



## Housing Services

# Enforcement Guidance 2017

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## Housing Services – Enforcement Guidance

### **1. Introduction**

The Borough Council's Enforcement Policy sets out how Newcastle-under-Lyme will enforce its statutory powers and duties.

This Housing Services Enforcement Guidance sits below the Enforcement Policy to further guide housing law enforcement decisions.

All investigations into possible breaches of legislation will follow best professional practice and Government Guidance.

### **2. Authorisation of officers**

Decisions on enforcement action are a matter of professional judgement and officers will need to exercise discretion. Authorisation of officers will be made under delegated powers to a level that is appropriate. Officers will refer to this guidance when considering housing law enforcement decisions.

### **3. Housing Services enforcement options**

When the Council investigates a possible breach of housing and public health law the options include:

- 
- no action
  - verbal advice or information
  - written advice or information
  - a letter requesting that action is taken
  - a legal notice advising that action is needed
  - a legal notice requiring specific action to be taken within a set time limit
  - an order that prohibits all or part of a property being occupied
  - a suspended notice or order that comes into force at a later date
  - emergency action to resolve a serious situation
  - work in default of a legal notice
  - suspending or revoking a licence
  - formal caution
  - civil penalty
  - entry on the rogue landlord database
  - rent repayment order
  - prosecution
  - banning order

The full legislation officers are authorised to enforce is listed in the delegated powers. For each situation the most appropriate piece of legislation and the most appropriate enforcement option will be chosen. The next few sections include further details on some of these options.

#### 4. Housing Act 2004 – Housing Health and Safety Rating System

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), a method of assessing and categorising hazards to health. The categories are summarised below:

HHSRS	Band	Severity	Response
Category 1 hazards	A	Serious hazards	The Council has a duty to take enforcement action.
	B		
	C		
Category 2 hazards	D	Less serious hazards	The Council has discretion to take action
	E		
	F		
	G		
	H		
	I		
	J		

The range of enforcement options for each category are:

Action	Category of hazard where action appropriate	
	Category 1	Category 2
No action	No	Yes
Hazard awareness notice	Yes	Yes
Improvement notice	Yes	Yes
Prohibition order	Yes	Yes
Emergency remedial action	Yes	No
Emergency prohibition order	Yes	No
Demolition order	Yes	In prescribed circumstances
Clearance area	Yes	In prescribed circumstances

When considering the most appropriate action factors to consider are:

- Whether an informal approach such as a letter informing the landlord of defects and asking them to confirm their intentions a set timescale is appropriate. This may be based on previous history of compliance.
- The significance of the hazards.
- The extent and location of the hazards.
- Whether the Council is under a duty or has a power to take formal action in respect of the hazards identified.
- The level of risk posed to the occupiers, including whether there is an imminent risk of serious harm
- The views and intentions of the occupiers.
- The views and intentions of the owners.
- The compliance record of the person in control of the premises.
- Whether the chosen option is practical, reasonable and proportionate in reducing the hazards to an acceptable level.
- The physical impact on adjoining buildings.
- The longer term viability of the premises.
- The impact on the local community and on the appearance of the local area.
- Whether the tenant will be protected from retaliatory eviction (section 4.1).

Appendix 1 shows a flow chart to aid decision making and appropriate action.

When an enforcement notice is served under the Housing Act 2004 it will be accompanied by a statement of reasons indicating why one type of enforcement action was taken rather than the other options available.

There is a right of appeal against any notice or order made by the Council. All appeals are made to the Residential Property Tribunal they may confirm, quash or vary the notice, order or decision.

#### **4.1 Retaliatory Eviction and the Deregulation Act 2015**

This provides tenants with protection from eviction by a section 21 notice following the service of a Housing Act 2004 notice provided they had asked the landlord in writing to deal with the issue of concern. With a section 21 notice the landlord has to give two months' notice but doesn't have to give a reason.

Tenants are encouraged to contact their landlord in writing about repairs prior to the council investigating. Where they have done this and a category one hazard is identified during inspection serving a notice rather than a letter is likely to be the chosen option to ensure the tenant is protected.

This process does not offer protection from eviction under section 8 where a landlord can still serve notice due to rent arrears and breaking terms of the tenancy.

#### **4.2 HMO Management Orders**

Part 4 of the Housing Act 2004 sets out the provisions for interim and final management orders. Section 102 places a duty on the council to make an interim management order if a licensable house in multiple occupation (HMO) is unlicensed, or the licence has been revoked, and there is no prospect of it becoming licensed and the order is necessary to protect the health, safety or welfare of the tenants.

The interim management order must be replaced with a final management order when it expires if the property continues to need a licence but one cannot be issued.

There are also discretionary powers for interim and final management orders which will be considered on a case by case basis, having regard to the relevant legislation and guidance available.

#### **4.3 Serving notice under the Housing Act 2004**

The table below sets out who to serve a notice on as identified in the Housing Act 2004. It may be appropriate to serve on the owner and agent where it is not possible to determine between them who has control.

##### **4.3.1 Housing Act 2004 - Schedule 1 - who to serve a notice on**

Type of property	Serve on
Dwelling - not a flat - not needing to be licensed	Person having control
HMO - not a flat - not needing to be licensed	Person having control Or Person managing
Dwelling in a selective licensing scheme	Licence holder

Licensed HMO	License holder
Flat - single occupation or HMO - not needing to be licensed	Owner of the flat and person who in LA opinion ought to do the works
Common parts which do not consist of residential accommodation	Owner of the specified premises (common parts or building) and person who in LA opinion ought to do the works
In all cases copies to - anyone with an relevant interest (freeholder, mortgagee or lessee) - any occupier	

'Person having control' – the person who receives the rack rent can be in their own right or on behalf of another (agent or trustee).

'Rack rent' - is essentially a market rent (not less than 2/3 of the full market rent).

'Person managing' – means the person who being an owner of lessee of the premises receives rents.

#### 4.4 Costs incurred by taking certain enforcement action

The Housing Act 2004, section 49 allows for the recovery of administrative and other expenses incurred in taking enforcement action. A charge will be made for the following actions.

- Serving an improvement notice,
- Serving an prohibition order or emergency prohibition order,
- Emergency remedial action,
- A management notice for HMOs.

Charges will reflect the actual costs incurred for the individual case including staffing and support costs from the point that enforcement action was deemed necessary.

#### 5. Powers of entry

In most cases access is voluntarily given.

Prior to any enforcement under the Housing Act 2004 section 239(5) requires at least 24 hours notice of intention to enter is given to the owner (if known) and occupier of the premises.

The council will seek to obtain a warrant to enter premises where legislation provides for this and the circumstances justify the action, such circumstances may include;

- a house in multiple occupation where the owner is not allowing access,
- a filthy and verminous property where the occupier is not allowing access for an initial inspection,
- where entry with prior notification may allow vital evidence to be removed.

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

These Regulations place three duties on landlords in the private rented sector;

- to ensure there is a smoke alarm on every storey of their property,
- to ensure there is a carbon monoxide alarm in any room used as a living room which contains a solid fuel-burning combustion appliance, and
- to ensure that alarms are in proper working order at the start of a new tenancy.

The Regulations require the Council to serve a remedial notice where there are reasonable grounds to believe the landlord has not complied with any of the three duties. If a landlord fails to comply with the remedial notice within 28 days of the notice being served, the Council has a duty (where the occupier consents) to arrange remedial

action, within 28 days of such consent, in order to ensure that tenants are protected by working alarms. The Council may also, within a 6 week period, impose a civil penalty charge on landlords who are in breach of their duty to comply with the remedial notice.

A local housing authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. The statement of principles is contained in Appendix 2 and sets out the charges as;

- £2,500 for the first breach of complying with a remedial notice,
- £5,000 for each subsequent breach.

## **7. Letting Agents Redress Scheme**

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc) (England) Order 2014 makes it a legal requirement for any person who engages in lettings agency work and/or property management work in England to join a Government approved redress scheme.

In the event of a failure to remedy a breach following service of notices, the Council may impose a fine up to £5000. The authority must give written notice of the intention to impose a penalty setting out the reasons and the amount. The lettings agent or property manager will have 28 days to make written representations or objections to the authority.

## **8. Public Health Act 1936 - filthy & verminous premises**

Powers are available to require cleaning of filthy and verminous premises. Conditions need to be extreme such as large accumulations of human or animal faeces or rotting food or severe pest infestation and there is a significant nuisance to adjoining premises or a serious hazard to the health or safety of the occupier.

Cases need to be treated sensitively and without judgement and as cleaning activity rarely brings about long term change this will only be carried out in partnership with Adult and Community Services and other relevant organisations.

If the property is tenanted, we will seek to involve the landlord in the process.

## **9. Empty homes**

The full range of housing and public health enforcement options are available to be used for empty homes, depending on taking the relevant factors into consideration, to prevent deterioration of condition and blight to the neighbourhood

## **10. Non-compliance with a notice**

Where the recipient of a notice fails to comply within the specified timescales there are various options that can be considered;

- Extending the timescale if credible evidence has been given that the person responsible is making progress with the works but needs a short time extension,
- Work in default, organising the work in default of the responsible person re-charging all the costs incurred.
- Instigating formal prosecution proceedings,
- Imposing a civil penalty for relevant Housing Act 2004 offences,
- Applying for a Rent Repayment Order for relevant offences,
- Applying for a banning order for relevant offences.

## **11. Work in default**

Where a notice is not complied with the Council may have the option to carry out work in default recovering the costs involved from the relevant person.

When deciding whether to peruse work in default the following will be considered;

- The extent and cost of the work,
- The impact of not completing the work,
- Other options available ie prosecution, civil penalty or rent repayment order.

Work in default can be undertake as well as prosecution, civil penalty or rent repayment order to ensure the work is completed as both those options are designed to punish the offender but do not necessarily result in the work being competed.

The Council will always aim to recover the costs incurred in carrying out work in default by one of the following methods:

- Invoice for the applicable amount and County Court action if the invoice is not settled in full.
- Recovery Orders (paragraph 12 of Schedule 3) requiring rent to be paid directly to the council until the debt owed by the relevant person is paid.
- A charge put on the property. The charge remains in place until the debt is cleared. The debt will accrue compound interest at the relevant rate until the debt is settled.
- By using powers under the Law of Property Act 1925 to enforce the sale of the property where a charge is secured against it.

## **12. Civil Penalties**

Under section 126 and schedule 9 the Housing and Planning Act 2016 local housing authorities can impose a civil penalty as an alternative to prosecution for the following offences;

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

The local housing authority should determine the amount of penalty which can be up to a maximum of £30,000. The table and notes in Appendix 3 set out the charging system and the matters which are to taken into consideration. With reference to the “Civil penalties under the Housing and Planning Act 2017 – Guidance for Local Authorities” the matters considered are;

- Severity of the offence,
- Culpability and track record of the offender,
- Punishment of the offender – a civil penalty should not be seen as a lesser option than prosecution,
- The harm caused to the tenant,
- Punishment of the offender,
- Deterring the offender from repeating the offence,
- Removing any financial benefit the offender may have obtained as a result of committing the offence.

### **12.1 Burden of proof**

A civil penalty can only be imposed where a local housing authority can satisfy itself that if the case were to be prosecuted in the magistrates court, there would be a realistic prospect of conviction. For this the authority needs to be able to demonstrate beyond reasonable doubt that the offence has been committed.

In determining whether to impose a civil penalty officers should refer to the Council's Enforcement Policy and complete the decision to prosecute form in Appendix 4 to test that evidence passes both the evidential stage and the public interest stage.

## **12.2 Civil Penalty procedure**

Civil Penalties under the Housing and Planning Act – Guidance for Local Authorities sets out the procedure to be followed when imposing a civil penalty. [www.gov.uk](http://www.gov.uk)

## **13. Banning Orders**

The Housing and Planning Act 2016 introduced the power for a first tier tribunal to serve a banning order on a landlord or property agent who has been convicted of a banning order offence. This is scheduled to come into force on 1<sup>st</sup> October 2017 and will include a conviction for the following types of offences:

- Illegal eviction or harassment ,
- Housing Act 2004 offences,
- Gas Safety (installation and use) Regulation,
- Regulatory Reform (Fire Safety) Order 2005,
- Immigration offences,
- Serious criminal offences.

## **14. Database of rogue landlords**

Also introduced under the Housing and Planning Act 2016 the database of rogue landlords will be used to record information about any landlord who has;

- received a banning order under the Housing and Planning Act 2016;
- been convicted of a banning order offence; or
- received 2 or more civil penalties over a 12 month period.

## **15. Prosecution or Civil Penalty?**

In relation to housing offences a banning order can only be applied for following a conviction in the courts.

Whenever the authority believes a Housing Act 2004 offence has been committed and the evidence passes the evidential stage and the public interest stage it will then be necessary to consider on a case by case basis if instigating prosecution proceedings or imposing a civil penalty is the best approach.

Factors to consider will be;

- The seriousness of the offence, history of compliance, culpability and the harm caused.
- Whether a civil penalty is likely to be sufficient to change the behaviour of the offender, if not then a banning order should be considered.
- Whether the offender has a large portfolio of properties potentially putting many tenants at risk if they continue to operate with poor practices.
- Information from partners agencies ie Police and Staffordshire Fire and Rescue Service.
- Is publicity likely to act as a deterrent to others, a prosecution is in the public domain whereas a civil penalty isn't.
- Which option will be the best deterrent to prevent further offences,
- Whether there is a desire to apply for a 12 month rent repayment order which, following a valid application, the tribunal must order following a conviction of a rent repayment order offence. There is more information about Rent Repayment Orders in section 16.
- Whether the tenant or council is also considering applying for a Rent Repayment Order.

## **16. Rent Repayment Orders**

A rent repayment order is made by the First Tier Tribunal and requires a landlord (person entitled to keep the rent) to repay a specified amount of rent. An application to the First Tier Tribunal can be made by a tenant where they paid the rent themselves or a local housing authority if the rent was paid through Housing Benefit or the housing element of Universal Credit.

### **16.1 Applying for a Rent Repayment Order**

The Housing Act 2004 allows rent repayment orders to be applied for following licensing offences and chapter 4, part 2 of the Housing and Planning Act 2016 allows them to be applied for in the following situations:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under 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 under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

The landlord does not have to have been found guilty of the offence but there must be evidence to satisfy the tribunal beyond reasonable doubt that the offence has been committed. This is similar to applying civil penalties and officers should refer to the Council's Enforcement Policy and complete the decision to prosecute form in Appendix 4 to test that evidence passes both the evidential stage and the public interest stage and that an application can proceed.

### **16.2 How much rent to recover**

If the application follows a conviction of the related offence a first tier tribunal will order the maximum amount of 12 months rent is repaid. In other cases the local housing authority decide how much to apply for, up to a maximum of 12 months, when deciding on the amount to claim the following can be taken into account;

- Punishment of the offender – ensuring there is an economic impact of receiving rent for a non-complaint property,
- Deterring the offender from repeating the offence,
- Deterring others from committing similar offences – rent repayment orders can be publicised,
- Removing the financial benefit from committing the offence,
- The period during which the offence was ongoing.

### **16.3 Rent Repayment Orders and Civil Penalties / Prosecutions**

A local housing authority can either prosecute for an offence or impose a civil penalty and seek a rent repayment order. Following an offence to which rent repayment orders apply the first consideration will be whether there is sufficient evidence to secure a conviction. If there is a decision will be made between a civil penalty or prosecution. Following that consideration will be given to applying for a rent repayment order or advising the tenant on applying.

## 16.4 Guidance

Rent repayment orders under the Housing and Planning Act 2016 – guidance for Local Housing Authorities contains guidance and process information on rent repayment orders. [www.gov.uk](http://www.gov.uk)

## 17. Targeted enforcement action

Housing services may take targeted enforcement action to address concerns in a particular geographical area or type of property.

This may be triggered by:

- Concerns about unlicensed HMOs in an area.
- Concerns about concentrations or increases in numbers of empty properties.
- Concerns about concentration of HMOs in an area.
- Low quality housing in an area predominantly in the private rented sector.
- Checking HMO licence conditions.
- Concerns about properties owned by a portfolio landlord where some properties have fallen significantly below legal standards or have Category 1 hazards present.
- Investigating whether to introduce selective or additional licensing.

## 18. Complaints

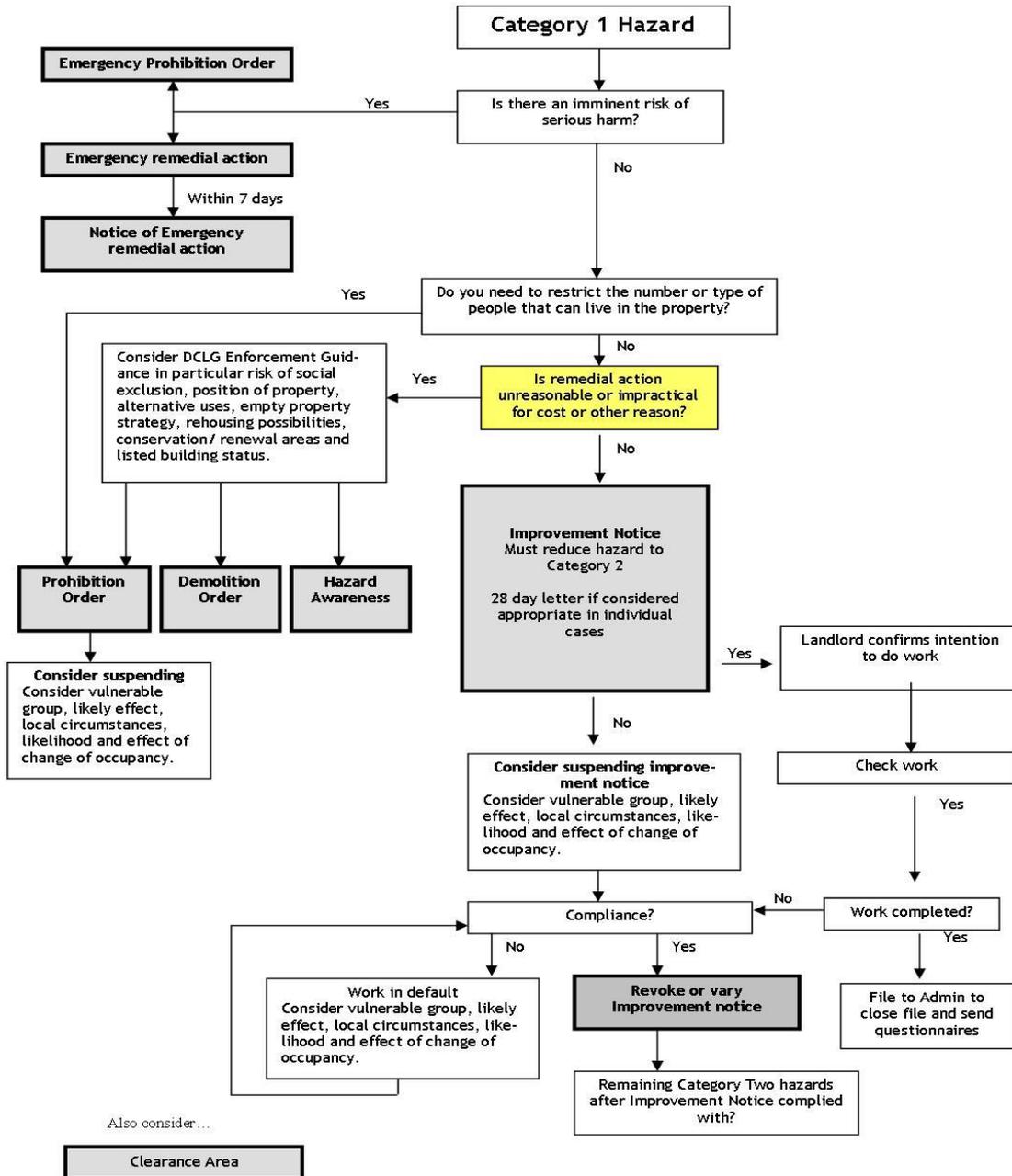
If you feel the Council has not acted in accordance with this policy please contact:

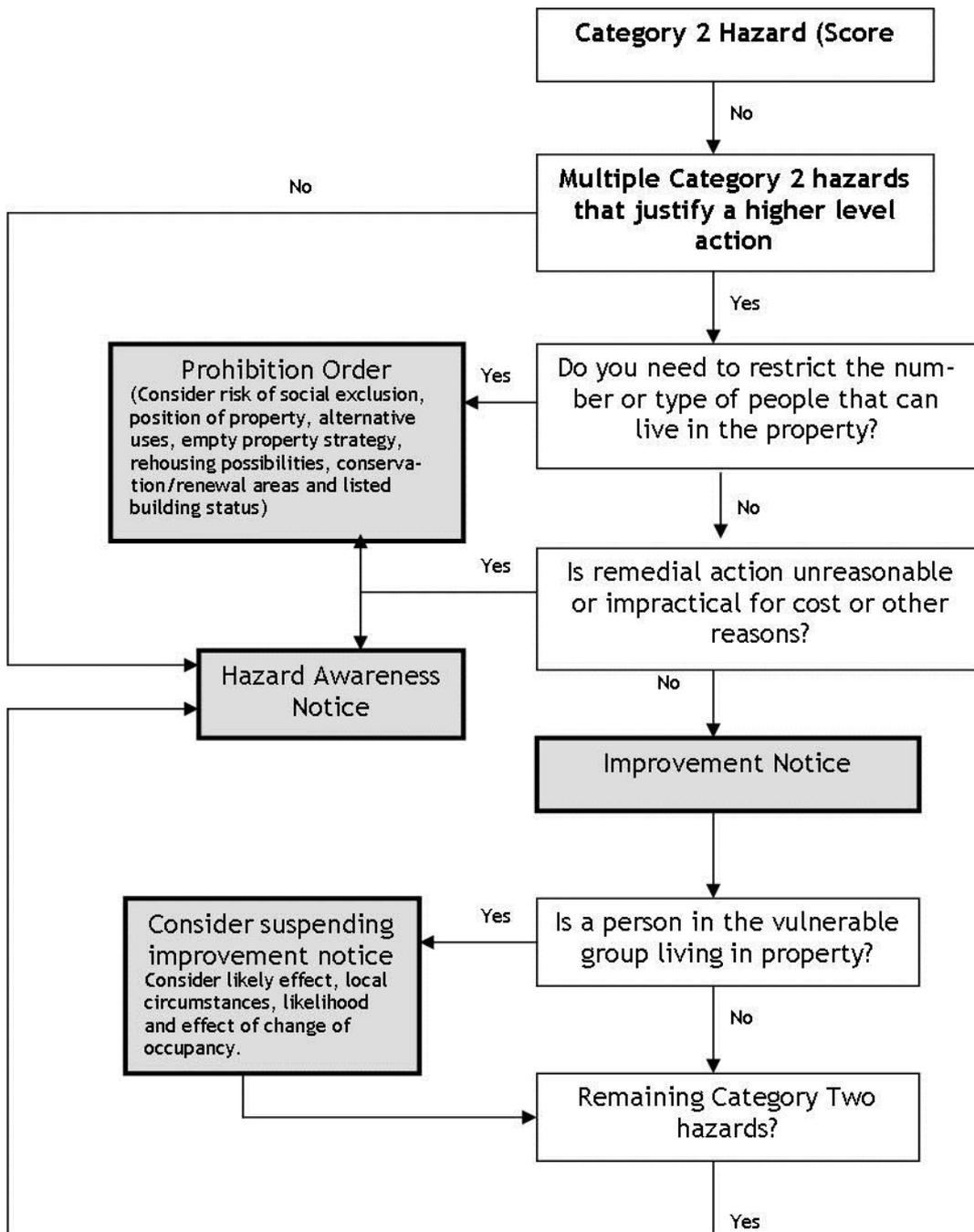
Housing Manager  
Newcastle under Lyme Borough Council  
Castle House  
Barracks Road  
Newcastle under Lyme  
Staffordshire  
ST5 1BL  
E-mail: [housing@newcastle-staffs.gov.uk](mailto:housing@newcastle-staffs.gov.uk)

If you are dissatisfied with the response you can pursue your complaint through the internal complaints procedure by contacting Customer Relations on 01782 717717 or by logging onto [www.newcastle-staffs.gov.uk](http://www.newcastle-staffs.gov.uk) and searching for complaint form.

If you remain dissatisfied after the Council's internal complaints procedure, you can refer the matter to the Local Government Ombudsman.

# Appendix 1 – Flowchart for Housing Act 2004 enforcement





## **Appendix 2 - Statement of Principles for determining financial penalties**

### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

These regulations place a duty on landlords (which includes freeholders or leaseholders who have created a tenancy, lease, licence, sub lease or sub licence) to ensure that:

- there is a smoke alarm on every storey of their property;
- there is a carbon monoxide alarm in any room used as a living room which contains a solid fuel-burning combustion appliance; and
- to ensure that alarms are in proper working order at the start of a new tenancy.

Where Newcastle-under-Lyme Council (the Council) believe that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord, under section 5 of these regulations.

If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require the landlord to pay a penalty charge. This power to charge is set out in section 8 of the regulations.

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

#### **The purpose of imposing a financial penalty**

The purpose of the financial penalties on landlords is to;

- Recognise the importance of compliance with the legislation to protect the safety of tenants and their visitors,
- Penalise the landlord for not installing alarms after being required to do so, under notice,
- Be proportionate to potential harm outcomes, the nature of the breach and the cost benefit to comply with these regulation,
- Change the behaviour of the landlord and prevent future non-compliance,
- Eliminate financial gain or benefit from non-compliance with the regulations,
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord.

#### **Criteria for imposing the financial penalty**

Where a breach of a notice is suspected the Council will look at the available evidence prior to considering imposing a financial penalty. This could be obtained from a property inspection, or information from the tenant or agent. The landlord could demonstrate compliance by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords also need to take steps to demonstrate they have met the requirements relating to testing alarms at the start of a tenancy. This can be achieved by tenants signing an inventory form and confirming the alarms were tested and were in proper working order at the start of the tenancy. Tenancy agreements can also specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

In deciding whether it would be appropriate to impose a penalty, the authority will take full account of the particular facts and circumstances of the breach under consideration and whether the landlord has taken all reasonable steps to comply.

A financial penalty charge will be considered appropriate if the Council is satisfied, on the balance of probabilities, that the landlord who had been served with a remedial notice under section 5 of the regulations had failed to take the remedial action specified in the notice within the time period specified.

### **Criteria for determining the amount of a financial penalty**

The regulations state the financial penalty must not exceed £5,000.

The penalty charge comprises two parts, a punitive element for failure to comply with the remedial notice and a cost element for investigative costs, officer time, administration and any remedial works.

The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served. The council will not be using its discretion to offer early payment reductions due to the serious implications to tenant safety of non-compliance.

The charges are;

- £2,500 for the first breach of complying with a remedial notice
- £5,000 for each subsequent breach to comply with a remedial notice.

### **Procedural matters for Penalty Charge Notices**

When the Council is satisfied that the landlord has failed to comply with the remedial notice, a penalty charge notice must be served within 6 weeks.

Where a landlord requests a review within 29 days of the penalty charge notice being served, the council will consider all representations made as part of that review. Representations should be sent to the address at the bottom of this appendix. The Council will serve a notice of its decision which will either be to confirm, vary or withdraw the penalty notice.

If the outcome of this review is to confirm or vary the penalty charge notice the landlord may appeal the decision to the First-tier Tribunal. Appeals should be made within 28 days of the Council's decision to confirm or vary the penalty charge notice.

If the penalty charge notice is not paid, court proceedings for recovery of the penalty charge will be commenced after 30 days from the date when the penalty charge notice was served.

If a review of the penalty charge notice has been requested or if a First Tier Tribunal appeal has been submitted recovery proceedings will not be undertaken until the review or appeal has been determined.

### **Remedial action taken in default of the landlord**

Where the council is satisfied that a landlord has not complied with the requirements of a remedial notice in the specified timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken within 28 days of being satisfied of the breach.

Battery operated smoke alarms will be installed at every storey of residential accommodation. If the property is a house in multiple occupation and further fire safety precautions are necessary this will be considered a temporary solution and further precautions will be required through Housing Act 2004 enforcement.

Where a carbon monoxide alarm is required, one will be installed in every room containing a solid fuel combusting appliance.

### **Contacting the Council**

Representations made against remedial notices and penalty charge notices should be sent to:

Housing Manager, Newcastle-under-Lyme Borough Council, Barracks Road, Newcastle under Lyme, Staffordshire, ST5 1BL.

Or emailed to: [housing@newcastle-staffs.gov.uk](mailto:housing@newcastle-staffs.gov.uk)

Castle House  
Barracks Road  
Newcastle-under-Lyme  
Staffordshire  
ST5 1BL

## Appendix 3 – Charging System for Civil Penalties

### Charging system for determining value of civil penalties imposed under Housing Act 2004 and Housing and Planning Act 2016

<b>Failure to comply with an Improvement Notice (Section 30)</b>	£
<i>(note 1)</i>	
1st offence	5000
2nd offence by same person/company	15000
Subsequent offences by same person/company	25000
<i>(note 2)</i>	
<b>Premiums (use all that apply)</b>	
Large housing portfolio (10+ properties)	+2500
<i>(note 3)</i>	
Multiple Category 1 or high Category 2 Hazards	+2500
<i>(note 4)</i>	
Vulnerable occupant and/or significant harm occurred as result of housing conditions	+2500
<i>(note 5)</i>	
Perpetrator demonstrates Income to be less than £440/week	-50%
<i>(note 6)</i>	

<b>Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)</b>	£
<i>(note 1)</i>	
Failure to obtain property Licence (section 72(1))	10000
subsequent offence by same person/company	20000
<i>(note 2)</i>	
Breach of Licence conditions - Section 72(2) and (3) - Per licence breach	5000
<b>Premiums (use all that apply)</b>	
Large housing portfolio (10+ properties)	+2500
<i>(note 3)</i>	
Vulnerable occupant and/or significant harm occurred as result of housing conditions	+2500
<i>(note 5)</i>	
Perpetrator demonstrates Income to be less than £440/week	-50%
<i>(note 6)</i>	

<b>Offences in relation to licensing under Part 3 of the Act (Section 95)</b>	£
<i>(note 1)</i>	
Failure to Licence - section 95(1)	10000
subsequent offence by same person/company	20000
<i>(note 2)</i>	

Breach of Licence conditions - Section 95(2) - Per licence breach	5000
<b>Premiums (use all that apply)</b>	
Large housing portfolio (10+ properties) <i>(note 3)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

<b>Offences of contravention of an overcrowding notice - section 139</b> <i>(note 1)</i>	£
1st relevant offences	2500
subsequent offence by same person/company <i>(note 2)</i>	10000
<b>Premiums (use all that apply)</b>	
Large housing portfolio (10+ properties) <i>(note 3)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding <i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%
Knowingly breach of notice <i>(note 7)</i>	+2500

<b>Failure to comply with management regulations in respect of HMOs (Section 234)</b> <i>(note 1)</i>	£
relevant offences (per regulation)	1000
subsequent offence by same person/company <i>(note 2)</i>	+2500
<b>Premiums (use all that apply)</b>	
Large housing portfolio (10+ properties) <i>(note 3)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

**Note 1 – Offences that may be dealt with by way of imposing a financial penalty**

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalties for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

**Note 2 - 2nd and subsequent offence by same person/company**

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

**Note 3 - Large housing portfolio (10+ properties)**

The premium is applied where the perpetrator has control or manages of 10 or more residential properties. It is considered appropriate to set a higher penalty for landlords who operate a large number of properties as they are effectively operating a business and in failing to comply with statutory provisions are gaining a competitive advantage over law-abiding landlords.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

**Note 4 - Multiple Category 1 or high Category 2 Hazards**

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or D or E Category 2 hazards associated with different building deficiencies. Where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

The purpose of this premium is to reflect the severity of the offence, in that several defects have not been addressed, and to ensure there is no financial benefit in not complying with a notice with multiple works.

**Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions**

This premium will be applied if the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions. A statement may be obtained from the tenant relating to harm caused.

A vulnerable person is someone who forms part of the identified vulnerable group for each hazard under the Housing Health and Safety Rating System. Or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard to. The table below identifies the vulnerable group for each hazard.

Significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance. At the time of publication this document can be found at [www.gov.uk](http://www.gov.uk) .

<b>Hazard</b>	<b>Vulnerable age group (age of occupant)</b>
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over

Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

**Note 6 - Perpetrator demonstrates Income to be less than £440/week**

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance. The threshold for such a reduction was determined by reference to the Magistrates Courts sentencing guidelines and could be amended as necessary to take into account inflation etc.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

**Note 7 - Knowingly breach of notice**

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless manner in not complying with the overcrowding notice.

### Appendix 4 - Decision to prosecute form

	Relevant Legislation	Details of Offence
<b>Offences</b>		

<b>Evidential Stage</b>	
What evidence is available to support the case?	
Are there any problems with the evidence/witnesses?	
Are there any statutory defences?	
What is the defence case likely to be?	
Is there a realistic prospect of conviction	

**Is the evidential stage passed Yes / No**

**Investigating Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorising Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<b>Public Interest Stage</b>	
<b>Factors Considered</b>	<b>Comments</b>
Seriousness of offences – is a significant sentence/ fine likely to result?	
Is conviction likely to result in a confiscation or other order	
Was the offence premeditated	
Was the victim vulnerable, put in fear, suffered attack, damage or disturbance	
Was the offence motivated by any form of discrimination	
Will prosecution adversely affect the victim	
Are there relevant previous convictions/ cautions	
Are there grounds to suspect that offences will continue or be repeated	
Will a prosecution have a significant positive impact on community confidence	
What explanation was offered by the offender	
Was the offence a genuine mistake/ misunderstanding	
Was there a victim/ someone who suffered loss	
Is the offence widespread across the area	
Has there been a long delay between the offence and the decision to pursue it	

**Proposed Course of action:** \_\_\_\_\_

**Investigating Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorising Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_