STRATEGIC HOUSING ENFORCEMENT, FEES AND CHARGING POLICY

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This document is held by Tamworth Borough Council, and the document owner is Jo Sands, Assistant Director Partnerships

Printed documents may be obsolete.

Revision History

Revision Date	Version Control	Summary of changes
November 2021	**1.1**	**Final draft**

Approvals

Name	Approved
Cabinet	**2nd December 2021**

Document Review Plans

This document is subject to a scheduled annual review or as future statute and practices dictate. Updates shall be made in accordance with business requirements and changes and will be with the agreement of the document owner.

Distribution

The document will be available on the Intranet and publicly accessible on the Tamworth Borough Council website

Contents

1. Aim

The primary enforcement role of the Strategic Housing Team is to maintain and improve the housing conditions in Tamworth. (This excludes properties owned by the Council.)
The Team endeavour to achieve this through advice, information and assistance. Where this approach fails or is not appropriate and it is necessary to protect the health safety and welfare of persons then the team will take the appropriate enforcement action.

The aim of this policy is to:

- Set out the criteria and priorities we will use when enforcing legislation, so it is transparent and clear to all
- Sets out our policy in respect of charges that may be imposed for enforcement and regulation
- Ensure our enforcement is consistent, fair, proportionate, and targeted.
- Ensure it is consistent with the aims and objectives contained in the Corporate Enforcement Policy and good practice guidance.

This policy has updated our approach to some areas of work and incorporated into one document and replaces the previous Enforcement, Houses in Multiple Occupation and the Housing and Planning Act 2016 policies which were agreed by Cabinet in 2017.

2. Scope

This enforcement policy covers the following functional areas:

- Licensing of eligible Houses in Multiple Occupation (HMOs)
- Management regulations and inspection of non-licensable HMOs
- Enforcing minimum Housing standards (HHSRS) to prevent injury and ill health,
- Ensuring private rented accommodation is maintained to keep tenants safe from hazards
- The redress scheme for letting agency and management work
- Empty homes
- Licensing of and enforcement of caravan sites and mobile homes
- Harassment and Illegal eviction of tenants
- Filthy and Verminous properties
- Owner occupier properties (statutory nuisance)
- Immigration inspections (partnership working)

3. Authorisations

Authority to exercise executive functions in relation to Private Sector Housing has been delegated to the Strategic Housing Team by The Executive Director Communities (in accordance with the Councils constitution).

Officers will use their powers of entry appropriately and proportionately.

Where legislation permits the use of a warrant and it becomes necessary, the powers will be used after due consideration of the case and likely outcomes.

An officer may enter a property at invitation of the tenant, without giving notice to the landlord, to advise and assist.

4. General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

Whilst this policy cannot cover every situation encountered, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Strategic Housing Team will act in such a way that is:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted at cases where action is needed
- Timely

Relevant advice/guidance and legislation underpinning this policy includes, but may not be limited to:

- Tamworth Borough Council Corporate Enforcement Policy
- DCLG document “Housing Health and safety Rating System; Enforcement Guidance”.
- The Regulator’s Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Data Protection Act 2018
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Housing Acts 2004 and 1985

- Local Government Miscellaneous Provisions Act 1976
- Public Health Act 1936/61
- Prevention of Damage by Pests Act 1949
- The Building Act 1984
- The Environmental Protection Act 1990
- The Caravan Site and Control of Development Act 1960
- The Caravan Sites Act 1968
- Mobile Homes Act 1983 and 2013,
- The FPPA Regulations,2020
- Protection from Eviction Act 1977
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Housing and Planning Act 2016
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2019
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Various Government (MHCLG) guidance for Local Housing Authorities but in particular “Civil Penalties under the Housing and Planning Act 2016” and “Rent repayment orders under the Housing and Planning Act 2016”
- Other legislation may be used occasionally in partnership with the Tamworth Community Safety Partnership

5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken: -

a) Informal action

b) Formal action such as:

- Statutory notice
- Simple caution
- Prosecution
- Works in default
- Prohibition Order
- Penalty Charge Notice
- Rent Repayment Order
- Banning Order
- Register landlord on Rogue Landlord Database

Not all these options are available in every case. The need to consider powers available under each piece of legislation will be done on a case by case problem solving approach.

In making any decision on enforcement, officers will consider the following criteria: -

- The legal duties placed on the Local Authority to take enforcement action
- The potential risk of harm
- The seriousness of any offence
- The owner/landlord's history
- Consequences of non-compliance
- The known or likely public benefit of the chosen enforcement action
- The willingness of the owner/landlord to carry out works and the confidence in them
- The likely ability of any witnesses to give evidence and their willingness to co-operate
- The Crown Prosecution Service's Code for Crown Prosecutors
- Any relevant guidance or case law

The primary legislation used by Strategic Housing Team is the **Housing Act 2004 as amended by the Housing and Planning Act 2016** and is mainly used to remove hazards in a property that puts occupiers at risk of injury or ill health.

This legal provision applies to all property and tenures including owner-occupiers.

Hazards are subject to a statutory risk assessment that determines whether the hazards are classified as a Category 1 or 2. A category 2 hazard is less serious than a Category 1 hazard.

There may also be occasion and be more appropriate to use the Environmental Protection Act 1990 where disrepair at one property is causing damage and/or nuisance to another. 'Statutory Nuisance.' This would involve the service of an abatement notice.

The Council are under a legal duty to take formal action in the case of a category 1 hazard.

The Council do not have a duty to take action with category 2 hazards, but they do have the power to take action where necessary and proportionate.

The decision in deciding which type of notice or order to serve will depend upon several factors. These factors are contained in DCLG document "Housing Health and safety Rating System; Enforcement Guidance" and is summarised in section 5.3.

In deciding on the most appropriate action the following matters will be taken into account: -

- Whether there are high scoring hazards
- Where there are multiple hazards;
- Whether the occupants are in the high-risk group in relation to any hazards present
- The wishes of the occupier
- Whether it is reasonably practicable to remedy the hazard
- Whether the defects have a significant effect on the occupants well - being
- Whether the landlord had a record of poor maintenance
- Whether the landlord has agreed to remedy the defect
- Whether the hazard is likely to become more serious if not dealt with, for example, damp can often lead to the property fabric deteriorating.

The Council may take enforcement action for category 2 hazards and will do so where it is felt appropriate and taking the above factors into account. Generally, a Category 2 hazard scoring more than 600 points under the HHSRS statutory assessment will be considered a high scoring category 2 hazard.

5.1. Informal action

In the first instance, the Council will try to deal with concerns in an informal manner. The matter will be brought to the attention of the owner, landlord, or responsible person in the form of a letter, e-mail or telephone. This letter will normally list any concerns or deficiencies found and arrange for a follow up visit to discuss the matter with the owner, manager, and occupiers.

If this informal approach does not result in enough progress being made, or the concerns are considered more serious, or information requested is not supplied then the Council will treat the matter in a more formal way.

Informal action is appropriate where;

- The act or omission is trivial in nature and it can be simply remedied.
- Confidence in the individual/businesses management is high.
- There is good co-operation of the landlord in responding to any hazard(s)
- Any hazards pose a minimal risk to health.
- There is insufficient evidence for formal action at the time (although formal action may follow later).
- The views or circumstances of the occupiers or owners provide compelling reasons why formal action should not be taken.
- There are no concerns that the tenant may be subject to retaliatory eviction.

5.2. Formal action

In some cases, the Council are under a legal duty to take formal action such as when there is a category 1 hazard under the Housing Act 2004.

Formal action will be taken when:

- The Council is legally required to take formal action,
- Informal action has not resulted in compliance or progress. See Appendix 1 detailing the service standards.
- There is a serious risk to an occupier or member of the public.
- An owner or landlord is known to have a history of non-compliance with statutory requirements.
- There is a belief that the tenant may be subject to retaliatory eviction.
- A serious offence has been committed.
- The consequences of non-compliance are significant.
- The likely ability of any witnesses to give evidence and their willingness to co-operate in the case of a prosecution.
- Where an empty property is a priority for action e.g. negative impact on the local community

5.3. Statutory Notices under the Housing Act 2004

Although notices are made under a variety of legislation, most notices and orders made by the Strategic Housing Team are issued under the Housing Act 2004. They are used in both single family dwellings and HMOs. The main ones used under this Act are:

- Improvement Notice (sections 11 and 12)
- Prohibition Order (sections 20 and 21)
- Emergency Remedial Action (sections 40 and 41)
- Emergency Prohibition Order (sections 43)
- Hazard Awareness Notice (sections 28 and 29)
- Suspended Improvement or Prohibition notice/order

The table below provides a guide to the likely action the Council will take under the Housing Act 2004. However, each case will be considered individually.

Notices will be registered as local land charges until complied with.

5.4. Houses in Multiple Occupation (HMO's)

Failure to licence a relevant HMO,* disrepair issues and any failures of the standards or Management Regulations are dealt with under the provisions of the Housing Act 2004/HPA 2016 and fall within the scope and approach of this policy.

The Council will also use provisions under anti-social behaviour law to regulate HMOs.

Both local and national standards need to be complied with.

Only mandatory licencing of HMOs in undertaken in Tamworth - see **Appendix 3 for Charges*

Guide to the application of Housing Act 2004 notices

Notice type	Category 1 Hazard	Category 2 Hazard
Improvement Notice	Most common notice used. It's mainly used for rented accommodation but can also be used for owner-occupied properties with where there is a concern for the health of the occupants. An example would be in the case of a fire hazard in a multiple occupied property (HMO)	This notice will often be used to require works to deal with both category I and 2 hazards. The notice may also be used where there are high scoring category 2 hazards, more than 1 category 2 hazard that may affect the health of the occupants or are likely to lead to a category 1 hazard in the future if the works are not carried out.
Suspended Improvement Notice	This may be used occasionally. For example, where the occupier refuses to have works carried out or the work is not practical with the current occupiers.	This may be used occasionally. For example, where the occupier refuses to have works carried out.
Hazard Awareness Notice	Not normally used for serious hazards except where the owner occupies the property. In this situation the owner is in full control to remedy the hazard and simply notifying the owner of the hazard is believed to be the most appropriate action.	This notice is mainly used where there are recommended works to be carried out, but they are not serious enough to warrant an Improvement Notice. May also be used for a high scoring hazard if an owner occupies the property.
Prohibition Order	Used where there are significant hazard/s and improvements are not practical. Used for overcrowding; to prohibit the use of	This order is not normally used for Category 2 hazards.

Notice type	Category 1 Hazard	Category 2 Hazard
	unsuitable parts of a property such as basements or rooms that have no adequate means of escape in case of fire.	
Suspended Prohibition Order	A Suspended Prohibition Order may commonly be used where it's not appropriate to require the current occupier to vacate the premises immediately.	This order is not normally used for Category 2 hazards.
Emergency Prohibition Order	An Emergency Prohibition order will be served where there is an imminent risk to health or injury and prohibiting the use of part or all the premises is believed to be the best solution.	This order is not normally used for Category 2 hazards.
Emergency Remedial Action	This will only be used in exceptional cases. There must be an imminent risk to health or injury of a person. The Council can carry out works immediately and recover their costs from the owner.	This action is not normally used for Category 2 hazards.

5.5. Works in default

Under certain pieces of legislation, the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- A notice has not been complied with within the specified time
- There is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- Speedy abatement is required, e.g. where there is an imminent risk of injury or ill health

- The circumstances are such that works in default are a more appropriate or effective remedy than other action
- The problem persists after prosecution.
- Where the Council is legally required to carry out such works; such as under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

A maximum 20% charge of the cost of the works will be made on works in default to cover the Councils administration costs, which will be fully recorded

5.6. Prosecution

Prosecuting someone is a serious matter and will be considered carefully on a case-by-case basis. When considering prosecution officers must follow the guidance in the Code for Crown Prosecutors .

For offences under the Housing Act 2004 the decision whether to prosecute will be subject to **Appendix 5** attached – ***Determining the Penalty for Offences under the Housing Act 2004*****.**

Where there are offences that have been committed not covered by A**ppendix 5**, officers may consider that prosecution is an appropriate way of dealing with the matter when:

- A simple caution is not appropriate, or the person accused has refused to accept the offer of a simple caution; or
- There is a risk to public health and safety or of environmental damage because of the breach; or
- The breach was because of a deliberate act or following recklessness or neglect; or
- The approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
- A legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or
- An officer has been obstructed in the course of their duty; or
- When a person continues to commit offences despite previous actions and warnings
- The refusal or provision of false information.

Please note this is not an exhaustive list and each case will be considered on its individual merits.

The initial decision to prosecute will normally be taken by the Strategic Housing Manager in consultation with the Assistant Director of Partnerships and following legal advice.

6. Penalty Charges

Under some legislation, the Council can serve a Penalty Charge Notice.

The Strategic Housing Team will use statutory powers and issue/ recover penalty charges when breaches of the relevant Regulations are discovered. These include:

- The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Housing Act 2004 as amended by the Housing and Planning Act 2016
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 28 days of the date the Final Notice was served.

If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 28-day period.

No reduction is available for cases subject to an appeal to the First-tier Tribunal if the appeal is unsuccessful. If an offender makes an early payment at the reduced rate, but then decides to appeal later and the appeal is unsuccessful the council will seek the full finalised amount after the appeal proceedings are completed.

6.1. The Redress Schemes for lettings Agency work and Property management Work (requirement to belong to a scheme etc.) England Order 2014

Since October 2014 lettings and managing agents have been required to be a member of a redress scheme. This gives both landlords and tenants the right and access to independent redress.

There are 2 schemes (as of August 2018)

- The Property Ombudsman
- Property Redress Scheme

Under the redress scheme the penalty charge will normally levy will be £5,000 for any contravention but on representation this charge may be reduced or in exceptional cases quashed. Some brief guidance has been provided on reasons to reduce the penalty charge which includes taking account of turnover of the business or other extenuating circumstances. This charge issued is in accordance with “Guidance on the Redress Scheme Improving Rented Sector” issued in March 2015 by DCLG.

The landlord can request the local authority to review the penalty charge. Normally any representations that are made will be considered jointly by any two of the following officers; the Strategic Housing Manager, the Assistant Director Partnerships, the Executive Director Communities.
A final appeal can be made by the landlord to the First Tier Tribunal.

Trading Standards also have powers under this Order and consideration will be given to work in conjunction with them as necessary.

6.2. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Since October 2015 private sector landlords have been required to have at least 1 working smoke alarm on each storey of their property.

Under these regulations, a penalty charge of up to £5,000 can be made. The Strategic Team will exercise these powers. Regulation 13 requires a local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. **Appendix 4** details the Councils Statement of Principles in this matter.

Where the Council undertake remedial action, the type of smoke detection fitted will if reasonable and practical will meet the standards contained in British Standard 5839- part 6:2019

6.3. Housing Act 2004 as amended by the Housing and Planning Act 2016

The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords which will be considered. These new powers include;

- Civil penalties of up to £30,000
- Extension of Rent Repayment Order
- Banning orders for the most prolific offenders
- A database of rogue landlords/property agents

The Strategic Housing Team will seek to use all these powers. Full details are found at A**ppendix 5; D*etermining the Penalty for Offences under the Housing Act 2004***.

This policy clarifies;

- when to issue a penalty notice and the amount of penalty to be charged,
- when to apply for a Rent Repayment Order,
- when to put a landlord the database of rogue landlords,
- when to prosecute and when to apply for a banning order.

6.4. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

These regulations have been made under the Housing Act 2004 and the Housing and Planning Act 2016. The regulations give legal responsibilities to landlords to ensure their property(s) electrical system are safe. This includes providing an electrical inspection report every 5 years. The regulations allow for a Penalty Charge (and no other form of penalty) of up to £30,000 for a breach of duties of a private landlord. The policy for determining the penalty will be the same process as **D*etermining the Penalty for Offences under the Housing Act 2004***, **found at Appendix 5**. A landlord can make written representation to the Council within 28 days, regarding a penalty charge.

6.5. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

These Regulations established the Minimum Energy Efficiency Standard (MEES)

The regulations provide that, subject to prescribed exceptions, a landlord of a domestic private rented property must not continue to let the property after 1st April 2020, where the energy performance of the property is below the minimum level.

The current requirement (post April 2020) is that any relevant property should have an EPC rating of at least an E. There are legal exemptions which must be registered under The National PRS Exception Register.

Where the Council is satisfied that a landlord is in breach, it may issue a penalty notice imposing a financial penalty.

The details can be found at **Appendix 6; D*etermining the Penalty for Offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.***

Trading Standards may also be informed around breaches of the Regulations as they have separate powers to enforce on non- compliance.

7. Overcrowding

Wherever possible the Council will resist taking action that would lead to homelessness but will seek to reduce overcrowding using suspended notices that relies on a voluntary reduction in the occupation of the dwelling. Working with the Council's Housing Solutions team where enforcement action may lead to a family moving out of their accommodation the following will be considered:

- The impact of the overcrowding upon the health and safety of vulnerable adults and children's living conditions
- Whether the occupants are being exploited (requiring work with other statutory partners)
- The wishes of the occupier

Where there is a serious hazard of overcrowding, a suspended prohibition notice will normally be served. This will require the occupation of the property to be reduced by the occupiers leaving the property when they choose to. The Notice will then become fully operative once the property is no longer overcrowded and it would be an offence if the property became overcrowded by new occupiers.

8. Priorities for Enforcement

Normally the Council will not take enforcement action against owner-occupiers as these homes are normally safer, and the owner has far greater control and power to remedy any hazards in the property.

A private tenant would not have this control or power. However, where the Council knows there is a serious hazard in an owner-occupied property, it may become necessary to take formal action in accordance with our statutory duty.

In most cases this will simply be a Hazard Awareness Notice, but an Improvement or Prohibition Notice may be served if this is needed to protect existing or future occupants.

To ensure that the Council meet their policy and enforcement objectives effectively, they will from time to time need to target their enforcement activity to specific subjects. For example, this may be:

- Concentrating our action on specific areas of the Borough where there are specific concerns
- On individuals or organisations who persistently commit offences, or their activities result in the need for us to work proactively to meet our objectives or;
- On specific types of properties for example Houses in Multiple Occupation or empty homes;

- The need to work with partners on specific enforcement activities.

9. Charging Policy for Taking Enforcement action

The Housing Act 2004 allows Councils to charge for taking enforcement action that results in service of a notice under the Act.

The Council will recover our costs when statutory action is taken including the full costs of an officer's time, overheads, and any relevant expenses such as specialist reports. Current charges are attached as **Appendix 2**.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken i.e. where it is very clear that the owner is not at fault or that the reason for serving the notice was outside the control of the owner.

Where a charge for enforcement action is levied, it will be registered as a legal charge on the property until paid.

10. Mobile Homes Parks.

The Strategic Housing Team undertake a number of functions in relation to local sites.

Under the requirements of the Caravan and Control of Development Act 1960, it it is a legal requirement for local authorities to licence caravan and mobile homes sites within their own district, unless they fall into the category of exempted sites (as covered by the First Schedule of the Act). Local Authorities can prosecute for a breach of the law.

The introduction of The Mobile Homes Act 2013 now provides greater protection to occupiers of residential park homes and caravans.

Local Authorities can now issue compliance notices and undertake emergency works on sites. Failures to cooperate with a compliance attracts an unlimited fine.

The 2013 Act introduced important changes to the Caravan Sites and Control of Development Act 1960. The changes directly affect the way the Council licenses permanent residential sites (known as relevant protected sites).

For legal purposes, sites are separated into 3 main types: - Touring, Static Holiday and Static Residential. Following the introduction of the Mobile Homes Act 2013, local authorities can charge fees to licence Static Residential sites also known as Park Homes and Relevant Protected Sites.

The definition of a relevant protected site is defined in the Mobile Homes Act 2013. A protected site is a mobile home park which has planning permission to

have residents living there as their main residence throughout the year. A holiday park isn't a protected site. An exemption from the protected sites description and annual licensing fee requirement applies on any site/s available for the sole use of the owner and their families. A single family permanent residential site is a relevant protected site, but the Council may choose to exempt these sites from the annual licence condition monitoring fee.

The council is able to charge for certain different licence fees and annual monitoring fees for mobile home sites. These licences are:

- Application for the grant of a site licence
- Application for the transfer of a site licence
- Application to alter the conditions of an existing site licence, and
- The application of annual site monitoring fees
- Application to register as a 'fit and proper person' (new fee from 1 July 2021)

10.1. Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

The regulations prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner or manager of the site is a fit and proper person to manage the site.

The purpose of the fit and proper person test is to improve the standards of park (mobile) home site management. If necessary, the council can appoint a person to manage the site.

An **occupier** means a person who is entitled to the possession of the land as under section 1(3) of the Caravan Sites and Control of Development Act 1960.

Single family site owners that are not operating as a commercial business are exempt from the requirement to be a fit and proper person test.

The council must establish and maintain a register of persons they are satisfied are fit and proper to manage a relevant protected site in their area.

The council is not required to consider an application for entry on the register unless that application is accompanied by the correct fee. If the correct fee is not paid, the application will not be valid and the site owner could be in breach of the Regulations

If the council decides not to approve an application the applicant is not entitled to a refund of the fee paid.

Where an application for a Fit & Proper Person test has been successful the applicants will be included on the public register for a period of 5 years

Breaches of the Regulations include an unlimited fine and potential revocation of the operator's licence.

See Appendix 7 for fees in relation to Mobile Homes Parks

*** charges for the service of compliance notices and emergency works are charged along the same principles as those under the Housing Act 2004, officer time and resources involved.*

11. Harassment and unlawful eviction

The law protects people living in residential properties against illegal eviction and/or harassment through two ways:

- by making illegal eviction and/or harassment a criminal offence; and
- by enabling someone who is being illegally evicted and/or harassed to claim damages through the civil courts.

The only way a landlord or Agent can force a tenant to leave a property is by following the relevant legislation and procedures set in law. For example, for assured shorthold tenants this means the relevant notice must be served and then a possession order and warrant obtained. Only a court bailiff can evict an assured short hold tenant. Assured shorthold tenancies are the most common tenants encountered.

Local Authorities have the power to take criminal proceedings for offences of illegal eviction and/or harassment, under the provision of the Protection from Eviction Act 1977. If the evidence justifies it, they can carry out investigations and prosecute if they believe an offence has been committed. Harassment includes the landlord letting themselves into a property without giving notice, disrupting the supplies of utilities. Where the harassment takes the form of the landlord/agent not undertaking necessary repairs, and the property is in poor condition, a local authority also has powers under the Housing Act 2004 (as amended by the Deregulation Act 2015), through the Housing Health and Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property.

The Strategic Housing Team will take a proactive stance and investigate any allegation it receives regarding harassment and/or illegal eviction.

If a conviction is secured, consideration will be given to applying for a banning order and the landlord will be added to the Rogue landlord database.

12. Filthy and Verminous Properties

The Strategic Housing Team have powers to deal with properties that are filthy and verminous e.g. contain rotting food, human or animal excrement or verminous e.g. infested with rats, mice, fleas, larvae.

This is not about dealing with properties which are cluttered or just have an overgrown garden.

Complaints may come from neighbours or referrals from other agencies. It's common that the occupiers of these properties have additional needs and it is best practice to take a collaborative approach working with both the occupier and other statutory and 3rd sector agencies to try and resolve all the concerns. Where this fails, powers under the Public Health Act 1936 (+1961) can be initiated and notices served requiring a clean-up, destruction of contents and other works. A warrant under the Public Health Act, may be sought if access cannot be gained to a property in any other way.

Where necessary works in default will be undertaken and costs recovered.

Where the condition of the property is causing issues to neighbours it may be treated as a 'statutory nuisance' and dealt with under the Environmental Protection Act 1990.

13. Empty Properties

The Strategic Housing Team deal with empty properties in the Borough.

Empty properties are a wasted resource, fall into disrepair, attract vandalism and fly-tipping and can blight the surrounding community.

When complaints are received about empty properties, attempts will be made to work with the owner to support them to undertake necessary works to remedy the concerns and advise and support to bring the property back into use.

Where working informally does not solve the problems, or when it is an urgent situation, e.g. a dangerous structure, formal action will be taken.

Formal action/ notices may be taken under several pieces of legislation including:

- The Housing Act 2004 (1985)
- The Building Act 1984
- The Environmental Protection Act 1990
- The Prevention of Damage by pests Act 1949
- Local Government (Miscellaneous Provision) Act 1982

- Town and Country Planning Act 1990 (in conjunction with Planning colleagues)

Where legislations permits, charges will be made for service of notices.

Cost charge will reflect officer time, costs of any works and /or specialist reports undertaken.

Many formal notices, as well as unpaid charges can be registered as a local land charge or may be recovered via the Courts and will be considered on a case by case basis.

Unpaid charges against a property can ultimately lead to an Enforced Sale or the Compulsory Purchase of the property.

14. Monitoring and Review of This Policy

To ensure compliance with this policy, the enforcement activities of the Strategic Housing Team will be monitored regularly by the Strategic Housing Manager in conjunction with the Assistant Director Partnerships.

This policy will be reviewed bi-annually or in line with changes in relevant legislation which would require urgent review.

Reporting on the use of enforcement powers and outcomes will be subject to report to the Housing and Homeless Sub-committee. Major changes will be approved by Cabinet.

15. Training and Development

Officer will undergo appropriate training and review to enable them to successfully carry out their duties within this policy

All officers will have recognised relevant qualifications and completed training on the Housing, Health and Safety Rating System.

16. Equality impact Assessment

Consideration has been taken to ensure that application of this policy will not result in discrimination against any of the protected groups. This document is covered by the Equalities Impact Assessment (EIA) for the overarching Corporate Enforcement Strategy.

17. Comments, Compliments and Complaints

Our Tell Us Scheme details how to make a comment, compliment or complaint and helps us to learn from public views and improve our services. However, for more serious matters it may be appropriate to make a formal complaint.

To ensure that customer feedback is received, either positive or negative, please use our on-line form that can be found here: http://www.tamworth.gov.uk/making-complaint or call us on our mainline number: 01827 709709 email: enquiries@tamworth.gov.uk

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation in the first instance.

18. How to Contact us

In the first instance please member of the public can telephone the number given on any correspondence received and speak to the officer dealing with the matter or contact; housingconditions@tamworth.gov.uk

APPENDIX 1 – Service Standards

Requests for service

1. All non- urgent requests for service to be **acknowledged** within 5 working days by telephone or e-mail or letter where this is a last resort. A case record will be set up within 2 working days of this acknowledgment.

2. Where a request for service is deemed very urgent with an imminent risk to health or injury, a visit to the premises should be made within 24 hours. If upon inspection it is confirmed there are hazards giving rise to a serious imminent risk to health the landlord or owner are to be informed as soon as practical and action taken within 4 working days. If the situation warrants it formal action may be actioned with immediate effect. A case record will be set up with immediate effect.

3. For all service requests the complainant will be required to give details of their problems and their landlord to either the officer they talk to or via the email they send. The receiving officer will contact for more details as necessary.
   If the complainant does not keep in contact with us the case will be closed after 28 days.
   The officer will try at least twice during this time to re-engage with the complainant.

4. In most disrepair cases the complainant will be advised in the first instance to write to their landlord detailing the issues and asking for them to be sorted, allowing 14 days for an appropriate response, e.g. for the landlord to acknowledge there is a problem and advise on a course of action. A copy of this letter/ email will be requested for the file. The complainant will be advised to re-contact us a necessary.

5. If issues are not resolved as above and the complainant gets back in touch. The landlord will be contacted by the Team within 5 working days, by phone or email in most circumstances to discuss how the issues can be resolved informally. The officer will decide if an inspection of the property is needed E.g. it may still not be clear what the issues are, they may be deteriorating, could be in dispute or the officer may feel that an inspection is the best way to get the landlord (or the tenant to co-operate,) This inspection should be undertaken within 10 working days of the tenant getting back in touch to advise no/little progress. An informal visit as 'invited' in by the tenant may be useful to establish facts in some cases e,g. a vulnerable tenant is struggling to get the relevant information to us.

6. Formal inspection- (I.e. where the likely outcome will be service of a notice) A section 239 (HA 2004) 24hrs notice , letter- 1st class proof of postage, or copy to recognised email address with read receipt, must be sent advising of the

inspection needs to be sent to both the landlord and the tenant. This is not required if the issue now represents an urgent risk or if attending a HMO to establish if a suspected offence is being committed.

7. Where no action is necessary or can be taken the complainant and landlord will be advised ideally at the time of inspection (a note made on the inspection sheet) but within 3 working days of the inspection if not at the time of the inspection.

8. If action if needed or an officer determines that works may be required, the council will write to the landlord and tenant within 10 working days of the inspection advising what these are. Progress on these 'informal cases' will be reviewed every 3 weeks.

9. If a formal notice is required it will be issued as above - 10 working days. (unless it is an Emergency Prohibition Order or Emergency Remedial Action Notice.) Copies of formal notices will be sent tenants and other interested parties.

   Where there is a concern that the tenant may be subjected to retaliatory eviction, the service of an Improvement Notice will be served as soon as possible, **if it is the appropriate notice to serve.**

10. Where a formal notice has been served, reviews will take place within 5 working days of any start date and completion date contained in the notice. The results of any review will normally be informed to the landlord in writing within 5 working days.

11. Where the notice has not been complied without reasonable excuse, then a penalty will be considered in accordance with Appendix 5. If action is deemed to be necessary, this would normally be instigated within 6 weeks of the contravention. Any such action is subject to legal considerations, being proportional and in the public interest so timescales cannot be overly prescriptive.

APPENDIX 2 - Charges for Housing Act Notices

Under section 49 of the Housing Act 2004 charges can be made for work undertaken in respect of the Housing Act 2004 for the service of statutory notices and the licensing of Houses in Multiple Occupation. These charges can include the costs for officer time; specialist reports such as electrical or structural reports and legal costs.

The Council will only seek to receive costs that have been reasonably incurred in administering the service and cannot be used to make profit or used as a penalty. Charges may be reduced or waived in exceptional circumstances, but this is at the discretion of the Strategic Housing Manager. Any request must be put in writing.

Charges for service of Statutory Notices under the Housing Act 2004

These charges are INDICATIVE – as linked to officer time etc.- set in 2021 and may be subject to change

Notice Type	Officer time costs*	Specialist reports costs	Possible Reduction
Hazard Awareness	No cost	Charge made for all costs	None
Improvement, Prohibition,	£ 300 for standard notice; £ 400 for more complicated notice	Charge made for all costs and there is no reduction.	Charge may be waived or reduced at discretion of Strategic Housing Manager.
Suspended Notices	Same charges apply as for Improvement and Prohibition Notices above. Plus annual charge of £50 for annual review.	Charge made for all costs and there is no reduction,	The charge is waived if works completed within 12 months of notice.
Emergency Remedial Action	£500	Charge made for all costs	None
Demolition order	£500	Charge made for all costs	None

* A standard notice would typically be a two or three bed house or a number of hazards; a complicated notice would typically be a House in Multiple Occupation, a property with more than three bedrooms or a property with more than four hazards.

APPENDIX 3 – Charges for Licensing of HMOs under the Housing Act 2003

These charges are for current for 2021/22 and may be subject to review

License Type	Current Fee
Initial application fee to licence an HMO.	£574.80 for 5 residents **plus** £37.79for each resident above 5 This fee includes the annual monitoring activity
Fee for Licence renewal	As above (assuming every 5 year)

APPENDIX 4 – Statement of Principles for Determining the Amount of Civil Penalty Charges under Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015. The regulations require private sector landlords from that date to have a working smoke alarm installed on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

2. Purpose of Statement of Principle

Under these regulations, Tamworth Borough Council as an enforcing authority may impose a civil penalty of up to £5,000 on landlords who do not comply with a remedial notice that has been served on them regarding meeting the requirements of the legislation.

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when determining the amount of a penalty charge.

The civil penalty scheme is designed to encourage a landlord to comply with their duties under the legislation and to reimburse the Council in arranging remedial action in default of the landlord. The civil penalties we impose are intended to be proportionate to the level of non-compliant behaviour, the potential harm outcome, to consider any mitigating circumstances and are therefore calculated on a sliding scale.

3. Overview of the penalty process

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation.

- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge.

A landlord will not be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

Tamworth Borough Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

Each stage of the civil penalty process

Breach

The landlord has 28 days to comply with the remedial notice. The civil penalty process starts when TBC is satisfied, on the balance of probabilities that a landlord on whom it has served a remedial notice has failed to comply with the terms of that notice (regulation 6(1)).

Decision

A decision with respect to determining the liability and calculating the penalty amount will be based on the following Consideration Framework.

Table 1: Consideration Framework

Stage 1: Determining the level of breach		
Breach	Is there a history of noncompliance within the last 5 years?	**Yes**: Apply the Level 2 Civil Penalty Calculator **No**: Apply the Level 1 Civil Penalty Calculator

Stage 2: Aggravating Factors	
Aggravating factor 1	Seriousness of offence. Does the premises have any working alarms, the length of time the property has lacked working detectors, has the tenant asked the landlord for working detectors, has the landlord refused to co-operate.
Aggravating factor 2	Is the property overcrowded, is it occupied by vulnerable persons, are there other fire hazards such as poor escape, height of premises above ground level or poor electrics?
Aggravating factor 3	Did TBC have to carry out works in default?

Stage 3: **Determining the penalty amount.**
Penalties are determined using the Civil Penalty Calculator. This calculator sets out a sliding scale of penalty amounts for each incidence of non-compliance The actual penalty amount will depend on the landlord's history of compliance and the seriousness of the offence. It will also look at any aggravating factors that should justify a higher penalty. For example, if aggravating factors 1 and 2 apply the penalty charge will be increased by £500. If only aggravating factor 1 applies, then the penalty charge will be increased by £250.

Civil Penalty Calculator

The Civil Penalty Calculator comprises two levels:

- The **Level 1** table should be used where there is no history of non-compliance during the last five years. The starting point for the calculation of the civil penalty is £2,000 before any additions are applied.
- The **Level 2** table should be used where you have been found to a history of non-compliance within the previous five years. The starting point for the calculation of the civil penalty is £4,000 before any additions are applied.

Where a civil penalty notice has been cancelled following a review or appeal and has not been replaced by a warning notice, it shall not be considered when calculating any subsequent penalty.

Level 1: First breach				
Starting penalty amount £2000				
Aggravating factor 1:		**Aggravating factor 2:**		**Aggravating factor 3:**
Penalty increased by £250		Penalty increased by £250		Penalty increased by £500

Level 2: Second or subsequent breach				
Starting penalty amount £4000				
Aggravating factor 1:		**Aggravating factor 2:**		**Aggravating factor 3:**
Penalty increased by £250		Penalty increased by £250		Penalty increased by £500

Payment

Penalty charges are to be paid in full within the period specified in the penalty charge notice (this will be not less than 28 days) unless within that specified period the landlord has given written notice to TBC that the penalty charge notice be reviewed.

TBC may reduce the specified charge under an early payment option which reduces the amount of your civil penalty by 25% if we receive payment in full within 28 days of the civil penalty notice being served. The reduced penalty

amount and the final date by which you must pay it will be clearly shown on your civil penalty notice.

If you lodge an objection to your penalty before the deadline specified in your civil penalty notice, you will continue to be eligible for the early payment option. If you are still required to pay a penalty following the review of your notice, you will be given a fresh notice which specifies a new date by which you may pay your penalty at the lower amount.

Review

Once proper notice having been given, the Council will consider any representations made by the landlord, decide whether to confirm, vary or withdraw the penalty charge notice and serve notice of its decision to the landlord. Any mitigation factors will be considered, and the penalty charge notice may be reduced. The review will be carried out by the Assistant Director Partnerships.

Appeal

The Council will be bound by the outcome of the Tribunal decision.

Enforcement

If a penalty notice is not paid in full a review requested or an appeal has been lodged by the specified due dates, enforcement action will commence. This includes action in the civil court to recover the unpaid penalty. This action may have an adverse impact on the ability of a landlord to obtain future credit and act in the capacity of a company director.

4. Multiple properties

A landlord within the Tamworth Borough Council area with more than one property found to be in non-compliance with the requirements of the legislation within the previous five years, will be subject to a penalty calculation using Level 2 of the Civil Penalty Calculator if the noncompliance is encountered at other of those properties, and the non-compliance can be attributed to a general failure of the landlord's overall approach to the legislation.

5. Information regarding this statement

The Council has prepared and published this statement in accordance with its duties under regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. This statement may be revised, and where this happens any revised statement will also be published. When determining the amount of a penalty charge, the Council will have regard to any updated guidance/ relevant appeal decisions published at the time when the breach in question occurred.

APPENDIX 5 – Determining the penalty for offences under the Housing Act 2004

(Including: The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020)
Housing Act 2004 as amended by the Housing and Planning Act 2016

Introduction

Financial Penalty (FP)

The new powers to issue a Financial Penalty came into force on April 6, 2017 under Chapter 4 and schedule 9 of the Housing and Planning Act 2016 ("2016 Act"). Section 249A of the Housing Act 2004 ("2004 Act") allows the Local Housing Authority (LHA) to issue a Financial penalties (FP) limiting the maximum penalty at £30,000. A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 ("2004 Act") offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (e.g selective licencing)
- Section 95 (2) – not comply with a private rented property licence condition. Section 139 – overcrowding notice for HMO
- Section 234 – non-compliance a HMO Management Regulation

These powers were amended by the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) which provided penalty charges of up to £30,000 in respect of electrical safety in rented accommodation and some minor amendments Management regulations and HMO licencing.

Penalties for a breach under the ESSPRS will be calculated using the same methodology as use for other Housing Act 2004 offences.

Rent Repayment Orders (RRO)

Rent Repayment Orders can be applied for by an LHA or tenant under sections 73 and 96 of the 2004 Act. Part 2, Chapter 4 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for an RRO. An application for a RRO can be made, within 12 month period, by a LHA or

tenant against a landlord who commits one of the following Housing Act 2004 ("2004 Act") offences (whether or not convicted)

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;
- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.
- Failure to comply with an Improvement Notice under section 30*,
- Failure to comply with a Prohibition Order under section 32(1),
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977 A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

Financial Penalties as an alternative to taking a prosecution.

The Government introduced the FP as part of its campaign to clamp down heavily on criminal landlords. Ministers have made it very clear that they expected this power to be used robustly and they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to prosecute and the level of FP to impose; at up to £30,000. The level of penalty in the Magistrates Court is now unlimited for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the "Landlord Banning Order" (LBO) for the most serious and prolific offenders and the "Rogue Landlord Database (RLD) of rogue landlords and property agents convicted of certain offences. Whilst a landlord issued with a FP can be placed on the RLD (* requiring two FP within a 12 month period) a FP will not be a "Banning Order Offence" and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.

The legislation does not permit LHA to issue both a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be prosecuted of an offence for the same conduct.

The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The first of five stages of 'Setting the

Penalty' offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide consideration of the appropriateness of the penalty chosen including the means, and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA where a landlord has committed breaches in more than one local authority area.

The decision whether to prosecute will be considered for each offence, but the Council will regard prosecution as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress, ultimately through the RLD and BO procedures. This approach will meet the Government's aim of clamping down heavily on a criminal landlord or letting agents.

Banding the Offence to Determining the most appropriate Action (using scoring matrix)

<table>
<tr><td colspan="4">Band 1</td><td colspan="4">Band 2</td><td colspan="4">Band 3</td><td colspan="4">Band 4</td></tr>
<tr><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td></tr>
<tr><td colspan="2">Caution</td><td colspan="14"></td></tr>
<tr><td colspan="8">Financial Penalty – Rent Repayment Order optional</td><td colspan="8"></td></tr>
<tr><td colspan="3"></td><td colspan="13">Financial Penalty and Rent Repayment Order</td></tr>
<tr><td colspan="3"></td><td colspan="13">Register on Rogue Landlord Database (2 FP within 12M period)</td></tr>
<tr><td colspan="8"></td><td colspan="8">Prosecution and Rent Repayment Order

Banning Order Offence – register on Database</td></tr>
<tr><td colspan="10"></td><td colspan="6">Consider - application to Ban Landlord</td></tr>
</table>

Setting the Financial Penalty (FP) for a Landlord.

A Local Authority must determine the level of FP that can be awarded against a landlord. Tamworth Borough Council has agreed this five-stage process to provide a framework to assist with "*determining the level of fine*" which will ensure consistency, transparency and a fair assessment for all parties.

The process has considered the following documents;

1. The statutory guidance issued by the Secretary of State under Schedule 9 of the Housing & Planning Act 2016,

   • Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.

   • Article 12 of schedule 13A in the 2004 Act.

2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.

3. Non statutory guidance issued by the Ministry of Housing, Communities and Local Government

4. Tamworth Borough Council's Corporate Enforcement Policy

Principles in the Statutory Guidance for Financial Penalties.

This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has from offending.

The five Stages in 'Determining the Level of Financial Penalty'.

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors;

• Culpability of the landlord; and

• The level of harm that the offence has had.

The scores are multiplied to give a penalty score which sits in one of four penalty bands;

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord's ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour

Stage1: Banding the level of Offence, (there are two factors to assess)

<table>
<tr><th colspan="2">Banding the Offence</th></tr>
<tr><td>Factor 1.

Culpability of Landlord (seriousness of offence and culpability)</td><td>Assessment:

The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</td></tr>
<tr><td rowspan="4">To be considered as part of the assessment:

• Is the landlord experienced or has a number of properties within their portfolio?
• what length of time did the offence continue for or repeat over?
• to what extent was the offence premeditated or planned,
• whether the landlord knew, or ought to have known, that they were not complying with the law, the steps taken to ensure compliance.
• whether the landlord has previous relevant unspent
• housing offence related convictions (source National Landlord database),
• the likelihood of the offence being continued, repeated or escalated.
• the responsibilities the landlord had with ensuring compliance in comparison with other parties</td><td>Significant - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</td></tr>
<tr><td>High – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</td></tr>
<tr><td>Moderate - Offence committed through act or omission which a landlord exercising reasonable care would not commit</td></tr>
<tr><td>Low - Offence committed with little fault, for example, because:

a. Significant efforts were made to address the risk although they were inadequate on this occasion

b. There was no warning/circumstance indicating a risk

c. Failings were minor and occurred as an isolated incident</td></tr>
<tr><td>Factor 2

Level of Harm (for tenant, community)</td><td>Assessment:

The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</td></tr>
</table>

To consider as part of assessment • Circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) • Tenant's views about the impact that the offence has had on them. • The extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties. • was more than one other household affected, • The level of actual or potential physiological or physical impact on tenant(s) and third parties? • What regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence? has the level of trust been breached and have landlord actions impacted on sector?	**Significant.** ✦ Serious adverse effect(s) on individual(s) and/or having a widespread impact ✦ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable Significant disregard of Regulator or legitimate industry role with significant deceit **High** ✦ Adverse effect on individual(s) (not amounting to significant) ✦ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. ✦ Regulator and/or legitimate industry substantially undermined by offender's activities Consumer/tenant misled **Moderate** Moderate risk of an adverse effect on individual(s) (not amounting to low risk) ✦ Public misled but little or no risk of actual adverse effect on individual(s) **Low** ✦ Low risk of an adverse effect on individual(s) Public misled but little or no risk of actual adverse effect on individual(s)

Scoring Matrix to Determine level of fine

Scoring Matrix for Financial Penalty					
FACTORS					
Level of Culpability (seriousness of offence)	**Significant**	**4**	**8**	**12**	**16**
	High	**3**	**6**	**9**	**12**
	Moderate	**2**	**4**	**6**	**8**
	Low	**1**	**2**	**3**	**4**
Level of Harm		**Low**	**Moderate**	**High**	**Significant**

Financial Penalty Banding and Penalty Scores

Band	Band 1				Band 2				Band 3				Band 4			
score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

Stage 2: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. **A significant aggravating factor may allow the FP to be increased by a FP point**.

Example aggravating factors:

- Previous convictions, having regard to;

a) The nature of the offence to which the conviction relates and its relevance to the current offence; and

b) The time that has elapsed since the conviction (is conviction spent)?

- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation

- Established evidence of longer-term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage 3: Amending the penalty band based on mitigating factors

Objective: to consider any mitigating factors and whether they are relevant to the offence**. A significant mitigating factor may allow the FP to be decreased by a FP point.**

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Voluntarily steps taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment of the proposed FP meets the aims of the Crown Prosecutions sentencing code:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that the proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, assess a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6 of Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be considered when making an assessment and setting the level of penalty. The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.
In setting a financial penalty, the LHA 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 the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA 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 which may include the inference that the offender can pay any financial penalty.

Process**:** The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the consideration is being given to issue more than one financial penalty, the LHA should consider the Sentencing
Council guidance "Offences Taken into Consideration and Totality - Definitive Guideline". Where separate financial penalties are imposed the LHA must be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act **does** permit the LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

"The total financial penalty is inevitably cumulative". The LHA should 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 LHA. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the LHA should consider how to reach just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- 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 (management offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects 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 LHA 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 LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

- Where an LHA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

Reduction in Penalty Charge for Early Repayment

As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 28 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 28-day period.

If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal if the appeal is unsuccessful. If an offender makes an early payment at the reduced rate, but then decides to appeal later and the appeal is unsuccessful the council will seek the full finalised amount after the appeal proceedings are completed.

Setting the Rent Repayment Order (RRO) for a Landlord.

A tenant or an LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7)(iii) and section 96 (7)(iii) of the 2004 Act and section 42 (2)(b) of the 2016 Act; the LHA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level or rent relates to a defined period of 12 months in the period leading up to the offence or during the 12-month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. An LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it addresses the following factors; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LHA will apply to the FTT for the maximum rent repayment, within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or a LHA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within “Determining the Penalty”.

If there is no conviction or a FP is not issued then the Council will apply to the FTT for the maximum rent repayment when a RRO is applied for.

If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure that the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a Rent Repayment Order with the FTT in line with section 74 and 97 of the 2004 Act and sections 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4 of the 2016 Act) applies. It is felt that not making the application for the maximum award would undermine the discretion of the FTT.

Appeals

A person issued with a FP has a right of appeal to the First Tier Tribunal (Para 10 of Schedule 13A of the 2016 Act)

A person placed on the DRL has a right of appeal to the First Tier Tribunal (Section 32 of the 2016 Act).

A person aggrieved by the decision of the FTT in relation to the making of a rent repayment order may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

NOTE

Financial Penalty Process and Right for Person to make Representations.

Before imposing a financial penalty on a person under section 249A of the 2004 Act the LHA must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 of the 2016 Act requires that the LHA must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the LHA about the proposed RRO

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

All communications for representations made against the intended FP or RRO are to be written and sent to: Assistant Director Partnerships, Tamworth Borough Council

APPENDIX 6 - Determining the Penalty for Offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. (amended 2019*)

Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) (the Regulations) are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for privately rented property.

The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated in June 2018.

Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

The council have had regard to this guidance in formulating this policy

Purpose of this policy

In accordance with Regulation 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. In the first instance the council will notify Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice on how the standards can be met and request Landlords to register an exemption if appropriate. Unless the landlord has reasonable excuse for not complying with these regulations, the council will normally take formal action without giving an informal opportunity for the landlord to comply where a contravention exists.

The Council has discretion to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. The Strategic Housing Team will serve Compliance Notices where the additional information is required. The Team will serve a Penalty Notices where a landlord fails to comply with the Compliance Notice.

The Team will check on the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial penalty

If offences under these regulations are committed the Team will normally serve a Penalty Notice. This policy is a framework for officers to follow in how to determine the appropriate penalty.

Under regulation 39 the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The Team will place the information on the register at the appropriate time, for a minimum of 12 months.

The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion

Penalties for non-compliance with the Minimum Energy Efficiency Regulations

Breaching the ban on letting a property with an EPC Rating of F or G for less than 3 months (statutory maximum £2000)	
First offence - £1000 (or £750 if paid within 28 days)	All other offences - £2000 (or £1500 if paid within 21 days)

Breaching the ban on letting a property with an EPC Rating of F or G for more than three months (Statutory maximum: £4,000)	
First offence: £2,000 (or £1,500 if paid within 28 days)	All other offences: £4,000 (or £3,000 if paid within 21 days)

Registering false or misleading information on the PRS Exemptions Register (Statutory maximum: £1,000)	
First offence: £500 (or £375 if paid within 28 days)	All other offences: £1,000 (or £750 if paid within 21 days)

Failing to provide information to the council demanded by a Compliance Notice (statutory maximum £2,000)	
First offence: £1,000 (or £750 if paid within 28 days)	All other offences: £2,000 (or £1,500 if paid within 21 days)

APPENDIX 7 - Fees in connection with Mobile Home Parks

A - Licencing

Sites are 'banded' from 1 to 5 according to their size in terms of the number of pitches. The fees structure recognises that larger sites are more complex and take more time in terms of site inspections than smaller sites.

Band	Number of pitches
1	1-10
2	11-40
3	41-99
4	100-199
5	200+

New site licence, transfer and amendments

The following fees are applicable if a site owner wishes to apply for a new licence or transfers or amends a site licence. The charge for these functions **cannot** be passed on by the site owner to the site residents.

An invoice will be raised upon receipt of the application/ transfer/ amendment request. Payment will be due within 30 days.

Band 5	Band 4	Band 3	Band 2	Band 1
New site licence application				
£ 537.46	£502.95	£406.49	£296.17	£ 230.69
Application to transfer a site licence				
£ 92.93	£ 72.28	£ 72.28	£ 61.95	£ 61.95
Application to amend a site licence				
£ 165.20	£123.90	£ 123.90	£ 103.25	£ 92.93

Checking and registering site rules

A fee is applicable for the checking and registering of site rules. The charge for this function cannot be passed on by the site owner to the site residents
This assumes an average of 2 hours admin and correspondence work.

Band 5	Band 4	Band 3	Band 2	Band 1
£ 41.30	£ 41.30	£ 41.30	£ 41.30	£41.30

An invoice will be raised upon receipt of the rules. Payment will be due within 30 days.

Annual licence monitoring fee

	Band 5	Band 4	Band 3	Band 2	Band 1
	£516.81	£420.35	£323.89	£203.25	Exempt

Invoices will be sent to the Licence holders of the relevant protected sites at the start of each financial year. Payment will be due within 30 days.

If an annual fee remains unpaid Tamworth Council can apply the 1st Tier Property Tribunal requiring it to be paid. Ultimately if it remains unpaid the Licence can be revoked. A charge may also be placed against the land.

Costs Associated with Fit & Proper Person Assessment

Tamworth Borough Council will charge a one off fee of £128.26 per person to be assessed.

There is no annual monitoring fee.