effectiveness. Any decision to alter the charge will be made by the Director of Regeneration and Development in consultation with the relevant cabinet member.

Financial Penalty Policy

June 2017

Introduction

1. The Housing and Planning Act 2016 allows local housing authorities to impose financial penalties of up to £30,000 as an alternative to prosecution for a range of offences contained within the Housing Act 2004:
 - a. Failure to comply with an improvement notice
 - b. Offences relating to the licensing of houses
 - c. Failure to comply with an overcrowding notice
 - d. Failure to comply with management regulations in respect of HMOs
2. The council will use these new powers in accordance with the following principles:
 - The failure to comply with the requirements listed above are criminal offences and, as such, a financial penalty will be considered in every case where an offence has been identified
 - A prosecution may be an appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past
 - A financial penalty will only be imposed where the council is satisfied beyond reasonable doubt that an offence has been committed
 - In addition, the council will consider whether the imposition of a financial penalty is in the public interest
 - The amount of the financial penalty will reflect the seriousness of the offence and will be determined in a consistent and transparent way
3. Regulations made under the Housing and Planning Act 2016 and the Housing Act 2004 enable the council to use any financial penalty recovered to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.
4. Schedule 13A to the Housing Act 2004 deals with the procedure for imposing financial penalties, appeals and enforcement.

Determining the Penalty

5. Statutory guidance states that the following factors should be considered when determining the appropriate level of penalty:

- Severity of the offence
 - Culpability and track record of the offender
 - Harm caused to the tenant
 - Punishment of the offender
 - Deterring the offender from repeating the offence
 - Deterring others from committing similar offences
 - Removing any financial benefit the offender may have obtained as a result of committing the offence
6. The council will use a consistent approach which is based on the Magistrates' Court Sentencing Guidelines issued by the Sentencing Council. This is shown in more detail in the Appendix.
7. A penalty band will be indicated based on a judgement of culpability and harm as shown in the following matrix:

Harm	Culpability			
	Very high	High	Medium	Low
High	Band 6	Band 5	Band 4	Band 3
Medium	Band 5	Band 4	Band 3	Band 2
Low	Band 2	Band 1c	Band 1b	Band 1a

8. With the exception of band 1, each band has an assumed starting point which indicates the penalty before any possible adjustments have been considered.

Band	Financial penalty range/£	Assumed starting point/£	Adjustment increment/£
1a	100	-	-
1b	150	-	-
1c	200	-	-
2	200-800	400	200
3	1,000-4,000	2,000	1,000
4	6,000 – 12,000	8,000	2,000
5	14,000 – 20,000	16,000	2,000
6	22,500 – 30,000	25,000	2,500

9. The penalty bands are weighted as follows:

- Band 1 relates to offences where there is a low risk of harm. Financial penalties at this level are designed to encourage compliance with lower level requirements for example failing to maintain yards and gardens or failure to display an information notice in a house in multiple occupation. They will also act as an initial deterrent where management standards are beginning to slip to prevent more significant contraventions.
- Bands 2 and 3 relate to more serious, but still relatively minor offences. This is reflected in lower indicative penalties. Penalties at this level will be considered as a deterrent to prevent more serious offending.

- Band 4 and 5 fines relate to the type of offences that are normally dealt with by the council where there is a higher risk of harm and greater culpability. These offences carry significantly higher financial penalties.
- Band 6 is reserved for cases where the contravention exposed people to a high risk of harm due to an intentional breach or flagrant disregard of the law.

10. In each band, the penalty may be adjusted by the incremental value to reflect the level of co-operation experienced following identification of the offence:

Full co-operation following identification of offence	Reduce from starting point by one increment
Minimal further input required by the council to achieve compliance	No adjustment
Significant involvement by the council required to achieve compliance	Plus one increment
A significant lack of co-operation and/or obstruction leading to significant further enforcement activity (e.g. works in default)	Plus two increments

11. Finally, the council will apply the “Totality Principle” in cases where more than one penalty has been imposed, with a view to ensuring that the total penalty or penalties properly reflect all of the offending behaviour and are just and proportionate in all the circumstances.

Ability to Pay

12. Statutory guidance states that local housing authorities should use their existing powers to, as far as reasonably possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate financial penalty.

13. The existing powers available to the council include:

- Section 235 Housing Act 2004 (power to require documents to be produced)
- Housing benefit and council tax information (permitted by Section 237 of the Housing Act 2004)
- Service of a requisition for information under section 16 of the Local Government (miscellaneous provisions) Act 1976 (power to obtain particulars of persons interested in land)

14. When a person receives a notice of intent to impose a financial penalty they have the right to make written representations about the proposal. The council will

specifically ask for those representations to include any evidence of the person's ability to pay the proposed penalty.

15. If no representations are received then the presumption will be that the person is able to pay the full amount of the proposed penalty. This presumption will be tested against information held by the council, or publicly available information such as company records or land registry entries.
16. Evidence put forward in representations will be assessed for accuracy against council-held and public information.
17. Where appropriate, further information may be required through service of notices using the powers listed above.
18. Any evidence about ability to pay will be considered before a final decision is made about the level of the penalty.

Representations and Appeals

19. A person who is given a notice of the council's intention to impose a financial penalty may make written representations to the council within 28 days beginning with the day after that on which the notice was given. These should be addressed to the private sector housing team at the council or emailed to privatesectorhousing@norwich.gov.uk.
20. Written representations will be considered by the private sector housing team leader.
21. A person who is given a final notice requiring a penalty to be paid may appeal to the First-tier Tribunal against
 - a. The decision to impose the penalty, or
 - b. The amount of the penalty
22. Details about how to make an appeal will be included with any final notice.

Recovery

23. A penalty must be paid within 28 days beginning with the day after that on which the notice was given
24. In the absence of an appeal and where a penalty is not paid within 28 days, the council will seek to recover it through a county court order.

APPENDIX: Determination of culpability and Harm

Culpability

Band	Description	Examples
Very high	The offender has intentionally breached or flagrantly disregarded the law	The offender has a track record of failure to comply
		There is evidence that the offender has deliberately delayed compliance for example to prevent a complainant from benefitting from improvements
		An opportunity to comply was deliberately avoided, for example, by moving a new tenant in to the property before a known hazard or breach has been remedied
		Deliberate avoidance of significant cost through non-compliance
High	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken	The offender had knowledge of the breach, for example through a complaint, but has not responded
		A clear requirement by the council has been ignored. This would include an improvement notice that has not been complied with, or the failure to respond to a letter requesting action to address a management failure
		The offender is a member of a professional body which makes clear requirements that have not been followed, leading to the breach
		Offender had not started the works by the notice expiry date and had not made a reasonable case for an extension of time
Medium	Offence committed through act or omission which a person exercising reasonable care would not commit	A failure to carry out regular inspections, for example, of the common parts of a house in multiple occupation
		Failure to have adequate systems in place to avoid the offence, for example, an emergency contact or regular maintenance contract for gas appliances or fire alarm systems
		The offender did not provide sufficient contact information to the tenant to enable the problem to be addressed
		Offender has failed to comply with notice start by date but, nevertheless, completed the works satisfactorily within time

Low	Offence committed with little fault, for example because: Significant efforts were made to address the risk although they were inadequate on this occasion There was no warning/circumstance indicating a breach Failings were minor and occurred as an isolated incident	Failure to comply with licence conditions aimed at lessening the impact of the use of the property on the amenity of the local area (e.g. keeping yards and gardens in reasonable condition) where there is no ongoing history of similar breaches
		Failure to display an information notice where required to do so

Harm

Category	Description	Examples
High	Serious adverse effect(s) on individual(s) and/or having a widespread impact High risk of an adverse effect on individual(s)	Failure to comply with an improvement notice served under section 11 of the Housing Act 2004 (category 1 hazard)
		Failure to maintain fire precautions
Medium	Adverse effect on individuals(s) Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect Legitimate industry substantially undermined by offender's activities	Failure to comply with an improvement notice served under section 12 of the Housing Act 2004 (category 2 hazard)
		Failure to maintain facilities or to clean common parts in houses in multiple occupation
		Unfair competition with landlords who do not commit offences e.g. by overcrowding
Low	Low risk of an adverse effect on individual(s)	Failure to display an information notice in a house in multiple occupation where the tenants possess that information through other means
		Minor inconvenience either to tenants or local residents through a failure to comply with licence conditions