

Private Sector Housing Enforcement Policy

For the Regulation of Housing Standards

January 2018

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1. INTRODUCTION

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

- 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 land owners, 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

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

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

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*
- *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)¹.
- 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

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)

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. POWERS OF ENTRY

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.

9. ENFORCEMENT OPTIONS

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"> • Where a person refuses or fails to carry out works through the pre-formal HHSRS process; • 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; • 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); • Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; • Where the person has a history of non-compliance with the Council and/or other relevant regulators; • Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management);

	<ul style="list-style-type: none"> • Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or • Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.
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 / Emergency Prohibition Order	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
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 consider 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.

10. INFORMAL ACTION

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

11. FIXED PENALTY NOTICES

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.

12. CIVIL LEGISLATION

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.

13. MANAGEMENT ORDERS

A management order *will* be made in the following circumstances;

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.

14. STATUTORY NOTICES

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.

15. SIMPLE CAUTIONS

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. WORK IN DEFAULT

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 owners 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.

17. PROSECUTIONS

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.

18. RENT REPAYMENT ORDERS

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)

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

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

19. LICENSING

Houses in multiple occupation (HMOs)

In Newcastle, there are many hundreds of Houses in Multiple Occupation: properties that are occupied by more than one household that share facilities.

As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. Some HMOs are subject to licensing:

- **Mandatory HMO Licensing**
- **Additional HMO Licensing** is not currently applied in Newcastle
- **Other HMO's** which do not currently require a licence are subject to the Management Of Houses in Multiple Occupation Regulations 2006

Selective Licensing

Newcastle has declared a number of Selective Licensing Areas. The aim of the Selective Licensing areas 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 regime includes 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.

Duration of Licenses

- Where the legalisation of the property is required, e.g. where planning consent is required for its use.
- Where there are concerns that the proposed management arrangements may not be satisfactory and evidence is required that management is satisfactory before allowing a longer license period to be granted.
- To remove any advantage gained over those license holders who applied at the appropriate time.
- Where a scheme is time limited by law.

Licenses will normally be granted for the full five-year period. The length of the license may be reduced from five years to a lesser period where the Council considers this is appropriate.

20. ENFORCED SALES

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. 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

22. PUBLICITY AND SHARING OF EVIDENCE

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 Fees & Charges

SELECTIVE LICENSING	
Standard Fee	£550
Discount for membership of a nationally recognised landlord body or recognised accreditation scheme	£100
Reduction fee for subsequent properties	£40
HOUSES IN MULTIPLE OCCUPATION	
Application for a first licence by proposed licence holder.	£843.00
Subsequent licence application by a licence holder who already holds an HMO licence in Newcastle.	£575
Licence renewal application made by the same Licence Holder	£575
Discount for membership of National Landlords Association or the Newcastle Housing Accreditation Scheme.	£50.00
Application fee for a Licence for a property owned by a Registered Charity.	£107.00
Variation of an existing licence, e.g. change in occupancy levels or change in manager.	£80.00
Change in permanent home or business address of licence holder.	No Charge
Cost to Undertake Work in Default of Statutory Notice	
Establishment Charge will be 20% of the cost of the works with a minimum charge of £180	
Charges for Notices	
Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge to recover certain expenses incurred by them when taking enforcement action under the Act. This includes service of statutory notices to remove hazards under sections 11, 12, 20, 21, 40 and 43 of the Act.	
Hazard Awareness Notice	£400
Improvement Notice	£400
Prohibition and Emergency Prohibition Notice	£400
Emergency Remedial Action Notice	£400 plus the cost of the work
Multiple Notices	£400 plus any incidental costs
MISCELLANEOUS	
Officer costs for legal cases and charge out rate per hour	Technician £39.00 Officer £44.00 Snr Officer £68.00 Expert Witness Costs £255.00
Immigration Inspection	£123.00

Appendix 2:

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all landlords during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

- a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Enforcement

- Where the Local Housing Authority has reasonable grounds to believe that
- there are no or an insufficient number of smoke alarms or Carbon Monoxide Detectors in the property as required by the regulations or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence.
- Then the Authority shall serve on the Landlord, in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.
- If after 28 days the Landlord has not complied with the Remedial Notice, a Penalty Charge shall be levied through a penalty charge notice.

Level of Penalty Charge

The Penalty Charge shall be set at £750 for the first offence if paid within a 14 day period. This will be increased to £1000 if not paid within a 14 day period. It will cover the cost of all works in default, officer time, recovery costs, legal costs, an administration fee and a fine.

Should the Landlord not comply with future Remedial Notices then the fine shall be set according to the table below:

Offence	Fine	Offence	Fine
Second	£2000	Fourth	£4000
Third	£3000	Fifth or More	£5000

No discount will be given for prompt payment after the first occasion.

Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the Regulations.

Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice.

The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

Appendix 3 Civil Penalties Policy

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:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (Not in force at the date of publication of this policy);
- Banning orders for the most serious and prolific offenders (Not in force at the date of publication of this policy).

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 (in its guidance) 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.

The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

- The severity of the offence
- The more serious the offence, the higher the civil penalty should be.
- The culpability and track record of the offender

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

The harm caused

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be perceived), the higher the amount should be when the local housing authority imposes a civil penalty.

The circumstances of the victim, including their vulnerability are highly relevant. Consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the offender committing the specific offence that is being considered. This means that even if some harm has already come to tenants, or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred. This will be determined on a case by case basis.

When assessing the level of harm, the Council will take all the circumstances of the case into account, for example an unlicensed HMO where the landlord has served an illegal s21 notice on the tenant to quit the property.

The Council will have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the offender has demonstrated hostility towards the victim based on those characteristics.

The Council will also consider whether a prosecution is likely to have a significant adverse effect on the victim's physical or mental health. Although this factor if present, may mean that a prosecution is less likely, the Council must have regard to whether it is in the wider public interest to prosecute the case through the courts.

Harm can include:

- Physical injury, damage to health and psychological distress to individual victims. The nature of the harm will depend on the personal characteristics and circumstances of the victim.
- Harm to the community, including economic loss and harm to public health
- Some types of harm are difficult to define but can reference public feeling about damage by behaviour to both individuals and society as a whole.

Examples of Harm

- **Low harm** outcomes are usually significant enough to warrant medical attention and can include occasional severe discomfort, broken finger, slight concussion, moderate cuts, significant bruising, regular serious coughs or colds.
- **Medium harm** outcomes include eye disorders, sleep disturbance, neuro-psychological impairment, dermatitis, severe stress, fractures, serious puncture wounds, severe strains, burns, migraines.
- **High harm** outcomes include asthma, lead poisoning, legionnaires disease, chronic confusion, severe fever, serious fractures and burns, the loss of a hand or foot.
- **Very high harm** outcomes include death, malignant tumours, paralysis, severe pneumonia, 80% burn injuries, and permanent loss of consciousness.

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.

Whether it will deter the offender from repeating the offence

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

Whether it will deter others from committing the offence

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

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

Purpose of the Civil Penalties Policy

Local housing authorities have the power to impose civil penalties of up to £30,000 on individuals and organisations (for certain specified offences under the Housing Act 2004) as an alternative to prosecution.

The purpose of this Policy is to describe how the Council will use its new powers, how it will decide when to prosecute and when to impose a civil penalty, and how it will determine the size of each civil penalty.

It 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.

Principles of Civil Penalties

As the Housing and Planning Act 2016 has only recently been enacted, there are not yet any legal precedents in relation to the use and levels of civil penalties.

Although the maximum civil penalty that can be imposed for an offence is £30,000, it is for the Council to determine the level of civil penalty.

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.

Although only one civil penalty can be issued for each of the first 4 offences listed above, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

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

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.

To achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed. The same principle applies in respect of civil penalties so, where a civil penalty is imposed and an appeal is 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.

A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches), rather than prosecution.

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 use of civil penalties (and rent repayment orders) will not only prevent the businesses of 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 also provide the Council with the opportunity to increase its housing enforcement activity in the City.

Financial Matrices for Civil Penalties

Factors taken into account when deciding the level of civil penalty

Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.

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.

When setting a civil penalty, the Council will also take into account the cost of investigating the offence(s) and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal.

The costs of investigating, determining and applying a civil penalty

In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords or the local council tax payers), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

Cases that result in the Council issuing civil penalties clearly entail investigative and preparation costs and may involve costs in defending an appeal. These costs, comprising resources and officer time, will be built into the civil penalty charge.

The final civil penalty amount is made up of two main financial elements – the investigative charge and the punitive charge.

Investigative charges

Investigative costs have been calculated for each of the offences that are covered by civil penalties by determining the average number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs. The costs are then broken down into 3 bands: low, medium and high.

Investigative Charges – Improvement Notice

Offence	Cost of investigation		
Housing Act 2004 section 30 Failure to comply with Improvement Notice	Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
	£200	£300	£400

The investigative costs incurred in dealing with a landlord's failure to comply with an Improvement Notice are significantly lower (compared to other offences) because the Council will already have charged some preliminary costs (currently £400) when serving the Improvement Notice. The additional costs will cover the work involved in confirming that the improvements are not completed, obtaining tenants' statements, interviewing any suspects under caution and deciding if there is a case to answer.

The other preliminary costs and bands reflect the complexity of the investigation, the numbers of witnesses interviewed, the obtaining of warrants to enter properties, and the cost of specific services, such as a locksmith to gain full access to the premises.

If an investigation leads to more than one civil penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each civil penalty. There will only be one set of investigatory charges for each investigation/operation undertaken by the Council.

Investigative Charges – Mandatory, Additional & Selective Licensing

Offence	Cost of investigation		
	Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
Housing Act 2004 section 72 and 95 Failure to licence a licensable property	£200	£300	£400
Housing Act 2004 section 72 and 95 Failure to comply with Improvement Notice	£500	£750	£1000
Housing Act 2004 section 72 and 95 Failure to comply with licence conditions	£300	£450	£600

Investigative Charges – HMO Management Regulations

Offence		Cost of investigation		
		Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
Regulation 3	Information not available / displayed	£300	£450	£600
Regulation 4	Duty to take safe measures	£300	£450	£600
Regulation 5	Duty to maintain water supply and drainage	£300	£450	£600
Regulation 6	Duty to supply and maintain gas and water	£300	£450	£600
Regulation 7	Duty to maintain common parts	£300	£450	£600
Regulation 8	Duty to maintain living accommodation	£300	£450	£600
Regulation 9	Duty to provide waste disposal facilities	£300	£450	£600
Regulation 10	Duty of occupiers	£300	£450	£600

Investigative Charges – Overcrowding Notices

Offence	Cost of investigation		
	Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
Housing Act 2004 section 139	£300	£450	£600

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:

CULPABILITY

	Low Little or no fault of landlord	Negligent Failure to take reasonable care	Reckless Foresight or wilful blindness	Deliberate Intentional breach	
Harm And Severity of Offence	Low (Range)	£1,000- £3,000	£2,000- £4,000	£3,000- £5,000	£4,000- £6,000
	Starting point	£2,000	£3,000	£4,000	£5,000
	Medium (Range)	£2,000- £4,000	£4,000- £8,000	£6,000- 10,000	£8,000- 12,000
	Starting point	£3,000	£6,000	£8,000	£10,000
	High (Range)	£2,000- £6,000	£6,000- £10,000	£10,000- £14,000	£16,000- £20,000
	Starting point	£4,000	£8,000	£12,000	£18,000
	Very High (Range)	£3,000- £7,000	£8,000- £12,000	£16,000- £20,000	£20,000- £30,000
	Starting point	£5000	£10000	£18000	£25000

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 factors (described in detail above) identified in the statutory guidance. Aggravating factors in the case will increase the initial amount and, equally, any mitigating factors will reduce the initial amount.

Examples of aggravating factors:

- Poor history of compliance
- Abuse of trust

- Lack of remorse

Examples of mitigating factors:

- Good history of compliance
- Circumstances at time of offence
- Mental or physical illness
- Culpability of victim
- Genuine remorse

Defence charges

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.

The Council will robustly seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal.

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.