Maidstone Borough Council

Private Sector Housing Enforcement Policy 2021-2025

FINAL DRAFT VERSION: February 2021

MAIDSTONE
Borough Council

Contents

1.0 Introduction

1.1 Maidstone is the county town of Kent. The Borough covers 40,000 hectares and is largely rural with approximately 50% of the Borough's population living in a parished area. The Borough comprises the large urban area of Maidstone town and a rural area containing a number of smaller villages and the Kent Downs Area of Outstanding National Beauty.

1.2 In 2019, according to estimates from the Ministry of Housing, Communities and Local Government (MHCLG) Maidstone has the largest number of dwellings in the County at 72,130 dwellings with 87% of them being privately owned or rented (not including Social Housing sector). We have a key role to play to support investment and improvement within the sector for the benefit of Maidstone's residents.

1.3 The Council's Strategic Plan (2019-2045) identifies our vision "Maidstone: a vibrant, prosperous, urban and rural community at the heart of Kent where everyone can realise their potential". Under the priority for Homes and Communities the Council places particular importance on improving housing to promote good health and wellbeing.

1.4 This policy details how we intend to use our mandatory and discretionary powers and resources to improve housing in Maidstone Borough.

1.5 We have a direct duty or authority to enforce relevant legislation. We are committed to the statutory principles of good regulation when this applies. Each case is unique and must be considered on its own merits.

1.6 General principles apply to each situation. This policy sets out factors to be taken into account when considering the type of enforcement action we take. The policy must be followed except in exceptional circumstances.

1.7 Priority will be given to addressing poor housing conditions that threaten the safety and wellbeing of occupiers. Resources will be targeted particularly at situations where occupiers have little influence over the condition of the accommodation they occupy.

1.8 This policy replaces the previous Housing Enforcement Policy 2016 adopted by this committee in 2016.

2.0 Background

2.1 The right home environment is critical to our health and wellbeing. Good housing helps people stay healthy and provides a base from which to sustain a job, contribute to the community, and achieve a decent quality of life. Safe and suitable housing also aids recovery from periods of ill health and enables people to better manage their health and care needs.

2.2 Housing is a key determinant of health, and by promoting good quality housing this policy will contribute to reducing health inequalities for Maidstone's residents and contribute to the key action area of encouraging good health and wellbeing.

2.3 Poor housing also has the potential to impact negatively on both the local neighbourhood but also on the wider housing market and by supporting investment in private sector housing we will contribute to the key action areas of securing a successful economy and providing a clean and safe environment.

3.0 Aims of policy

- This policy details how the Council will regulate housing standards across all sectors within the local authority area of Maidstone Borough Council. It provides a background to the legislation and guidance upon which it is based;
- How we will work to maintain and improve housing conditions and how we will meet our statutory obligations;
- To ensure that housing enforcement decisions are always consistent, balanced, fair, transparent, proportionate, and relate to common standards;
- To inform the community at large of the principles by which enforcement action is taken;
- To empower Officers to deliver our objectives to ensure that the housing conditions comply with statutory standards, making the most effective use of capital and staffing resources.
- To provide customer focused, effective, intelligence driven services that support empower and secure a safe and healthy environment for all our residents;
- To support a growing economy where all landlords meet their legal responsibilities; and
- To set out the factors to be taken into account when considering enforcement action.

4.0 Partners

4.1 Officers shall consider if there are relevant internal or external partners. Some of these are listed below:

- Ministry of Housing, Communities & Local Government
- Building Control
- Community Protection
- Environmental Health
- Planning / Planning Enforcement
- Kent Fire and Rescue
- Kent Police
- Maidstone Mediation Service
- Voluntary sector organisations
- UK Border Agency

5.0 Governance and ethics

5.1 We will take into account the legal and procedural implications of both The Human Rights Act 1998 and European Convention on Human Rights.

5.2 We will also have regard to our responsibilities as described in the Equality Act 2010 and our own MBC Equality Policy. We recognise there is diversity within the community. Care will be taken to ensure enforcement actions are clearly understood by all. For example, we will provide documents in an appropriate language wherever possible. We may also arrange for an interpreter.

5.3 The Code for Crown Prosecutors and legislative and regulatory reform sets out what people being regulated can expect from us. It commits us to good enforcement practice with effective procedures and clear policies.

5.4 This document has been prepared with regard to the current principal legislation and statutory guidance including:

- The Regulatory Enforcement and Sanctions Act 2008;
- Legislative and Regulatory Reform Act 2006;
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007;
- Regulators' Code;
- Housing Health & Safety Rating System Enforcement Guidance.

5.5 The Regulatory Enforcement and Sanctions Act 2008 requires us to:

- Have regard to any statutory guidance given to us,
- Comply with guidance where we are directed by the Secretary of State, and
- Have regard to any list of enforcement priorities from the Secretary of State.

5.6 The Legislative and Regulatory Reform Act 2006, Part 2, requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is:

- Proportionate,
- Accountable,
- Consistent,
- Transparent,
- Targeted to those situations that need action.

5.7 We have had regard to the Regulators' Code in the preparation of this policy and when we take enforcement action we aim to:

- Change the behaviour of the offender,
- Change attitudes in society to offences which may not be serious in themselves, but which are widespread,
- Eliminate any financial gain or benefit from non-compliance,
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction,
- Be proportionate to the nature of the offence and the harm caused,
- Restore the harm caused by regulatory non-compliance, where appropriate,
- Deter future non-compliance.

5.8 Our primary function is to achieve regulatory compliance in order to protect residents. However, we may take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

5.9 When considering enforcement action, we will, where appropriate/reasonably practicable, discuss the circumstances with those suspected of a breach. We will consider these discussions when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

6.0 Methods of enforcement

6.1 We recognise that prevention is better than cure. However, where it becomes necessary we will take enforcement action. The term "enforcement" has a wide meaning and applies to all dealings between us and those on whom the law places a duty. The range of actions available include:-

- No action
- Informal action and advice
- Enforcement action (see appendixes)
- Charges for enforcement
- Works in default
- Interview under caution
- Simple Caution
- Prosecution or financial penalty

7.0 No action

7.1 Before considering taking any action in tenanted properties, we will require the tenant to have contacted their Landlord. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Any copies of correspondence between the tenant and landlord should be provided to officers.

7.2 Tenants will be expected to keep officers informed of any contact they have with their landlord (or landlords agent, builder etc.) that may have an effect on what action we take.

7.3 The following situations may lead us to withdraw the service or not provide the service, are as follows:

- Where tenants of their own free will shortly move out of the property;
- Where the tenants unreasonably refuse access to the landlord, landlords agent or builder to arrange or carry out the works;
- Where the tenants, in our opinion, have clearly caused the damage they are complaining about, and there is no other disrepair;
- Where the tenant has requested a service, then failed to keep an appointment, and not responded to a follow-up letter or appointment card.

8.0 Informal action and advice (Owners)

8.1 Owner/Occupiers generally have control over the repair of their property. Taking formal action, serving notices and requiring works may appear heavy handed and it is for this reason that we may adopt a policy of notifying owner/occupiers of risks by letter rather than by notice. (Even Hazard awareness notices may seem officious to elderly owners).

8.2 We usually inspect Owner/Occupied properties when owners are requesting some financial assistance under our Housing Assistance Policy and we may identify hazards that the owner has not been aware of, (electrical wiring being old or dangerous is a typical example). Owners may be reluctant to have this work done particularly if they have requested assistance to address more cosmetic and less serious repairs for example. Every effort should be made to encourage the owners to carry out works to deal with the most serious hazards first, but if this fails then grant aid will be refused.

8.3 Where category 1 hazards are left after maximum financial assistance has been applied we would inform the owner by letter or if very serious hazards we would consider the service of a more formal notice. If the defects are considerable we may consider other actions such as re-housing the occupant/owner.

8.4 Where category 2 hazards, band D-F remain after maximum financial assistance has been applied we would inform the owner of the hazards by letter.

8.5 Where an owner qualifies for financial assistance for dealing with hazards, but does not want work done, maybe wanting lesser hazards dealt with we will inform the owner by letter/notice of the category 1 hazards, and informed that they will not get a grant if they do not deal with category 1 hazards first.

8.6 Where an owner does not qualify for any financial assistance due to their financial circumstances we will inform the owner of the category 1 hazards by notice and the category 2 hazards by letter.

9.0 Informal action and advice (Tenants)

9.1 We may initially take informal action to secure improvements. This will be most likely where the assessed level of risk to current occupiers is low and cooperation is being received from the person having control of the property.

10.0 Enforcement action

10.1 For information on the different forms of enforcement action, please see the appendices at the end of this report.

11.0 Charges for enforcement action

11.1 We can charge the reasonable expenses incurred in taking formal enforcement action against property owners. Whilst this has not generated surplus income, it has proved to be a valuable deterrent and has

encouraged prompt cooperation from landlords in carrying out required works.

11.2 Landlords have a duty of care to their tenants and should provide accommodation that is both free from significant hazards and properly maintained, thus avoiding the need for our intervention. The Housing Act 2004 enables us to recover our reasonable expenses associated with Hazard Awareness Notices, Improvement Notices, Prohibition Notices and other enforcement activity.

11.3 Charges will therefore normally be made when the following types of notice are served:

- Improvement Notices,
- Prohibition Notices,
- Emergency Prohibition Orders, and
- Emergency Remedial Action.

11.4 Charges for enforcement action will include all expenses incurred from the point that enforcement action was deemed necessary including the cost of preparing and serving the notice.

11.5 Charges in respect of us taking enforcement action will be notified to recipients by way of a formal demand for expenses on which there is a right of appeal to the First-tier Tribunal.

11.6 Charges in respect of Suspended Improvement Notices or Prohibition Orders will not be invoked until such notices and orders come into force.

11.7 Charges in certain circumstances can be waived by agreement in the following circumstances:

- The Landlord / Person having control of the property could not reasonably have known about the existence of the hazard or the need for the remedial works;
- The Notice was served as the result of a consultation or request for assistance;
- The Notice relates to matters caused solely by the actions of tenants;
- The person responsible for carrying out the remedial works / prohibiting its use is cooperating fully with us.

12.0 Works in default

12.1 Most notices allow carrying out work in default. This ensures ultimately that the work is completed if the recipient of any notice does not carry out the work required by the notice. We may employ a contractor to enter the property and carry out the work required. We may charge the appropriate person for the cost of works together with the costs involved in arranging for the work to be done.

12.2 The decision as to whether to carry out works in default we will take into account the following (not exclusive) matters:

- The prospect of the person responsible carrying out the work e.g. if the owner is absent or infirm;
- There is imminent risk to an individuals or public health and safety;
- A prosecution has been brought, is successful, but the works have not been carried out;
- A prosecution is not appropriate; or
- It is appropriate to carry out the works quickly.

12.3 Following the completion of works in default we will send the appropriate person an invoice requesting payment. If this is not paid the matter may be referred to our legal team for further action. We will place a charge on the property or may enforce the sale of the property or take other recovery methods.

13.0 Simple cautions

13.1 A simple caution may be an appropriate course of action where there is a criminal offence but the public interest does not require a prosecution. Ministry of Justice guidance – simple cautions for adult offenders 2015 states that the purpose of the caution is:

- To offer a proportionate response to low level offending where the offender has admitted the offence;
- To deliver swift, simple and effective justice that carries a deterrent effect;
- To record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- To reduce the likelihood of re-offending;
- To increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending Court, whilst simultaneously reducing the burden on the Courts.

13.2 In considering whether a caution is appropriate, we will consider the following questions:-

- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)?
- Is there a realistic prospect of conviction if the offender were to be prosecuted?
- Is it in the public interest to use a caution as the appropriate means of disposal?
- Does the offender consent to being cautioned?

13.3 The decision to issue a simple caution will be made by the Head of Housing & Community Services in consultation with the Head of Legal Services.

13.4 Where a simple caution is offered and declined we are likely to consider prosecution.

14.0 Interviewing under caution

14.1 As soon as it is determined that an offence has been committed we will caution the person(s) suspected of the offence if they are present. We will normally invite the person(s) suspected of committing the offence to our offices to carry out an interview under caution.

14.2 The interview will normally be recorded in accordance with the Police and Criminal Evidence Act. The interview is to question a subject about an offence and offer them the opportunity to give their account. If the person suspected of committing the offence does not attend the interview we will prepare a case for prosecution with the help of our Legal Team.

15.0 Prosecution or financial penalty

15.1 If there is enough evidence for a prosecution or a financial penalty (if available) the Housing & Health Manager with the Head of Housing & Community Services will decide which course of action to take.

15.2 Each offence will be assessed on a case-by-case basis. However, the starting position is that we will seek to impose a financial penalty for a relevant offence if this is available unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

15.3 If a prosecution is considered appropriate we will refer the case to our Legal Team who will determine if there is enough evidence and if the prosecution is in the public interest. If the decision is to award a financial penalty the relevant procedure given in the Appendixes will be followed.

16.0 Monitoring

16.1 All notices will be signed by an authorised officer, normally a different officer than the one who prepared it. This allows the opportunity to review cases to ensure compliance with this policy.

16.2 All enforcement activity will be monitored regularly.

17.0 Service of notices

17.1 If the service of a notice is appropriate and the recipient of the notice lives within the Borough, the Case Officer may hand deliver the notice either by handing it to them in person or by posting the notice through their letterbox or by first class mail. We may email notices if the recipient has agreed to receive notices via email.

17.2 If the recipient of the notice lives outside of the Borough, the Case Officer will normally send the notice by first class mail. We may email notices if the recipient has agreed to receive notices via email (if legislation allows).

18.0 Authorisations

18.1 Only Officers who are competent by training, qualification and/or experienced will be authorised to undertake enforcement action. The authorisations will be in writing and in accordance with delegations.

18.2 Unless expressed elsewhere in this policy, the decision to take no action; informal action; or enforcement action will be taken by the investigating officer of at least a Housing & Health Officer level. Contentious matters and those situations that may be life threatening or lead to serious injury should be discussed jointly with the Senior Housing & Health Officer or more senior manager within the Housing & Community Service. Decisions and the rationale behind them must be recorded onto the appropriate Council's software and officer's notebook.

18.3 Individuals delegated by the Head of Housing & Community Services to be authorised to sign and serve various documents shall have the level of competence and ability as required in their job descriptions and specifications. Individuals authorised will carry identification and evidence of their authorisation.

18.4 From time to time, the job titles of officers are altered and any reference to the Housing & Health Manager or the Head of Housing and Community Services may be deemed to include a reference to any future equivalent post.

19.0 Application of this policy

19.1 The principles contained within this policy shall be applied to the enforcement of legislation relating to investigations by the Housing & Health Team. This policy provides the overarching principles applied by our Housing and Health Team when enforcing the legislation within its remit.

20.0 Access to the policy

20.1 The policy is available on our website and at our offices. The Case Officer will be able to provide a copy of this policy given suitable notice. On request and where practicable this policy (or relevant passages) may be made available on tape, in braille, large type, or in a language other than English.

21.0 Review of policy

21.1 The policy will be kept under review to take into account changes in legislation and amendments found necessary because of internal monitoring. Minor revisions of this policy may be authorised by the relevant Director for the service on receipt of a report documenting proposed changes.

22.0 Complaints

22.1 If you are dissatisfied with the service you receive, please let us know. We are committed to providing quality services and your suggestions and

criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence.

22.2 Wherever possible we will attempt to resolve your complaint informally through the Case Officer or the Housing & Health Manager. If we cannot resolve your complaint you will be referred to the Council's complaints procedure. Details of this are available on request and on our website.

22.3 If you are still unhappy you can discuss your complaint with your local ward Councillor, MP or you can complain to the Local Government Ombudsman.

23.0 Help and advice

23.1 If you would like further advice or clarification on this policy, please contact the Housing & Health Team at the address given below.

24.0 Contact details

24.1 Housing & Health
Maidstone Borough Council
King Street
Maidstone
ME15 6JQ
housingandhealth@maidstone.gov.uk

24.2 First-tier Tribunal (Property Chamber)
Residential Property
Havant Justice Centre
The Court House
Elmleigh Road
Havant
Hampshire
PO9 2AL
Email: rpsouthern@justice.gov.uk
Tel: 01243 779 394
Fax: 0870 7395 900

24.3 The address of the First-tier Tribunal may change from time to time, but the latest address will be detailed on any appealable notice served and can be found at: https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber

Appendix 1: Housing Act notices

1.1. Housing Act 2004

1.2. The Housing Act 2004 replaced provisions under the Housing Act 1985 and is the main tool that regulates rented accommodation in England and Wales. The main way housing conditions are determined is by way of the Housing Health & Safety Rating System.

1.3. Housing Health and Safety Rating System (The Rating System)

1.4. The Housing Health and Safety Rating System (The Rating System) assesses the risk to the health & safety of occupiers posed by certain specified housing related hazards.

1.5. The Rating System involves the assessment of 29 potential hazards and scoring of their severity to decide whether improvements are needed. Assessed hazards are banded Category 1 or Category 2 depending on the seriousness of the risk. Where Category 1 hazards are found we have a duty to take action. If Category 2 hazards are found, we have a discretionary power to take action.

1.6. The process can be summarised as:

- Determine hazards present.
- Assess hazard score.
- Power or duty to take action?
- Determine the most appropriate action to deal with the hazard(s).

1.7. Enforcement options

1.8. A range of enforcement options are available to us, how these discretionary powers are used will depend on the circumstances of each case. In making decisions the following will be taken into account excepted that where a category 1 hazard exists within a property we must take some action:

- The nature of the hazard;
- The nature and circumstances of the current occupier (Age, vulnerability etc.);
- Views of Occupiers;
- Local priorities for improving housing conditions;
- Availability of other forms of Housing Assistance;
- Action must be proportionate to the risk.

1.9. When a hazard is identified, we must decide the most practical course of action to take. We can choose to deal with the matter informally as an alternative to enforcement action. This will be most likely where the assessed level of risk to current occupiers is low and cooperation is being received from the person having control of the property or in the case of Owner Occupiers where they have control over their circumstances. This does not prevent subsequent service of enforcement notices.

1.10. We will, other than in exceptional cases, for instance where it will result in an unacceptable delay in alleviating a serious hazard, always ensure that landlords, tenant(s) and owners have the opportunity to discuss our proposed action before a notice is served.

1.11. The Housing Act requires us to produce a Statement of reasons justifying the type of action we are taking. This must accompany all improvement notices and orders served.

1.12. **Notices available**

- Power to require documents to be produced (s235)
- Power of entry (s239)
- Warrant (s240)
- Improvement Notice (s.11 + s.12);
- Prohibition Order (s.20 + s.21);
- Emergency Remedial Action Notice (s.40 + s.41);
- Emergency Prohibition Order (s.43);
- Demolition Order (Housing Act 1985);
- Clearance Areas (Housing Act 1985);
- Statutory Overcrowding Notice (Housing Act 1985)
- HMO Overcrowding Notice (s139)
- Management Orders / Interim Management Orders;
- Hazard Awareness Notice (s.28 + s.29);
- Suspended Orders / Notices

1.13. **Power to require documents to be produced**

1.14. This notice allows us to require the relevant person to provide documents that they may hold to help us determine the course of action we may take. The notice is useful for requiring documents such as tenancy agreements, gas safety certificates, and electrical inspection reports.

1.15. The documents must be produced on (or before) the date specified in the notice. If the relevant person does not comply with the notice, we may prosecute them, which could result in a fine.

1.16. **Power of entry**

1.17. This notice enables us to enter premises at any reasonable time. If the premise is being entered in order to ascertain whether an offence has been committed under section 72 (failing to licence an HMO), section 95 (failing to selectively licence a premises, not relevant in Maidstone), or section 234(3) Management of Houses in Multiple Occupation we do not need to give 24 hours' notice to the owner or the occupier of the premises.

1.18. If we are entering the premises for other reasons, we must give the owner and occupier at least 24 hours' notice. We may give notice by phone, text or in person but we will normally give notice via a letter or a more formal notice.

1.19. If we fail to enter the premises, we may serve another notice giving the owner and occupier at least 24 hours' notice of our intended visit.

1.20. It is an offence if an owner or occupier obstructs us in the course of our duties. We may therefore take evidence such as witness statements. We may also caution the relevant person.

1.21. If we fail to enter the property after one or two attempts of using our powers, we may apply for a warrant at the Magistrate's Court to gain entry to the premises by force.

1.22. **Warrant**

1.23. We may apply for a Warrant to the Magistrate's Court to enter premises for the purposes of carrying out our functions.

1.24. We may apply for a warrant if we have failed to inspect a property after giving notice of our intention to inspect. We may also apply for a warrant if the purpose of the entry would be defeated by giving the owner or occupier prior warning. Such as the collection of evidence of an offence.

1.25. We may take a Police Officer or Police Community Support Officer with us when we gain entry. We will leave the premises as secure as it was before we entered.

1.26. **Improvement Notices**

1.27. Improvement Notices are the most practical formal remedy for most hazards, particularly in tenanted property. Repair or renewal will generally be cost-effective because of the high value of property in Maidstone.

1.28. An improvement notice can be used for Category 1 or 2 hazards and can deal with more than one hazard of either type.

1.29. The notice will be placed as a charge on the property and failure to comply with it is an offence which may lead to a prosecution or a financial penalty.

1.30. After an improvement notice is served Housing Act 1988 (as amended) Section 21 notices are invalid for up to 6 months.

1.31. **Prohibition Orders**

1.32. Prohibition Orders may be applied to part or all of a dwelling, for example, where it is not practical or cost effective to alleviate an identified hazard. In addition, where there are other restrictions on the improvement of the property e.g. Listed Building status they may be used in conjunction with Improvement Notices to prohibit parts of a premise that cannot reasonably be improved. An example might be where there is inadequate natural lighting to a basement or where there is no possible safe means of fire escape from an attic room.

1.33. A Prohibition Order must specify whether the prohibition relates to Category 1 or 2 hazards, must detail the remedial works deemed necessary to alleviate the hazard(s), and may allow the owner / occupier to apply for compensation.

1.34. The order will be placed as a charge on the property and failure to comply with it is an offence which may lead to a prosecution and/or a rent repayment order.

1.35. **Emergency Remedial Action**

1.36. Emergency Remedial Action will be used where immediate action is required to remove an unacceptable and imminent risk to occupiers or other persons. This action enables us to carry out remedial works ourselves and recover all expenses incurred.

1.37. To carry out Emergency Remedial Action there must be a Category 1 Hazard + an imminent risk, and notices must be served within seven days of taking action.

1.38. **Emergency Prohibition Orders**

1.39. Emergency Prohibition Orders are the same as Prohibition Orders but they have immediate effect to prevent occupation of all or part of the premises.

1.40. To carry out an Emergency Prohibition there must be Category 1 Hazard + an imminent risk, notices should be served on the day the order is made and may allow the owner / occupier to apply for compensation.

1.41. **Demolition Orders**

1.42. Demolition Orders enable the compulsory demolition of an individual property where it is considered to be beyond economic repair. Such action is considered unlikely in Maidstone where property values are high. Demolition of property will only be considered on housing grounds after a full Neighbourhood Renewal Assessment has been completed which indicates that this is the most appropriate course of action.

1.43. Compensation will be payable to the owner / occupier in all cases.

1.44. **Clearance Areas**

1.45. Clearance Areas enable the compulsory clearance of neighbourhoods where the housing is considered to be beyond economic repair. Such action is considered unlikely in Maidstone where property values are high. Clearance will only be considered on housing grounds after a full Neighbourhood Renewal Assessment has been completed which indicates that this is the most appropriate course of action.

1.46. Compensation will be payable to the owner / occupier in all cases.

1.47. **Overcrowding Notices**

1.48. If a premise is statutory overcrowded, Part X of the Housing Act 1985 still applies and we may serve a notice.

1.49. We will measure the floor areas of each bedroom and living room. We will determine the ages and sexes of the occupants and determine whether the premises is statutorily overcrowded having regard to the room sizes and maximum number of persons per room as given below.

Room size	Maximum number of persons
5m² to 6.5m²	0.5
6.5m² to 9m²	1 person
9m² to 11m²	1.5 persons
11m² +	2 persons

Age	Calculation of persons
0 to 1 year	0
1 to 10 years	0.5 persons
10 years+	1 person

1.50. **HMO Overcrowding Notices**

1.51. If a premise is an HMO, which is not licensable, and is crowded we may serve an HMO Overcrowding Notice.

1.52. We will measure the floor areas of each bedroom / living room. We will count the number of facilities provided such as bathrooms and kitchens. We will determine the number of occupants and whether the premises is overcrowded having regard to:

1.53. Room sizes:

Use of room:	Minimum Room Size:
Bedroom occupied by 1 person	9m²
Bedroom occupied by 2 people	14m²
Kitchen used by up to 5 people	7m²
Kitchen used by up to 10 people	10m²
Living room used by up to 5 people	11m²
Living room used by up to 10 people	16.5m²

1.54. Amenities:

Use of room:	Number required:
Bathroom	1 for every 5 people
WC	1 for every 5 people
Kitchen	1 for every 5 people

1.55. Facilities:

Facility:	Number required:
Bath or shower and wc	1 for every 5 people
Separate WC	1 for every 5 people
Shared wash hand basin	1 for every 5 people
Wash hand basin	In every unit where possible
Kitchen sink	1 for every 5 people
Fridge	1 for every 5 people
Freezer	1 for every 5 people
Cooker (4 hot ring, grill and oven)	1 for every 5 people
Food storage	1 base unit per person (or equivalent)
Worktop (shared)	2 meters for every 5 people
Worktop (individual)	1 meter for every unit

1.56. If the premises is, or is likely to be overcrowded, we may serve an intention to serve an overcrowding notice on each person with an interest in the property such as occupiers; owners; managers; and mortgagee's.

1.57. The intention to serve an overcrowding notice gives the recipient of the notice at least fourteen days to make representations.

1.58. After the consultation period has ended, we may serve an overcrowding notice, which will require the relevant person to either not add additional occupants or to seek possession of the property back from the occupants.

1.59. The notice will be placed as a charge on the property and failure to comply with it is an offence which may lead to a prosecution or a financial penalty.

1.60. **Management Orders / Interim Management Orders**

1.61. We may use Management Orders / Interim Management Orders if Houses in Multiple Occupation (HMO's) are not licensed, do not comply with the required standards or if the person in control is not a "Fit and Proper" person.

1.62. If a landlord fails to bring an HMO up to the required standard or fails to meet the Fit and Proper person criteria, we can take over the management of the property. An Interim Management Order (IMO) allows us to manage the property for up to a year, until suitable management arrangements have been made. The owner does keep their right as an owner.

1.63. If the IMO expires and no improvement in management has been made, then we can issue a Final Management Order (FMO). This can last up to five years and be renewed following this period.

1.64. **Hazard Awareness Notices**

1.65. Hazard Awareness Notices are advisory notices only. They may be appropriate where the hazard is minor or where remedial action is

unreasonable and impractical. They may also be used as an alternative to informal action where the owner has agreed to take remedial action.

1.66. This does not prevent subsequent formal action should an unacceptable hazard remain.

1.67. We may choose to use Hazard Awareness Notices where significant hazards have been identified in owner occupied accommodation, or in other circumstances where we consider the occupier has some control over his circumstances. In these cases other forms of enforcement action may be inappropriate.

1.68. **Suspended Notices**

1.69. Improvement Notices / Prohibition Orders may be suspended until such time or event specified. We may consider this:

- As an alternative to a Hazard Awareness Notice;
- Where the most vulnerable age group for particular hazard are not present;
- As a consequence of the current occupiers views;
- As an option for a more strategic approach;

1.70. Suspended Notices and Orders must be reviewed (not less than annually). In deciding what action is necessary and appropriate in each case we will take account of:

- The severity of hazard;
- Nature of hazard;
- Risk posed to existing occupants;
- Practicality of remedial action;
- Cooperation of the Person Having Control;
- Tenure;
- Occupiers wishes;
- All relevant Local Housing Strategies / Policies. Fees & Charges.

Appendix 2: Other legislation

2.1. **Local Government (Miscellaneous Provisions) Act 1982, section 33.**

2.2. This section enables us to re-connect or prevent the disconnection of gas, electricity or water supply in tenanted properties. These powers will be used in exceptional circumstances when all other negotiation has failed. These powers will only be used where the tenant is not responsible for the payment of the bill.

2.3. We may re-charge our costs and place a charge on the property.

2.4. **Local Government (Miscellaneous Provisions) Act 1982, section 29.**

2.5. This section enables us to board up insecure empty properties. We will attempt to contact the owner to carry out the work. We may serve a notice giving the owner 48 hours to make the property secure.

2.6. If the property remains unsecured after this, we may carry out the work, re-charge our costs and place a charge on the property.

2.7. **Local Government (Miscellaneous Provisions) Act 1976, section 16**

2.8. This section enables us to obtain information about the interest in land. The notice is used to determine who owns, manages, and occupies a dwelling. The information must be provided within 14 days of service of the document.

2.9. Failure to provide the information may result in a prosecution of the relevant person. On summary conviction, the Magistrates Court can issue a fine.

2.10. **Public Health Act 1936, section 17**

2.11. This section enables us to require owners / occupiers to unblock or repair toilets. If negotiation fails, we may serve a notice requiring the toilet to be unblocked within 7 days. If the toilet remains blocked, we may carry out the work and re-charge our costs.

2.12. If the toilet requires repair we may serve a notice requiring the toilet to be repaired within 14 days. If the toilet remains in disrepair, we may carry out the work and re-charge our costs.

2.13. **Building Act 1985, section 59**

2.14. This section allows us to require owners to provide new, repair, or upgrade existing: drains, guttering, cesspools, sewers, drains, soil pipes, and rainwater pipes etc.

2.15. We must give the owner of the property at least 21 days to carry out the work. If the owner fails to carry out the work, we may carry out the work ourselves and prosecute the owner. The fine on summary conviction is level 4 on the standard scale.

2.16. **Protection from Eviction Act 1977**

2.17. We are responsible for enforcing the Protection from Eviction Act 1977. This is when landlords unlawfully evict or harass tenants with the intention of causing their tenant to vacate their home. The maximum penalty on summary conviction is up to 6 months imprisonment and a fine of up to £400. On conviction of an indictment to a fine and/ or to imprisonment of up to 2 years.

2.18. We will normally negotiate with the landlord in order to prevent an illegal eviction from occurring. If this fails, we may provide advice to the tenant in order to allow re-entry into the dwelling.

2.19. We may decide not take further action if the landlord desists with their actions and the tenant remains in the dwelling. If the landlord does not desist with their actions and the tenants are unable to remain in the dwelling we will consult with legal services and determine whether it is in the public interest to take forward a prosecution.

2.20. We may advise the tenant to apply for a rent repayment order to obtain up to 12 months of rent back from the landlord. We may apply for a rent repayment order to obtain up to 12 months rent back from the landlord (where rent has been paid by us).

2.21. **Compulsory Purchase Orders**

2.22. Making a Compulsory Purchase Order is an option that will only be taken in exceptional circumstances and must be approved by the relevant Secretary of State before it can be made. It may be an option: -

- Where a property has been derelict for some time and is having a detrimental effect on the local environment or neighbouring properties,
- Where the property appears to have been abandoned and the owner cannot be traced,
- Where all other avenues for bringing the property back into use have been exhausted, or
- Where the property is suitable for immediate residential use but it is unlikely to be occupied for residential purposes unless bought by us.

2.23. **Deregulation Act 2015 Retaliatory Evictions**

2.24. Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and in response, instead of effecting the repair, the landlord serves them with a notice seeking possession under section 21 (no fault eviction procedure) of the Housing Act 1988. On 1st October 2015 provisions in the Deregulation Act 2015 came into force. These provisions are designed to protect tenants against unfair eviction.

2.25. Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord and their complaint has been validated by a Local Authority inspection and consequently serve a Housing Act 2004 section 11 or 12 Improvement Notice or Emergency Remedial Action under section 40, any section 21 notice served on a tenant

by a landlord under the provisions of the Housing Act 1988 will become invalid for a period of six months from the date of service of the notice.

2.26. We may inform the landlord and tenant about the effect of the Deregulation Act in relation to section 21 notices during our consultation and/or when we serve the notice. If we become aware that a tenant has received a section 21 notice within six months of the date of service of an improvement notice, we may advise the tenant or landlord of the section 21 notice's invalidity.

Appendix 3: Smoke and Carbon Monoxide Alarm Regulations

3.1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) require landlords to install smoke detectors and carbon monoxide alarms in privately rented accommodation.

3.2. **Penalties**

3.3. If the landlord fails to carry out the work we will within 28 days following the end of the notice period carry out the work (if there is consent by the occupier) after giving the occupier 48 hours' notice.

3.4. If a landlord fails to carry out the work we may impose a penalty charge (amount as agreed in the Smoke and Carbon Monoxide Alarms Statement of Principles), within 6 weeks of determining that the landlord has breached the regulations.

3.5. **Reduction for early payment or after written representations**

3.6. If the landlord pays the charge or provides written representations within 14 days following service of the notice the fixed penalty notice is reduced to an amount as detailed in the Smoke and Carbon Monoxide Alarm Statement of Principles.

3.7. **Appeals**

3.8. The landlord may appeal to the First-tier Tribunal (Property Chamber) following a decision by us to confirm or vary a penalty charge notice if the decision was based on an error of fact, the decision was wrong in law, the amount of penalty charge was unreasonable, or the decision was unreasonable for any other reason. The Tribunal may quash, vary or confirm the penalty charge notice, but may not increase the amount of penalty charge.

3.9. **Statement of principles for determining financial penalties Smoke and Carbon Monoxide Alarm Regulations**

3.10. The purpose of this statement is to set out the principles, which we will apply in exercising our powers to require a relevant landlord to pay a financial penalty.

3.11. **The legal framework**

3.12. Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) provides that we may require a landlord to pay a penalty charge if we are satisfied on the balance of probabilities that when served with a remedial notice under regulation 5 they failed to take the required action within the period specified.

3.13. **The scope of this document**

3.14. Regulation 13 of the regulations requires us to prepare and publish a statement of principles, which we propose to follow in determining the amount of a penalty charge.

3.15. We may revise our statement of principles and, when we do so, we must publish the revised statement.

3.16. Where a penalty charge is made, we must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

3.17. This document sets out the principles, which we will apply and will have regard-to when exercising our powers under regulation 8.

3.18. **Applicable principles**

3.19. The primary purpose of the exercise of our regulatory powers is to protect the interests of the public, although they may have a punitive effect.

3.20. The primary aims of financial penalties will be to:

- Change the behaviour of the landlord,
- Eliminate any financial gain or benefit from non-compliance with the regulations,
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes,
- Aim to deter future non-compliance, and
- Reimburse the costs incurred in undertaking work in default.

3.21. **Criteria for the imposition of a financial penalty**

3.22. By virtue of regulation 8, a failure to comply with the requirements of a remedial notice allows us to require payment of a penalty charge. In considering the imposition of a penalty we will have regard to:

- The evidence of a breach of the requirement of the remedial notice.

3.23. In deciding whether it would be appropriate to impose a penalty, we will take full account of the particular facts and circumstances of the breach under consideration. Factors which we will take into consideration are:

- That we are satisfied on the balance of probabilities that the landlord on whom was served a remedial notice has failed to take the remedial action specified in the notice within the period specified.

3.24. A financial penalty allows us, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in the following circumstances:

- Where the landlord has failed to comply with the requirements of a remedial notice.

3.25. **Criteria for determining the quantum of a financial penalty**

3.26. Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial

notice (subject to any representation made by a landlord to us) and a cost element relating to the works carried out by us.

3.27. The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served.

3.28. **Early repayment period**

3.29. We have discretion to specify that if a landlord pays the penalty charge within a specified earlier period a reduction in the penalty charge may be applied. We will exercise this discretion to reduce the penalty charge in relation to payment within a specified "early payment" period.

3.30. The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served. Early repayment will attract a discount of 50% on the charge.

3.31. **Review of penalty charge**

3.32. We may also exercise a similar discretion where the landlord gives written notice to us that they wish the authority to review the penalty charge notice. We may exercise the discretion to reduce the penalty charge where a landlord gives written notice, including evidence of mitigating factors, to us to review the penalty charge notice.

3.33. The mitigating factors are that the landlord has taken all reasonable steps to comply; the landlord has been actively co-operating with us; has effective systems in place for monitoring compliance; and has been pro-active on their approach to the legislation. Each case will be considered by officers on the basis of the information available.

3.34. **Landlord has taken all reasonable steps to comply**

3.35. Landlords will not be able to provide evidence that they have taken all reasonable steps to comply if they have done nothing, have not written to the tenant to explain the legal requirement and that it is for their own safety, or they have not checked the alarms are in good working order on the first day of the tenancy.

3.36. **Landlord has been actively co-operating.**

3.37. Landlords will not be able to provide evidence that they have actively been co-operating with us if they have not provided officers, when requested access to the property; alarm service records; and tenancy records. Landlords are expected to respond promptly, honestly and accurately to officers and disclose any evidence which may assist us in our investigations.

3.38. **Landlord has effective systems in place for monitoring compliance**

3.39. Landlords will not be able to provide evidence that they have effective systems in place for monitoring compliance if they do not have robust document checking systems in place; records of alarms for the premises; or records of testing the alarms on the first day of the tenancy (i.e. an

inventory showing the alarm has been checked as working and signed by the tenant).

3.40. **Landlord has been pro-active on their approach to the legislation**

3.41. Landlords will not be able to provide evidence that they have been proactive on their approach to the legislation if they have not informed, preferably in writing, the Housing & Health Team, that they have had difficulty with complying with the legislation before a notice is served under regulation 5 of the regulations.

3.42. **Levels of fine**

3.43. For a first breach, the penalty charge applied will be £2,500.

3.44. For subsequent breaches, the penalty charge will be £3,000 to deter continued non-compliance.

3.45. If a landlord provides evidence of mitigating factors, we may reduce the penalty charge notice by £500 for each mitigating factor. Therefore, the fine may be reduced by a maximum of £2,000.

3.46. Early repayment of the penalty charge will attract a discount of 50%.

3.47. **Procedural matters**

3.48. The regulations impose a number of procedural steps that must be taken before we can impose a financial penalty.

3.49. Before imposing a requirement on a landlord to pay a penalty charge we must, within a period of six weeks from the point at which we are satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- The reasons for imposing the penalty charge;
- The premises to which the penalty charge relates;
- The number and type of prescribed alarms (if any) installed at the premises;
- The amount of the penalty charge;
- The obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- How payment of the charge must be made; and
- The name and address of the person to whom a notice requesting a review may be sent.

3.50. The landlord can request a review in writing within 28 days of service of the notice. In conducting the review, we will consider any representations made by the landlord, and serve notice of our decision whether to confirm, vary or withdraw the penalty charge to the landlord.

3.51. A landlord who having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge, may appeal to the First-tier Tribunal (Property) against our decision.

Appendix 4: Houses in multiple occupation

4.1. The definition of a House in Multiple Occupation (HMO) is contained in section 254 to 259 of the Housing Act 2004.

4.2. **Inspection of the premises**

4.3. We will inspect Houses in Multiple Occupation having regard to the Housing Health and Safety Rating System, our own standards and the Management Regulations. If after the inspection it is found that the property does not meet our HMO standards, or has hazards under the Rating System, enforcement action will be considered.

4.4. **Consultation with Kent Fire & Rescue Service**

4.5. If works are required in relation to the Hazard of Fire, we will normally consult with the Kent Fire and Rescue Service as to the works required. A letter will be sent to the interested parties of the property stating what works are required.

4.6. **Enforcement**

4.7. If the work remains outstanding, we may serve an Improvement Notice or if an Improvement Notice is not appropriate, a Prohibition Order may be considered to reduce the risk. If the HMO is overcrowded, or may be overcrowded, we may serve an intention to serve an overcrowding notice on the interested parties. Following representations (if any), we may serve an overcrowding notice.

4.8. **Management of houses in multiple occupation**

4.9. The Management of Houses in Multiple Occupation (England) Regulations 2006 applies to Houses in Multiple Occupation ("HMOs") in England apart from Housing Act 2004 section 257 HMOs to which the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply.

4.10. The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply to converted blocks of flats to which section 257 of the Act applies. These are buildings that have been converted into, and consist of self-contained flats, where the building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them, and less than two-thirds of the self-contained flats are owner occupied.

4.11. **Procedure**

4.12. If after the property is inspected there are issues related to the management of the property that in our opinion requires further action the we will write to the owner/manager of the HMO detailing the defects which should be addressed and under what regulation. We will give the owner/manager a period of time to carry out the work, dependant on the severity of the defect and the work involved to eliminate it. For example, rectify faulty alarm system – up to 7 days.

4.13. We will determine who is responsible for remedying the defect. If the property is licensed this would be through the licence details, if not, we may serve a Notice requiring this information.

4.14. If after the period of time to remedy the defect has expired and the defect has not been rectified we may, collate evidence for a prosecution or impose a financial penalty. If a prosecution is deemed appropriate, the evidence will be passed to our Legal Department.

4.15. A person who fails to comply with these Regulations commits an offence under section 234(3) of the Housing Act 2004, punishable on conviction with a fine not exceeding level 5 on the standard scale (currently unlimited).

4.16. **Licensing of houses in multiple occupation**

4.17. Mandatory Licensing of Houses in Multiple Occupation (HMO) is contained under Part 2 of the Housing Act 2004. We are required to have a licensing scheme in place, seek properties that require licences and licence those properties that are licensable (currently HMO's occupied by five or more people, and where there is sharing of an amenity or the units are not self-contained). Flats in Multiple Occupation are exempt if they are purpose built flats and there are three or more flats in the same block.

4.18. Failure to licence a 'licensable' property is an offence with the maximum fine on summary conviction being an unlimited fine. The other actions that could be taken are rent repayment orders to recover up to one years' worth of rent and section 21 notices (Notice requiring possession) are invalid.

4.19. If we identify a house in multiple occupation which should be licensed but is not we may send out a letter and application pack. The letter will inform the owner/manager of the need to licence their property.

4.20. If the owner/manager has not returned the licensing application form and fee within 1 month, we may send a reminder letter with another copy of the licence application form and give another month. If no licence application or fee is received after a further month, we may inspect the property and gain evidence.

4.21. **Prosecution or financial penalty**

4.22. Once evidence is collected, the case may be prepared for prosecution or for the imposition of a financial penalty. If a property is identified as a licensed house in multiple occupation but there is a breach of the licence conditions or that the property is occupied by more people than allowed by the licence, we may collect evidence for a prosecution or a financial penalty.

4.23. At this time, we will also consider the implementation of a Management Order to take over the management of the property. Our use of HMO management orders will be in accordance with Government guidance.

4.24. We may advise the tenant(s) to apply for a rent repayment order to obtain up to 12 months of rent back from the landlord.

Appendix 5: The Redress Schemes for Letting Agents/Managers

5.1. Under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 letting agents and managers of privately rented dwellings must belong to either the Property Redress Scheme (www.theprs.co.uk) or The Property Ombudsman (www.tpos.co.uk).

5.2. **Penalties**

Where the Council is satisfied on the balance of probabilities that a person has failed to belong to a redress scheme as required by article 3 or 5 of the 2014 Order it may by notice require that person to pay a monetary penalty.

- For first time breaches we may impose a financial penalty of £2,500,
- For subsequent breaches we may impose a financial penalty of £3,000,
- We may repeat the process until the letting agent or manager has registered with a redress scheme.

5.3. **Withdrawing / reduction of the fine**

5.4. We may withdraw a notice of intent or final notice or reduce the penalty charge subject on a case-by-case basis at our discretion. We will reduce the amount of the penalty charge if the charge is paid within 14 days of the date of service of the penalty charge notice.

5.5. Typical reason for reducing the penalty charge include the letting agent / manager providing evidence that they have taken all reasonable steps to comply with the notice.

5.6. **Appeals**

5.7. The letting agent or manager can appeal the penalty charge notice to the First-tier Tribunal (Property Chamber).

Appendix 6: Rent repayment orders

6.1. The Housing and Planning Act 2016 introduced powers on the First-tier Tribunal to make a rent repayment order where a landlord has committed a relevant repayment offence. The legislation is contained in chapter 4 of Part 2 of the Housing and Planning Act 2016. The powers came into force on 10th March 2017 and 6th April 2017 (SI 2017 No. 281).

6.2. **Guidance**

6.3. We will have regard to the guidance given by the Department of Communities and Local Government contained in the publication titled Civil Penalties under the Housing and Planning Act 2016, guidance for local authorities published in April 2017.

6.4. **Before deciding to apply for a rent repayment order, we will:**

- Consider each case on its own merits,
- Ensure that there is sufficient, reliable evidence to justify the action taken,
- Ensure that action meets the public interest test,
- Consider any mitigating circumstances, and
- Be fair and consistent in reaching decisions.

6.5. **Amount of order (local housing authorities)**

6.6. The amount of Rent Repayment Order must relate to the amount of Universal Credit (or Local Housing Allowance) paid during 12 months until the date of the offence for offences for entering and remaining on property (Criminal Law Act 1977, section 6(1)), and Unlawful Eviction and harassment of occupier (Protection from Eviction Act 1977). For all other relevant offences the amount of Rent Repayment Order must relate to the amount of Universal Credit (or Local Housing Allowance) paid during the period in which the landlord was committing the offence, not exceeding 12 months.

6.7. **Enforcement of rent repayment orders.**

6.8. The amount of the rent repayment order is recoverable as a debt. If it is in relation to Universal Credit, it does not constitute an amount recovered by the authority. The Secretary of State may make regulations as to how we deal with amounts recovered under rent repayment orders, but to date there are no such regulations.

6.9. **Helping tenants apply for a rent repayment order**

6.10. We may help a tenant to apply for a rent repayment order, for example by conducting proceedings or by giving advice to the tenant.

6.11. **Appeals**

6.12. A person aggrieved by a decision of the First-tier Tribunal, may appeal to the Upper Tribunal. For the appeal to be brought the First-tier Tribunal or Upper Tribunal must give permission.

Appendix 7: Minimum Energy Efficiency Standards

7.1. The Energy Act 2011 introduced the Minimum Energy Efficiency Standards which are further detailed in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015 No. 962). The regulations came into force after 1st April 2018 for new (or renewed) tenancies and after 1st April 2020 for all relevant tenancies.

7.2. **Guidance**

7.3. We will have regard to the guidance issued for landlords www.gov.uk/government/uploads/system/uploads/attachment_data/file/669587/Domestic_Private_Rented_Landlord_Guidance_-_Updated_Version.pdf

7.4. **Exemptions**

Landlord may apply for an exemption (for up to five years) to the regulations on specific grounds. The exemption must be applied for online at www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance If a valid exemption is applied for then the landlord will not have breached the regulations. We may still take action under the Housing Act 2004 for dwellings which have a valid exemption.

7.5. **Penalties**

- Regulation 23 (under 3 months) - up to £2,000 + publication penalty.
- Regulation 23 (over 3 months) up to £4,000 + publication penalty.
- Regulation 36(2) – up to £1,000 + publication penalty.
- Regulation 37(4a) – up to £2,000 + publication penalty.

7.6. The maximum penalty cannot be more than £5,000 for each individual breach of the regulations. We may still take action under the Housing Act 2004 for dwellings in breach of the regulations.

7.7. We may publish the following information on the PRS Exemptions Register for 12 months (or longer if decided):

7.8. **Right to review**

7.9. Landlords served with a penalty notice may request a review of the notice. We will accept the review if it is received within 28 days from the date of service of the notice.

7.10. Representations may be submitted by a private landlord to support their request for a review. A request for a review, together with any representations received, will be carefully considered before we make a final decision as to whether to confirm or withdraw the Penalty Notice. Once we have made a decision, we will notify the private landlord of that decision by serving a Notice of Decision.

7.11. To ensure fairness and transparency, every decision to confirm a Penalty Notice following a request for review will be subject to approval. In the first instance, the decision to confirm a Penalty Notice will be proposed by the Housing & Health Manager, who will provide an assessment of any written

representations received. The proposal will be reviewed by the Head of Housing & Community Services.

7.12. **Reduction for an early acceptance of guilt**

7.13. As with criminal prosecutions, we are of the opinion that an early acceptance of guilt is in the public interest as it saves public time and money.

7.14. An offender can demonstrate an early acceptance of guilt by paying a financial penalty within 21 days of the date the Penalty 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.

7.15. A Penalty Notice will set out the financial penalty amount having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.

7.16. An offender would not be demonstrating an early acceptance of guilt if they decided to request a review of our decision to serve a Penalty Notice. If we confirm a Penalty Notice after such a request, the full amount of the financial penalty will be payable and the option to make a payment in the reduced sum will not be available.

7.17. **Appeals**

7.18. The landlord may appeal to the First-tier Tribunal that the issue of the penalty was based on an error of fact or law; the penalty notice does not comply with the regulations; or in the circumstances, it was inappropriate for the penalty to be served on the landlord.

7.19. **Recovery of financial penalty**

7.20. If the landlord fails to pay all or part of the financial penalty we may recover the penalty or part on order of the County Court as if it were payable under an order of that Court. For relevant enforcement of unpaid financial penalties see Financial penalty as an alternative to prosecution.

Appendix 8: Tenant Fees Act 2019

8.1. The Tenant Fees Act 2019 came into force on 1st June 2019 for an applicable new (or renewed) tenancy agreement. Under this Act landlords or agents are no longer able to require tenants in the private rented sector in England or any persons acting on behalf of a tenant or guaranteeing the rent to make certain payments in connection with a tenancy.

8.2. **Guidance**

8.3. We will have regard to the statutory guidance issued for enforcement authorities www.gov.uk/government/publications/tenant-fees-act-2019-guidance

8.4. **Enforcing authorities**

8.5. Kent County Council Trading Standards have a duty to enforce the Act in their area. We can enforce the Act in our area. The lead enforcement authority (Bristol City Council) has the power to take steps to enforce where necessary or expedient to do so.

8.6. **Penalties**

8.7. A first breach of the legislation will usually be a civil breach with a financial penalty of up to £5,000. If a further breach is committed, within five years of the imposition of a financial penalty or conviction for a previous breach, it will become a criminal offence. Upon conviction, the penalty is an unlimited fine and a banning order offence under the Housing and Planning Act 2016. We may impose a financial penalty of up to £30,000 as an alternative to prosecution.

8.8. A breach of the requirement to repay the holding deposit is a civil offence and is subject to a financial penalty of up to £5,000. Each request for a prohibited payment is a breach and where the landlord or agent has not previously been fined, the financial penalty is up to £5,000 each.

8.9. **Procedure**

8.10. We will initially refer cases to Kent County Council Trading Standards to determine if they are already taking action or have the capacity to deal with the case.

8.11. We will have regard to relevant guidance and general principles as indicated in this policy and whether a prosecution is in the public interest on a case-by-case basis.

8.12. **Determining the appropriate financial penalty**

8.13. We will consider the following factors to help ensure that the financial penalty is set at an appropriate level:

8.14. **Severity of the breach**

8.15. The more serious the breach, the higher the penalty should be. The track record of the landlord or agent will be considered and whether the landlord

or agent has a history of failing to comply with their obligations and/or their actions were deliberate or where they knew, or ought to have known that their actions were in breach of their legal responsibilities. Landlords and agents are expected to be aware of their legal obligations.

8.16. Harm caused to the tenant, the greater the harm, the greater the monetary amount should be when imposing a financial penalty.

8.17. **Punishment of the landlord or agent**

8.18. The financial penalty should not be regarded as an easy or lesser option compared to prosecution. The penalty should have a real economic impact on the landlord or agent and demonstrate the consequences of not complying with their legal obligations.

8.19. The penalty should deter repeated breaches, deter others from committing similar breaches, and remove financial benefit the landlord or agent may have obtained because of committing the breach.

8.20. **Aggravating and mitigating factors**

8.21. Aggravating factors include, but are not limited to:

- Previous convictions or record of non-compliance,
- Motivated by financial gain,
- Obstruction of the investigation
- Deliberate concealment of the activity or evidence,
- Vulnerability of the tenant.

8.22. Mitigating factors include, but are not limited to:

- Co-operation with the investigation,
- Prompt repayment of the prohibited charge to the tenant,
- Health reasons preventing reasonable compliance with repayment of prohibited charge,
- No previous breaches,
- Landlord or agent is vulnerable, where the vulnerability is linked to the breach being committed,
- Good character / exemplary conduct,
- Admission of guilt
- Whether the landlord or agent's primary trade or income is not connected with the private rented sector.

8.23. **Fairness and proportionality**

8.24. The penalty should be fair and proportionate but in all instances act as a deterrent and remove any gain as a result of the breach. Factors include:

- Totality principle, where more than one breach or penalty is the total penalty just and proportionate,
- Impact of the financial penalty on the landlord or agent's ability to comply with legislation, and whether is proportionate to their financial situation (e.g. risk of loss of home),

- Impact of the financial penalty on third parties (staff or other customers)

8.25. **Failure to pay a financial penalty**

8.26. If a landlord or agent fails to pay all or part of a financial penalty we may recover the outstanding amount on order of the County Court, as if it were payable under the order of that Court.

8.27. **Income received from a financial penalty**

8.28. Income received from a financial penalty will be retained by the Council provided that it is used to further our statutory functions in relation to our enforcement activities covering the private rented sector. Any excess must be paid to the Secretary of State.

8.29. **Assistance to recover amount paid**

8.30. We may help a tenant or other relevant person to make an application under section 15 to the First-tier Tribunal. We may help a tenant or other relevant person in the event that the landlord or agent does not comply with the order of the First-tier Tribunal and needs to apply to the County Court.

8.31. **Duty to notify**

We will notify Kent County Council Trading Standards of our intention to take action and if we subsequently do not take action. We will notify the lead enforcement authority whenever we impose a financial penalty; when a financial penalty is withdrawn; or when a penalty is quashed on appeal.

8.32. **Publicity**

8.33. We may publicise a successful penalty. For a first breach, we may publicise the breach if this would have a beneficial effect on awareness of the legislation for the public. For further breaches, we may make public successful convictions, banning orders or financial penalties.

8.34. We may disclose criminal convictions on a landlord or agent on request by a tenant where these are a matter of public record (conviction or after an appeal to the First-tier Tribunal). We will decide in each case if there is a lawful basis to process personal data and in the public interest. We will have regard to the Data Protection Act 2018.

Appendix 9: Banning orders

9.1. Under Chapter 2 of the Housing and Planning Act 2016 Local Authorities can apply to the First-tier Tribunal to impose a banning order on a landlord or managing agent, following conviction for a 'banning order offence as contained in the current Banning Order Offences Regulations.

9.2. A landlord or managing agent subject to a banning order is prevented from:

- Letting housing in England,
- Engaging in English letting agency work,
- Engaging in English property management work, or
- Doing two or more of those things

9.3. **Guidance**

9.4. We will have regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016

9.5. **Factors to consider when to apply for a banning order**

9.6. The following factors will be considered in deciding whether or not to apply for a banning order, and when recommending the length of a banning order:

- The seriousness of the offence,
- Previous convictions/rogue landlord database,
- Harm caused to the tenant,
- Punishment of the offender,
- Deterrence to the offender from repeating the offence, and
- Deterrence to others from committing similar offences

9.7. The decision to commence the procedure to apply for a banning order and length of proposed time for any such order will be authorised by the Head of Housing and Community Services.

9.8. Where a banning order is made, the individual will be determined not to be 'fit and proper' to hold a licence under Part 2 or 3 under the Housing Act 2004 and any licences in force under those parts will be revoked.

9.9. **Publicity**

9.10. Where a successful banning order has been made, we will consider whether to publish details of these, including the names of individual landlords. Legal advice will be sought prior to this where appropriate, and consideration will be given to the Ministry of Justice guidance as to whether to publish sentencing outcomes.

9.11. Information on banned landlords will be made available to tenants on request.

Appendix 10: Financial penalty as an alternative to prosecution

10.1. The Housing and Planning Act 2016 amended the Housing Act 2004 so that instead of prosecution in some cases we can impose a financial penalty.

10.2. The legislation is contained in sections 23, 126 and Schedule 9 of the Housing and Planning Act 2016. The powers came into force on 6th April 2017 (SI 2017 No. 281).

10.3. Under section 249A of the Housing Act 2004, we may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a "relevant housing offence".

10.4. **Relevant housing offences**

10.5. The relevant housing offences are:

- Failing to comply with an improvement notice (Housing Act 2004 section 30);
- Failing to licence a House in Multiple Occupation under Part 2 (Housing Act 2004 section 72(1));
- Knowingly permitting the over-occupation of an HMO licensed under Part 2 (Housing Act 2004 section 72(2));
- Failing to comply with a condition of an HMO licence issued under Part 2 (Housing Act 2004 section 72(3));
- Failing to licence a house subject to selective licensing under Part 3 (Housing Act 2004 section 95(1));
- Failing to comply with a condition of an HMO licence issued under Part 3 (Housing Act 2004 section 95(2));
- Failing to comply with an HMO overcrowding notice in respect of a non-licensable HMO (Housing Act 2004 section 139(7));
- Failing to comply with the HMO Management Regulations (Housing Act 2004 section 234(3)); and
- Breaching a Banning Order (Housing and Planning Act 2016 section 21).

10.6. A person who commits any of the above offences without reasonable excuse is liable on summary conviction to a fine in the Magistrates' Court. A financial penalty imposed us as an alternative must not exceed £30,000.

10.7. **Breaches of banning orders**

10.8. The Housing and Planning Act 2016 also introduced banning orders under Chapter 2 of Part 2. We may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a banning order offence. A banning order offence is an offence set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 different acts are listed, including those listed above as relevant housing offences.

10.9. A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:

- Letting housing;
- Engaging in letting agency work;

- Engaging in property management work

10.10. A person who breaches a banning order commits an offence under section 21(1) of the Housing and Planning Act 2016 and is liable on summary conviction to imprisonment, or to a fine, or both. However, we may instead impose a financial penalty under section 23 of Housing and Planning Act 2016 of an amount not exceeding £30,000.

10.11. **Prosecution or financial penalty**

10.12. We cannot both prosecute and impose a financial penalty in respect of the same offence. We must decide which course of action is most appropriate.

10.13. **Burden of proof**

10.14. The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, we must therefore be satisfied that if the case were to be prosecuted in the Magistrate's Court, there would be a realistic prospect of conviction.

10.15. In order to actually achieve a conviction in the Magistrates' Court, we would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, we would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

10.16. We should consult the Code for Crown Prosecutors' for this purpose as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction. The Code has two stages: (i) the evidential stage and (ii) the public interest stage.

10.17. **Statutory guidance**

10.18. In exercising their functions in respect of financial penalties, we must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016. The Ministry of Housing, Communities & Local Government issued such as statutory guidance in April 2018, Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities.

10.19. The guidance requires us to develop and document a policy which sets out:

- When we should prosecute and when we should impose a financial penalty; and
- The level of financial penalty we should impose in each case.

10.20. The guidance states that we should consider the following factors to help ensure that any financial penalty is set at an appropriate level:

- Severity of the offence;
- Culpability and track record of the offender;
- The harm caused to the tenant (actual and potential);

- Punishment of the offender (the penalty should be proportionate of the offence and have a real economic impact);
- Deter the offender from repeating the offence;
- Deter others from committing similar offences;
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

10.21. This policy sets out how we will impose financial penalties in accordance with relevant legislation and statutory guidance.

10.22. **When a financial penalty is to be imposed**

10.23. The Government announced the introduction of financial penalties for relevant housing offences with a press release entitled: "Tougher measures to target rogue landlords – new rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters". The Government is obviously keen to see enforcement action taken against the small minority of rogue landlords who neglect their responsibilities.

10.24. Significantly, these powers allow us to retain the income received from financial penalties to further private rented sector enforcement activities.

10.25. We will use the powers robustly wherever it is appropriate to do so.

10.26. **Determining an appropriate sanction**

10.27. Each offence will be assessed on a case-by-case basis. However, the starting position is that we will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

10.28. We may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If we are of the opinion that an offence is of such a serious nature that it warrants a more significant financial penalty than that which could be imposed by this policy, we will normally seek to prosecute the offender(s).

10.29. The breach of a banning order under the 2016 Act is a serious offence, and the we will give careful consideration to the option of prosecution in such cases, as the Courts have the power to impose a prison sentence as a punishment.

10.30. Prosecution may also be an appropriate course of action when an offender has previously committed a housing offence in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.

10.31. Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by us and local media.

Such publicity in respect of an offender may be in the public interest in certain circumstances. Naming and shaming also helps to deter others from committing similar offences.

10.32. There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, we will carefully review the merits of every offence to decide when to prosecute and when to issue a financial penalty.

10.33. **Determining the starting point for a financial penalty**

10.34. **Severity of the offence**

10.35. A financial penalty may be any amount up to the statutory maximum of £30,000. However, we are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.

10.36. Having due regard to the statutory guidance published by Government, a Table of Financial Penalties has been developed as set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following factors:

- Culpability;
- Track record;
- Portfolio size;
- Risk of harm

10.37. **Culpability**

10.38. Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:

- Very High;
- High;
- Medium;
- Low

10.39. <u>Very High</u>

10.40. This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium.

10.41. <u>High</u>

10.42. This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take

appropriate and/or timely action. This category is subject to an 80% culpability premium.

10.43. Medium

10.44. This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium.

10.45. Low

10.46. This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

10.47. **Track record**

10.48. We would expect a good landlord or agent to have very little contact with the Council's Housing & Health Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.

10.49. The second step in determining the amount of financial penalty relates to the offender's track record. An historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

10.50. We will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:

- Any previous convictions for housing related offences;
- Whether the offender has previously been subject to a financial penalty for a housing related contravention;
- Whether the offender has previously been subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

10.51. Following the review, the offender's track record will be classed as one of the following categories:

- Significant;

- Some;
- None or negligible

10.52. Significant

10.53. Where there is evidence of multiple enforcement interventions by our Housing & Health Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

10.54. Some

10.55. This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

10.56. None or negligible

10.57. This category will be used if, following a review of our records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. We may also exercise our discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales.

10.58. The descriptor "Negligible" has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in our area, this category will be used.

10.59. **Portfolio size**

10.60. The size of an offender's portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such, the penalty should have regard to their ability to pay.

10.61. Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

10.62. The third step in determining the amount of financial penalty requires us to allocate a portfolio size. There are four size categories that relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:

- One unit of accommodation;
- Two to four units of accommodation;
- Five to nineteen units of accommodation;

- Twenty or more units of accommodation.

10.63. A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation ("HMO").

10.64. The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

10.65. Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.

10.66. We will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment.

10.67. If we cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

10.68. **Risk of harm**

10.69. The fourth step in determining the amount of financial penalty concerns the risk of harm associated with the offence. The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence.

10.70. We will make an assessment of the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. The offence will be placed into one of the following four categories:

- Level 1;
- Level 2;
- Level 3;
- Level 4

To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high.

10.71. Level 1

10.72. This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories.

10.73. Any offence associated with the operation of an unlicensed HMO will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

10.74. Level 2

10.75. The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

10.76. Level 3

10.77. The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

10.78. Level 4

10.79. The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

10.80. **Table of Financial Penalties**

10.81. Having made the four-step assessment described above, we will determine the starting point for the financial penalty using the Table of Financial Penalties set out on the next page.

10.82. Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,000
		20+	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20+	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,000
		20+	£12,500	£15,000	£17,500	£25,000
High	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20+	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20+	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20+	£10,000	£12,000	£14,000	£20,000
Medium	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20+	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20+	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20+	£7,500	£9,000	£10,500	£1,500
Low	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20+	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20+	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20+	£5,000	£6,000	£7,000	£10,000

10.83. **Determining adjustments of the penalty**

10.84. The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, we will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.

10.85. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and we may take into account any factor deemed to be relevant.

10.86. **Hardship**

10.87. Landlord

10.88. If at this stage of the process, we are aware of the offender's personal situation and financial position, and we are of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

10.89. Tenant

10.90. If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, we may consider reducing the amount of financial penalty, but only in exceptional circumstances.

10.91. **Previous offences**

10.92. While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences require a more robust approach to punishment.

10.93. For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a *Significant* track record category is already in use for a certain offender, repeated offences where the *Culpability* is very high would be restricted owing to the *Risk of Harm* categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, we may consider increasing the amount of financial penalty.

10.94. **Scale of exposure**

10.95. The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, is does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons

exposed is higher than average, we may consider increasing the amount of financial penalty.

10.96. A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

10.97. **Actual harm**

10.98. If actual harm has occurred, we may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely we will seek to review the financial penalty upwards.

10.99. **Adjustment range**

10.100. The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500.

10.101. We will not, under any circumstances, vary the financial penalty by more than 50%, and increase it above the statutory maximum of £30,000.

10.102. **Decision making**

10.103. If we decide to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, we will make a record of our decision and notify the offender of the reasons for that decision.

10.104. To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager. In the first instance, the variation will be proposed by the Housing & Health Manager. The proposal will be reviewed by the Head of Housing and Community Services, or an officer of similar or higher seniority, and a final decision made by that senior manager.

10.105. **Notice of Intent**

10.106. Before imposing a financial penalty, we must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a "Notice of Intent".

10.107. The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased.

10.108. For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, we may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, we will still have the option to serve a Notice of

Intent, but if we choose to do so, we must serve the Notice of Intent within six months of the date the valid licence application was made.

10.109. **Right to make written representations**

10.110. Any person served with a Notice of Intent may make written representations to us about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served. Written representations may be made in respect of any matter.

10.111. **Financial position**

10.112. The offender may wish to submit information as to their financial position. If we are aware of the financial position of the offender before serving the Notice of Intent, we may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make us aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty.

10.113. **False or misleading information**

10.114. It is important to note that any person who supplies information to us that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates' Court to an unlimited fine.

10.115. **Review of representations**

10.116. We will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but we will seek to make a decision as to our proposed course of action as soon as possible.

10.117. We will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
- Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
- Impose the financial penalty proposed in the Notice of Intent;
- Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.

10.118. If we decide to withdraw the proposal to impose a financial penalty, we will confirm our decision in writing. If we decide to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, we will serve a Final Notice.

10.119. If the offender has provided written representations that increase the severity of the offence committed, we may seek to impose a higher financial penalty. If we decide to take that course of action, we will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an

increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

10.120. **Reduction of financial penalty**

10.121. A reduction in the amount of financial penalty to be imposed may arise from us altering the starting point on the Table of Financial Penalties.

10.122. Whether we decide to alter the starting point or not following any written representations, we will not reduce the financial penalty by more than 50% of the finalised starting point.

10.123. If we decide not to alter the starting point after a review of any written representations received, and we have already used our discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

10.124. **Decision making**

10.125. To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager. In the first instance, the imposition of a financial penalty will be proposed by the Housing & Health Manager, who will provide an assessment of any written representations received. The proposal will be reviewed by the Head of Housing and Community Services, or an officer of similar or higher seniority, and a final decision made by that senior manager.

10.126. **Final Notice**

10.127. If we decide to impose a financial penalty following a review of any written representations received, we will serve a "Final Notice" on the offender which will set out:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal; and
- The consequences of failure to comply with the notice

10.128. The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served.

10.129. **Appeals**

10.130. A person on whom a Final Notice has been served may appeal to the First-tier Tribunal against the decision to impose the financial penalty or the amount of the financial penalty.

10.131. Appeals should be made within 28 days of the date the Final Notice was served. Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn.

10.132. The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.

10.133. **Multiple offences**

10.134. When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, we will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.

10.135. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by us does not constitute an unjust and disproportionate punishment.

10.136. **Determining a just and proportionate punishment**

10.137. We will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. We will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.

10.138. If we consider the cumulative total to be just and proportionate, we will normally impose a financial penalty for each offence.

10.139. However, if we consider the cumulative total to be unjust and disproportionate, we will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

10.140. **Reduction of financial penalty**

10.141. We may use discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether or not there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration.

10.142. **Decision not to impose a financial penalty**

10.143. We may use discretion not to impose a financial penalty in respect of every offence under consideration. If we decide to take this course of action, the offence or offences disregarded will usually be of a lower severity.

10.144. **Rent Repayment Orders**

10.145. In consideration of totality, we will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

10.146. **Unpaid financial penalties**

10.147. We will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served.

10.148. An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer stating that the financial penalty (or part thereof) has not been paid will be accepted by the Court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to 2016 Act (breaches of banning orders).

10.149. In taking Court action, we would seek to recover interest and any Court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

10.150. **Enforcement**

10.151. If an offender does not comply with an order of the court, we will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

10.152. **Court bailiffs**

10.153. A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

10.154. **Charging order - Order of sale**

10.155. We can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, we can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to us.

10.156. **Attachment to earnings order**

10.157. If the offender is in paid employment, we can apply to the Court for an attachment of earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the Court until the debt owed to us has been fully discharged.

Appendix 11: Electrical Safety Standards

11.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1st June 2020 and apply to tenancies which start after 1st June 2020 and to existing tenancies from 1st April 2021 apart from excluded tenancies.

11.2. Landlords must ensure that electrical safety standards are met when the property is occupied, the electrical installation is tested at least every five years and provide a copy of the report to the tenant. They must also give the report to a prospective tenant or to us when asked for it.

11.3. We must serve a notice where there has been a breach. We may withdraw the remedial notice or if the notice has been breached arrange for the work to be undertaken. The landlord may appeal the notice within 28 days of service.

11.4. We may recover costs from the landlord which are reasonably incurred in taking remedial action or urgent remedial action by serving a demand for recovery of costs notice. The landlord has the right to appeal the demand within 21 days of service.

11.5. **Urgent remedial action**

11.6. Where an electrical report indicates urgent remedial action is required and the landlord has failed to undertake the investigation or work we may arrange to undertake the urgent remedial work and serve notice on the landlord.

11.7. **Financial penalties**

11.8. Where we are satisfied, beyond reasonable doubt, that a landlord has breached the duties, we may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. The financial penalty may be any amount we determine but not greater than £30,000. In determining the amount of financial penalty we will use the same principles as for a Financial penalty as an alternative to prosecution.

11.9. **Appeals**

11.10. A landlord may appeal a final notice to the First-tier tribunal against our decision to impose a financial penalty, or the amount of penalty, within 28 days of the service of the final notice. The First-tier tribunal may confirm, quash or vary the final notice.

11.11. **Recovery of financial penalty**

11.12. If the landlord fails to pay all or part of the financial penalty we may recover the penalty or part on order of the County Court as if it were payable under an order of that Court. For relevant enforcement of unpaid financial penalties see Financial penalty as an alternative to prosecution above.

Appendix 12: Community Protection Notices

12.1. The Anti-social Behaviour, Crime and Policing Act 2014 replaced a number of powers that have been available to the Council and Police for dealing with anti-social behaviour within communities. Under this legislation we have the power to serve a Community Protection Notice on an individual, business or organisation responsible for anti-social behaviour.

12.2. The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti-social behaviour which spoils the community's quality of life. We will work with our partners in the Community Protection Team in determining cases using this legislation.

12.3. **Warning**

12.4. If the behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent and continuing nature and is unreasonable a warning may be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising of the consequences if it does not stop.

12.5. **Notice**

12.6. If the behaviour continues a notice may be issued, which will specify what is to be stopped or undertaken in order to avoid further anti-social behaviour. We will review the notice 12 months from the date of service and make a decision as to whether or not it should remain in place.

12.7. **Remedial Action**

12.8. If the perpetrator fails to comply with the notice we may decide to take remedial action to address the issue. If we decide that remedial action is needed we will establish what works are required to put the situation right.

12.9. When it has been decided what works are required we will specify what work we intend to carry out and the estimated cost. Once the work has been completed we will give details of the work completed and the final amount payable. In determining a 'reasonable' charge we will ensure the costs are no more than is necessary to the standard specified in the notice. Such costs may include officer time, use of cleaning equipment, and administration costs relating to the clearance itself.

12.10. **Appeal**

12.11. The person who was served a Community Protection Notice may appeal it at the Magistrates' Court within 21 days.

12.12. **Fine / Prosecution**

12.13. A breach of the notice is a criminal offence and therefore we may issue a fixed penalty of £100 and/or prosecute the offender. If the offender is prosecuted they may be fined up to £2,500 (or up to £20,000 if they are a business) at the Magistrates' Court.