

# Private Sector Housing Enforcement Policy

For the Regulation of Housing Standards

July 2020

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## 1. Introduction

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This policy is intended to provide guidance for officers, business and members of the public on the principle and processes which will apply when enforcement action is considered or taken.

Newcastle City Council follows the principles laid down in the Regulators' Compliance Code when investigating complaints, responding to service requests, carrying out inspections, reviewing and granting licences and completing proactive project work. This enforcement policy will seek to meet the objectives set out in this code as we aim to prevent, risks to public health, statutory nuisances, anti-social behaviour, environmental crimes, unfair competition and trading which is detrimental to consumers and businesses. It is also the policy of the Council to promote awareness and understanding of our regulatory and licensing issues through education and working in partnership with other organisations.

Any departure from this enforcement policy will be exceptional, recorded and the circumstances and reasoning noted.

Note 1 – In this Policy, the term “landlords” also includes “property agents”, “managing agents” and “letting agents” unless otherwise specified

## 2. Our Objectives

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- To strive to ensure that tenants of a private landlord or a Registered Social Landlord (RSL) live in homes free of significant risks to their health and safety.
- All Houses in Multiple Occupation (HMO's) and Selective Licensed properties are safe, licensed where required and all licensing conditions are met.
- Empty homes are not left empty where there is blight and a need for housing.
- Privately owned property and land does not present a statutory nuisance to other landowners or does not directly or indirectly present an unacceptable risk to public health, safety or the environment.
- We meet our statutory duties as a local housing authority.

## 3. Decision Making

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Enforcement action will be based on risk and we must also have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance.

Enforcement Officers are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering the criteria within this Policy and any relevant written procedures. A senior officer will give prior approval to all formal action falling outside the scope of this policy.

Where the investigating enforcement officer believes that legal action may be required, evidence will be collected, and the case will be reviewed by senior officers before it proceeds.

Any person subject to potential prosecution action will be invited to a formal interview or asked to send written representations to the Council for consideration prior to any final decision being made.

#### 4. Principles of Good Enforcement

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When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities

#### 5. Principles underpinning Enforcement Action

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The Public Protection and Neighbourhoods Team's enforcement activity will be:

**Targeted** at properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

**Proportionate**, reflecting the nature, scale and seriousness of any breach or non-compliance.

**Fair and objective**, based on the individual circumstances of the case, taking all available facts into account.

**Transparent**, communications will be easy to understand, with clear reasons being given for any enforcement action taken.

**Consistent**, undertaken by well-trained investigators to ensure consistency in the interpretation and enforcement of legislation. We will work with other regulatory agencies and share and develop good practice.

**Accountable**, undertaken in a responsible manner that has a clear purpose. If any person is aggrieved by the enforcement of legislation, they can register a complaint by:

Phone: 0191 278 7878 and ask for Complaints

Email: [complaints@newcastle.gov.uk](mailto:complaints@newcastle.gov.uk)

Writing to us at: Complaints at Newcastle, Newcastle City Council, Civic Centre,  
Newcastle upon Tyne, NE1 8QH.

From time to time we will target our enforcement activity to ensure we meet our objectives effectively and efficiently.

Some examples of ways in which activity may be targeted is set out below (not an exhaustive list):

- Unlicensed properties.
- Poorly managed privately rented properties.
- Private rented property subject to incidences of anti-social behaviour.
- Properties where tenants receive Local Housing Allowance/Housing Benefit/Universal Credit. These tenants are more vulnerable to lower standards of accommodation and can consequently face greater risks to their health safety and welfare.
- Properties poorly or illegally built or converted that may not comply with planning or building regulation requirements.
- Household types such as shared accommodation.
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC)<sup>1</sup>.
- Construction type – where there is a known issue associated with methods of construction for example precast reinforced concrete.
- Where a style of renting or rental model causes risk to health, safety or welfare, e.g. rent to rent models, where a short-term tenant sub-lets a property creating an unregulated HMO.

## 6. Dealing with complaints

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The Public Protection and Neighbourhoods Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness.

Unless the matter appears to present an imminent risk to health the tenant is expected to contact their landlord first about the problem. Tenants are expected to keep copies of all correspondence with their landlord and this should be given to the officers on request.

## 7. Housing, Health and Safety Rating System (HHSRS)

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The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- **Category 1 hazards** represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- **Category 2 hazards** represent a lesser danger and, although it has no duty to take action, the Council will exercise its power to reduce category 2 hazards through appropriate action.

A range of enforcement powers is available under the Act to remove or reduce any hazards identified to an acceptable level.

## 8. Enforcement Options

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Newcastle City Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action, including prosecution. To achieve and maintain consistency, relevant guidance and advice is always considered and followed where appropriate.

The Council will seek to secure compliance with regulatory legislation through the use of the following courses of action:

- Use of informal action, written guidance, advice and notices
- By refusal, revocation or the attachment of conditions to a licence
- By issuing fixed penalty notices
- By using civil legislation where appropriate
- By the use of various management orders
- By the use of statutory notices
- By issuing simple cautions
- By carrying out work in default
- By prosecution
- By the use of civil penalties
- By using anti-social behaviour powers
- By compulsory purchase or enforced sale.

The Council in deciding upon enforcement options will also have due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

### Enforcement Decision Table

The following table contains some examples of situations where different types of action may be taken. Decisions are made, however, on a case-by-case basis.

Action	General Circumstances
No Action	<p>Where formal action may not be appropriate.</p> <p>In such cases, customers may be directed to other sources of advice and support.</p>
<p>Informal Action and Advice includes verbal advice and advisory letters</p> <p>See section 10</p>	<p>Where it may be appropriate to deal with the issues through informal action and advice.</p> <p>In such cases, the pre-formal stage of the HHSRS may be followed, with the Council working collaboratively with responsible landlords to address and resolve any problems.</p>
<p>Service of Notice requiring repairs or specific legal requirements</p> <p>See section 14</p>	<ul style="list-style-type: none"> <li>• Where a person refuses or fails to carry out works through the pre-formal HHSRS process;</li> <li>• Where there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach;</li> <li>• Where there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc);</li> <li>• Where standards are extremely poor, and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements;</li> <li>• Where the person has a history of non-compliance with the Council and/or other relevant regulators;</li> <li>• Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management);</li> <li>• Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or</li> <li>• Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.</li> </ul>
Powers to require information and/or documents	Where it is necessary for documents and information to be provided to enable officers to carry out their powers and duties
Emergency Remedial Action /	Where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises



Emergency Prohibition Order	
Revocation of HMO Licenses and Approvals	Where the Manager is not a “fit and proper person”; and/or Where there are serious breaches of the licensing conditions and/or serious management offences.
Simple Caution See section 15	Where an offence is less serious and the person who has committed the offence has admitted their guilt.  In such cases, a Simple Caution may be offered (as an alternative to Court or Civil Penalty action, and on the understanding that the Council’s costs will be paid by the offender) where it is likely that they will heed a warning about their behaviour and the legal consequences if they commit further offences.
Prosecution See section 17	Where the authority considers the offence is not suitable to be dealt with by way of a Civil Penalty or a Civil Penalty is not available for the type of offence.

## 9. Informal Action

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Informal action includes:

- Offering advice
- Giving verbal and written warnings
- Negotiating agreements between complainants and other residents or businesses
- The negotiation of specific conditions with licences, and
- The use of informal notices

It is generally considered appropriate to take informal action in one or more of the following circumstances:

- The act or omission is not serious enough to warrant formal action.
- From the business'/member of public’s past history it can be reasonably expected that informal action will achieve compliance with the law.
- The consequences of non-compliance will not pose a significant risk

## 10. Powers of Entry

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In certain circumstances, Powers of Entry into a property are provided to authorised officers. In general, the powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection and gather evidence
- Take someone with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Leave recording equipment for later collection
- Take samples of articles or substances; and in some cases, to carry out works.

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days. Notice that powers of entry need to be carried out will normally be in writing or by email but can in some circumstances be given verbally, depending on the relevant statutory provision.

The powers of entry can be enforced with a warrant. The Police will accompany officers where that is appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their Power of entry will carry identification and details of their authorisation to carry out their action.

## 11. Civil Legislation

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Where appropriate, the City Council will use civil legislation in the fulfilment of its duties. For example, an injunction may be sought to prevent a business from continuing to breach consumer's rights and causing financial harm.

## 12. Statutory Notices

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A wide range of legislation contains provisions for the use of statutory notices, which legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety. Only officers specifically authorised are permitted to serve statutory notices.

Notices will normally be served where:

- informal action has not achieved the desired effect,
- there is a lack of confidence that the individual/company will respond to an informal approach,
- there is a history of non-compliance with informal action,
- standards are generally poor with little management awareness of statutory requirements,
- the consequences of non-compliance could be potentially serious to the health and safety of the public

Realistic time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served. In some circumstances,

requests for extension of time can be made. These should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

Statutory notices may also be served in conjunction with prosecutions. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include officer contact details

Having regard to statutory powers, and where the law allows, a charge will apply to statutory notices. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Council's agreed charges having regard to a written record assessing costs reasonably incurred. In all cases the Council will instigate debt recovery action.

Where a notice is not complied with by the expiry date, a prosecution may be considered appropriate. In these circumstances a report, in accordance with the Constitution, will be made to decide what further enforcement action is appropriate.

### 13. Work in Default

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In some circumstances, failure to comply with a notice may result in the City Council arranging for the necessary works to comply with the notice to be carried out (work in default). The cost to the owner will usually be more than if the owner carries out the works themselves as they will be charged for officer time on visits, carrying out schedules of work and any other reasonable costs incurred by the local authority.

The Council will actively pursue debts incurred. Enforced sale of empty properties will be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the owner's default. Until cleared all debts will be registered with the local Land Charges Registry as a financial charge. Once registered the charge will accrue compound interest.

### 14. Fixed Penalty Notices

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An authorised officer may issue fixed penalty notices where the legislation allows and where there is reason to believe an offence has been committed under specific legislation and there is sufficient evidence to meet any subsequent prosecution. This notice will give the offender the opportunity to avoid prosecution for that offence by the payment of a fixed penalty.

A fixed penalty notice will be issued only where a member of the public has committed the specific offence and is unable to provide a satisfactory explanation or defence. The notice will be issued with verbal and where possible, written advice.

## 15. Simple Cautions

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The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence, but the public interest does not require a prosecution.

It may be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. Decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging

Before a Simple Caution can be given, it is important to try to establish:

- The views of the victim about the offence,
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances
- Whether the offender has made any form of reparation or paid compensation

A Simple Caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record. Failure to accept a Simple Caution leaves the authority with an option to instigate legal proceedings instead.

Simple Cautions are viewed as valuable enforcement tools because they can be cited in court if the same person or organisation, within three years of the original offence, commits similar offences and typically both save officer time and reduce the burden placed upon the court system.

## 16. Prosecutions

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Prosecution will normally be reserved where one or more of the following circumstances apply:

- It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence.
- There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm.
- There has been failure to comply with a legal notice or a repetition of a breach that was subject to a formal caution, or failure to pay a fixed penalty notice within the permitted payment period;
- There is a blatant disregard for the law;

- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- Officers have been intentionally obstructed in the lawful course of their duties.  
Where inspectors are assaulted, we will seek prosecution of offenders.

In all cases, alleged offenders will be invited to send written comments or explanations for consideration.

## 17. Rent Repayment Orders

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A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed. Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (section 1 of the Protection from Eviction Act 1977)

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty. The calculation of the civil penalty will be taken into account when determining if rent repayment order will be pursued.

The Council will offer advice, guidance and support to tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

## 18. Property Licensing

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Mandatory HMO licensing came into force in April 2006. Newcastle also has 7 designated Selective Licensing Areas and has designated city-wide Additional Licensing.

The aim of the Selective Licensing is to promote good management of privately rented properties within the areas. A licence is required for each privately rented dwelling in the areas.

The HMO and selective licensing regimes include arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It

also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

It is a criminal offence if a person controlling or managing an HMO or privately renting a property in a selective licensing area does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed properties and breaches of the licence conditions.

The Council will vigorously pursue anyone who is controlling or managing a property without a licence and, where appropriate, it will impose civil penalties on them or pursue their prosecution.

### **Cause for concern test.**

Under Parts 2 and 3 the Housing Act 2004 the local authority may issue licenses for privately rented properties for a term of 5 years or less. Newcastle City Council will generally grant a licence for the maximum period of 5 years. However, there may be circumstances where the Council has cause for concern and as a result determine a licence will be granted for a shorter period, such as 1 year.

Cause for concern would arise in circumstances where there is evidence that the persons involved have contravened housing, landlord and tenant law or other law and such contraventions conflict with the objectives of the licensing scheme.

In these situations, licence applications will be considered on a case by case basis with full consideration of the relevant facts. In reaching any decision particular regard will be had to circumstances where there is a continuing breach of housing law or planning regulations.

Shorter licence periods may for example;

- allow the Council to monitor conditions and the management of a licence holder's property,
- enable the licence holder to seek regularisation of planning permission or building regulations approval.

Such matters would then be taken into consideration when determining the duration of any future licence.

Intense regulation, enforcement and landlord support will in place for the duration of a reduced licence period. This will allow the local authority to help improve management standards and ensure the necessary property and management requirements are being met.

## 19. Management Orders

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A management order will be made in the following circumstances

### Property Licensing

Where it appears to Officers that there is no reasonable prospect of a House in Multiple Occupation (HMO) or a property in a selective licensing area being licensed in the near future and that it is necessary to protect the health and safety or welfare of persons occupying it or having an estate or interest in any premises in the vicinity.

On expiry of the interim management order where the house would be required to be licensed but Officers consider that they are unable to grant a licence a final management order will be made.

### Special Interim Management Orders

Where the Council is satisfied that a significant and persistent problem of anti-social behaviour in an area is attributable, in full or in part, to the anti-social behaviour of an occupier of an HMO or other dwelling and that the landlord is failing to take action to combat the problem, it can make a Special Interim Management Order.

A Special Interim Management Order operates in the same way an Interim Management Order and may also be applied where it is necessary for protecting the health and safety or welfare of persons occupying, visiting or otherwise engaging in lawful activities in the vicinity of the house.

### Empty Property Management Orders

If after serving an interim empty dwelling management order the officer considers that there are no steps it can appropriately take under the order to ensure that the property becomes occupied, it will either make a final empty property management order, or revoke the order without taking any further action

## 20. Enforced Sales

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If a charge has been recorded in the Council's Land Charges register, the Council may opt to recover the charged debt by way of an enforced sale of the charged property.

The criteria for carrying out an enforced sale would be:

- The total debt on the property should normally exceed £500
- The property is vacant and has been empty for more than 1 year.
- The necessary enforcement notices and documents have been served.

If the first two criteria are not met, then a Compulsory Purchase or an Empty Dwelling Management Order may be considered. However, if an empty property is derelict and causing a major problem but does not meet the above criteria, the owner is missing or

refusing to co-operate the use of an enforced sale would still be considered providing there was justification for doing so.

Upon disposal of the property the Council will recover all of its debts and costs from the sale proceeds. The balance will be held by the Council until it is claimed by the owner.

## 21. Publicity and Sharing of Evidence

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We will endeavour to secure media representation at hearings in the Courts when we are seeking prosecution of offenders with the aim of drawing their attention to the court case. Thereafter we will publicise any conviction, which could serve to draw attention to the need to comply with the law or, deter anyone tempted to act in a similar manner. Details of such cases will also be published on our website

The Council will share intelligence and evidence, secured in the ordinary course of our business, with other statutory enforcement bodies and relevant partners in accordance with our duties under Crime and Disorder Act 1988, section 17.



## Appendix 1: Civil Penalties Policy

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### Introduction

This policy has been created in accordance with the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance"), published by the Department for Communities and Local Government.

This policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed, it will play a significant role in helping the Council to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.

This policy is supplemented by the Private Sector Housing Civil Penalties Guidance document which will determine the amount for each civil penalty.

### What is a civil penalty?

Civil Penalties were created under the Housing and Planning Act 2016, a financial penalty of up to £30,000 which can be imposed on a landlord as an alternative to prosecution for specific offences under the Housing Act 2004.

The amount of penalty is determined by the Council on a case by case basis. The process for determining the civil penalty is set out in the Private Sector Housing Civil Penalties Guidance document.

### The Government's intentions and expectations

The Government has said that it wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants. However, it has also pledged to crack down on rogue landlords who flout the law and knowingly rent out unsafe and substandard accommodation.

The Housing and Planning Act 2016 introduces a number of measures to help local authorities deal more robustly with criminal, rogue and irresponsible landlords. When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords.

In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the DCLG) explained why the maximum penalty is £30,000:

*"[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000".*

*“ It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”.*

Although the Government states that, generally, it would expect the maximum civil penalty of £30,000 to be “reserved for the very worst offenders”, it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord’s previous record of offending.

### **Principles of Civil Penalties**

Newcastle City Council will continue to take robust action against those landlords that flout the law, and it will ensure that its use of civil penalties is consistent, appropriate, proportionate and fair.

Civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be issued with a civil penalty for the same offence.

Where the letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both parties. The level of the civil penalty imposed on each offender may differ, depending on the circumstances of the case.

The Council considers that the most likely recipients of civil penalty notices will be those persons who are involved in the owning or managing private rented properties. However, the Council does have the power to impose them on tenants of Houses in Multiple Occupation, for offences under section 234 of the Housing Act 2004 and will consider doing so where it is deemed appropriate.

The use of civil penalties will not only prevent criminal, rogue and irresponsible landlords from profiteering from illegal and dangerous practices, but it will also demonstrate the Council’s commitment to ensuring that it is offenders (rather than good, responsible landlords or the local council tax payers) who pay for the cost of housing enforcement.

As the Council is allowed to retain the income it receives from civil penalties, this course of action will provide the Council with the opportunity to increase its housing enforcement activity in the City.

### **Deciding on an appropriate sanction**

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that, before taking formal action, the Council needs to satisfy itself that, if the case were to be prosecuted in the magistrates’ court, there would be a realistic prospect of conviction.

As such where a civil penalty is imposed, and an appeal subsequently made to the First-tier Tribunal, the Council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties should not be used in cases where serious offences have been committed.

If the Council believes that it has a reasonable prospect of a conviction in a particular case, it will always consider a civil penalty in the first instance and only by exception will it seek alternative measures such as prosecution or simple cautions.

### **The punishment of the offender**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

### **Housing offences covered by civil penalties**

The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation
- Section 95 – Offences in relation to licensing of houses under Part 3 of the Act
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of Houses in Multiple Occupation

### **Consideration of a Civil Penalty**

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty. The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?

- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e. the offence is particularly serious, and the landlord has committed similar offences in the past and/or a banning order should be considered.

### The Totality Principle

Where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence.

When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved.

The landlord may also have committed multiple similar offences or offences which arose from the same incident. In these cases, consideration should be given to whether it would be more appropriate to only impose penalties for the more serious offences being considered and to prevent any double counting.

Having regard to the above considerations, a decision should be made about whether a civil penalty should be imposed for each offence and, if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several other less serious offences, this is the offence that will normally be considered for the civil penalty. Deciding not to impose a civil penalty for some of the offences does not mean that other enforcement options, such as issuing a simple caution, cannot be pursued for those offences.

### Determining a civil penalty

The civil penalty is made up of two distinct components.

1. The penalty calculation.  
Consideration of the severity of the offence, the landlord's track record and the landlord's income.
2. Financial Benefit  
The amount, if any, which the landlord obtained from committing the offence. These two components are added together to determine the final penalty amount that will be imposed on the landlord.

In order to ensure that the civil penalty is set at an appropriate level, the Council will consider the following factors that the Government has identified, in its statutory guidance, as being pertinent:

- The severity of the offence

- The culpability and track record of the offender
- The harm caused to the tenant
- The punishment of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The final factor is an overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

### **Punitive charges Table**

The Council has created a table of punitive charges (based on Culpability and Harm / severity of offence) that Officers will use as a starting point for determining, on a case by case basis, the level of civil penalty that should be imposed.

In order to ensure that the punitive charge is set at an appropriate level, the Council will complete its investigation and consider all of its findings against the statutory guidance. Aggravating and mitigating factors will always be taken into account.

### **Appeals**

A person who has been issued with a civil penalty has a right of appeal to the First-Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued.

The First-tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or it has no reasonable prospect of success.

The Council intends to defend its decision to issue civil penalties rigorously and this will involve not only officer time and resources but also specialist legal support.

### **Financial means to pay a civil penalty**

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

It is for the offender to disclose to the Council such data relevant to his financial position as will enable the Council to assess what s/he can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

As some offenders will own one or more properties in Newcastle, it is likely that they will have assets that they can sell or borrow against. After taking into account any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.

## Appendix 2: Newcastle City Council: Banning Order Policy 2020

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Newcastle City Council “the Council” will use the powers contained within the Housing & Planning Act 2016, when appropriate, to ban criminal landlords from renting out property and operating in the private rented sector.

In this policy the term “landlord” also includes “property agents” (letting agents and property managers as defined under Chapter 6 of Part 2 of the Act.

The government have issued non-statutory guidance for the use of banning orders. In this guidance the government have indicated that they expect banning orders will be targeted at the most serious offenders.

### Introduction

Part 2 of Chapter 2 of the Housing & Planning Act 2016 (the “Act”) enables Local Authorities to apply to the First-tier Tribunal for a banning order against a landlord who has been convicted of a “banning order offence”.

Banning order offences are set out in The Housing & Planning Act 2016 (Banning Order Offences) Regulations 2018 (the “Regulations”), a list of these offences is set out in Appendix 1 of this document.

A banning order bans a landlord 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.

It may also include a provision banning the person from being involved in any body corporate that carries out any activity that the person has been banned from carrying out.

Breach of a banning order is a criminal offence.

### Determining when to commence the banning order procedure.

Following conviction of a landlord of a banning order offence, the council can apply to the First-tier Tribunal for a banning order. The Council will consider if a Banning order is appropriate if a Banning Order offence has been committed.

Where the council considers an application for a banning order an Officer Group will convene and consider the matter. The Officer Group will consist of the following persons:

- Case Officer
- Senior Practitioner
- Team Manager
- Representative from Legal Services (advisory purposes only)

The following factors will be taken into account by the Officer Group when determining whether to apply for a banning order and also when proposing the length of any ban:

- **The seriousness of the offence**

Whilst all banning order offences are serious, the length of the sentence imposed by the court for any such offence will generally be indicative of the seriousness of the offence and will therefore be considered when determining whether to apply for an order.

- **Previous convictions/rogue landlord database & track record**

The council will check the rogue landlord database for any relevant entries. Checks may also be made with other council departments, neighbouring authorities and partner organisations in respect of the landlord and any relevant findings taken into consideration. Particular regard will be had to any previous convictions the landlord has for banning order offences. Ultimately, a longer ban may be more appropriate where a landlord has a history of failing to comply with their obligations.

- **The harm caused to the tenant**

This will be a key factor when determining whether to apply for a banning order and also for determining the proposed length of the ban. The greater the harm, or potential for harm (this may be perceived by the tenant), the more appropriate it will be to apply for an order.

- **Punishment of the offender**

The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. Any banning order should be set high enough to remove the worst offenders from the sector and should have real economic impact on the offender.

- **Deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again, or in certain circumstances, help ensure that the landlord fully complies with all of their legal responsibilities in the future. The length of the ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences**

An important part of deterrence is the realisation that (a) the local authority is proactive in applying for a banning order where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

In addition to the aforementioned factors, the Officer Group will also consider the effect of the banning order on the landlord and anyone else who may be affected by the order.



In formulating its recommendation, the Officer Group will consider the matter in-line with this policy, the non-statutory guidance issued by the government, the council's Private Sector Housing Enforcement Policy and any other document or matter deemed relevant.