



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Housing Standards Enforcement Policy

2021

Version 1

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1. INTRODUCTION

Cherwell District Council has a responsibility to deal with unsatisfactory housing in its area. Our aim is to raise housing standards and contribute to the Council's strategic priorities, in particular to *'Improve the quality and sustainability of our homes and build thriving, healthy communities.'*¹ This policy sets out the powers we have at our disposal to regulate and improve housing in the district, the Council's approach to enforcement and how we intend to use the available powers.

Conditions in privately rented homes tend to be less satisfactory than other tenures², so this is where our work is predominantly focussed. However, there are circumstances where we will act to address issues relating to owner-occupied dwellings and properties managed by Registered Providers and other bodies.

Whenever possible we will provide advice and guidance to assist landlords and other parties in complying with their legal requirements; however, it is recognised that if the law is broken, then robust enforcement action can be essential to protect the public and the environment. Throughout our housing interventions we will be seeking to:

- **Protect** and improve the health, safety, and welfare of occupants, members of the public and the environment;
- **Change** non-compliant behaviours and remove benefits of non-compliance; and
- **Promote** best practice in the private rented sector.

Cherwell District Council recognises and affirms the Regulators' Code³ and the importance of achieving and maintaining consistency and transparency of regulatory enforcement action. This policy aims to provide:

- **Guidance** for Council officers to ensure **consistency** and **fairness** when the Council is investigating, considering options and deciding to take enforcement action relating to the housing within its district; and
- **Clarity** to help businesses and members of the public know what to expect from the service when the Council takes legal proceedings.

In deciding upon enforcement options, the Council will have due regard to its overarching Enforcement Policy⁴ as well as statutory guidance, approved codes of practice and relevant industry or good practice guides. Appropriate enforcement actions that can be taken include, but are not limited to, those outlined below.

¹ Cherwell District Council Housing Strategy 2019-2024 'Cherwell - A Place to Prosper' - <https://www.cherwell.gov.uk/download/downloads/id/8860/housing-strategy-2019-2024.pdf>

² English Housing Survey 2019-20 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945013/2019-20_EHS_Headline_Report.pdf

³ Regulators' Code - <https://www.gov.uk/government/publications/regulators-code>

⁴ Cherwell overarching enforcement policy - <https://www.cherwell.gov.uk/download/downloads/id/138/enforcement-policy-december-2016.pdf>

2. GENERAL APPROACH TO HOUSING ENFORCEMENT

Whilst we shall endeavour to develop a professional and constructive relationship with responsible landlords, the need to ensure that all properties meet minimum standards is paramount. We expect landlords and managing agents to comply with the law and to proactively manage their properties to ensure the health, safety and welfare of tenants is protected. Where individuals or companies are failing in their responsibilities and duties, the Council will take firm but fair enforcement action.

2.1 Identifying the need for action

The Council has a duty to keep the housing conditions in its area under review and we believe enforcement should be targeted at those individuals and organisations who fail to uphold the required standards. Our officers will establish the need to take enforcement action through:

- proactive investigations, audits and inspections of dwellings – including reviews of an individual landlord or agent’s portfolio of properties, area-based modelling, and data analysis; and
- reactive responses to complaints, referrals, or requests for assistance.

2.2 Shared enforcement responsibilities

In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

2.3 Selecting appropriate enforcement options

Enforcement action decisions will principally be based on risk, but the exact type of enforcement taken will vary according to the legislation being applied. In many instances it will be appropriate for officers to use informal action such as offering advice, information and assistance to landlords and residents to aid compliance with housing related legislation.

However, when housing law contraventions are established, robust formal actions should be considered, and in some cases, taking a certain enforcement action is a statutory duty. Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance and to protect those at risk. In the most serious contraventions possible action will include prosecution.

The type of enforcement action pursued is always considered on a case by case basis, based on its own merits and taking account of the assessed risk in each case. Officers will be suitably trained to make assessments and informed judgements; in particular in the application and use of the Housing Health and Safety Rating System (HHSRS) as the statutory method of assessing risks in housing.

Following consideration of the specific circumstances of the case, the most appropriate enforcement option will be applied and properly recorded. In every case enforcement seeks to:

- Promote and achieve sustained compliance with the law
- Ensure that risks to health, safety or the environment are appropriately addressed
- Minimise the negative impacts of wrongdoing and see that those who breach legislative requirements are held to account

In all cases, enforcement decisions, whether they are decisions to take action or to not take action, will be recorded, and the outcome communicated appropriately to the parties concerned.

2.4 Powers of entry and investigative powers

The Council has various powers to enter domestic premises and to require information and documents to be supplied in connection with the exercise of its various functions and the investigation of suspected offences. In most cases, entry will be sought under section 239 of the Housing Act 2004, and generally, officers will give at least 24 hours' notice prior to exercising a power of entry. However, no such notice is required where entry is to ascertain whether an offence has been committed in relation to licensing of HMOs, selective licensing of houses, breach of the HMO Management Regulations or Overcrowding Notices. If admission is refused, premises are unoccupied, or giving notice of entry is likely to defeat the purpose of the entry, then a warrant to enter by force may be sought, if judged necessary. Other Acts have their own enforcement powers including powers of entry which will be used accordingly when the Council exercises these specific pieces of legislation.

We will use all available powers to meet the enforcement objectives within this policy, having regard to any relevant Government guidance and other legal requirements that might apply to our actions; for example, the Data Protection Act 2018, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984. We will ensure that our officers are duly authorised, trained and supported to effectively exercise the Council's functions.

3. HOUSING ENFORCEMENT ACTIONS

This section summarises the types of action and legislation most commonly applied in the enforcement of housing standards. It is not an exhaustive list nor is it intended to be a definitive interpretation of the legislation or provide a full statement of the law. The Council may take any number of these courses of action, either simultaneously or consecutively, depending on the circumstances of the case.

In all cases we will seek to ensure that the information we provide is in clear, concise and accessible language, and that legal requirements are clearly distinguished from recommendations above the minimum standards. Decisions to take enforcement action will be properly recorded and justified.

3.1 Advice and guidance

We recognise that prevention is better than cure and we actively work with businesses, landlords and residents to educate and promote compliance with the law. In some cases, a fee may be payable for our advice. Where this is the case you will be informed and provided with details of the charge and how to pay the fee.

3.2 Informal enforcement action

The Council will allow an opportunity for informal compliance where this is considered appropriate. This judgement will be based on risk and compliance history. Where an informal opportunity does not achieve sufficient progress, or there is increased risk, the Council will proceed with formal action.

3.3 Statutory (Legal) Notices and Orders

In respect of breaches under the Housing, Public Health and related legislation Cherwell District Council has powers to issue certain statutory notices. Such notices are legally binding and may require the recipient to carry out work, cease doing specified things, provide information or take other actions depending on the statute or circumstances. As the Council relies upon statutory notices to effectively carry out its regulatory functions, breach of a notice is viewed as a serious matter. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or other sanctions where appropriate. Where legislation permits the recovery of costs for serving statutory notices, the Council will normally charge.

3.4 Works in default

Where someone fails to comply with a notice which requires work to be completed, the Council may, depending on the specific legislation, carry out those works instead and recover the costs incurred in so doing. This is known as works-in-default. The Council will decide in each case whether to undertake works-in-default, and may also impose other available sanctions, for example prosecution. Some legislation also permits the Council to undertake emergency works where an imminent risk of harm exists. In all cases, the Council will follow the procedures specified in the particular legislation being exercised.

3.5 Prosecution

We apply the Code for Crown Prosecutors⁵ two-stage test when deciding whether a prosecution, civil penalty or simple caution is viable and appropriate, and only proceed when the case has passed both the evidential test and the public interest test. The principles in these tests form the basis of much of our formal enforcement decision-making.

The Evidential Test: We must first be satisfied that for each charge there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, the Council would be able to demonstrate beyond reasonable doubt that the offence has been committed.

The Public Interest Test: The Council must then decide whether it is in the public interest to prosecute. In deciding on the public interest, the Council will make an overall assessment based on the circumstances of each case and will consider all relevant circumstances carefully, including local and corporate priorities. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate.

Cherwell District Council will generally save prosecution for the most serious offences unless there is no alternative sanction, for example non-compliance with certain notices. The Council will also consider prosecution for banning order offences where the circumstances of the case dictate a Banning Order will be appropriate.

3.6 Simple Caution

Cherwell District Council may offer a simple caution as an alternative to prosecution in cases where there is insufficient public interest to prosecute, and:

- a. there is sufficient evidence to give a realistic prospect of conviction; and
- b. the offender admits his or her guilt; and
- c. the person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution instead of prosecution in the courts would commonly be, for example, that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur.

3.7 Civil (Financial) Penalties

The Council has powers to issue civil (financial) penalties for breaches under a wide range of housing legislation. The following general policy provisions will be applied in all cases, unless a specific policy has been published by the Council.

⁵ The Code for Crown Prosecutors - <https://www.cps.gov.uk/publication/code-crown-prosecutors>

The justification for the decision to issue a civil penalty (rather than to prosecute or take any other course of action), and for the level of penalty set will be fully recorded at each stage. This approach will ensure transparency and aid consistency in the enforcement process and will assist in defending appeals against decisions to impose civil penalties and/or the penalty amount. The Council will set penalties it believes reasonable, proportionate, and which can be successfully defended in the event of an appeal.

In the event that the Council receives properly made representations in response to a penalty notice, those representations will be considered and any decisions reviewed by a senior officer and/or the team manager within Housing Standards before responding. Especially complex or contentious cases will be escalated to the Assistant Director for Housing who will determine whether to impose a penalty and, if so, the amount of the penalty.

The income received from civil penalties will be retained by the Council to further its statutory functions, as the Local Housing Authority, in relation to its enforcement activities covering the private rented sector.

The Council will seek to recover all debts owed from financial penalties.

Changes to the appended civil penalties protocols to reflect changes in guidance, best practice and tribunal decisions will be delegated to, and approved by, the Assistant Director, Housing and Social Care Commissioning.

3.7.1 Civil penalties under the Housing and Planning Act 2016 and Housing Act 2004

The Housing and Planning Act 2016 introduced the power for Local Authorities to impose civil penalties of up to £30,000 as an alternative to prosecution for certain housing offences. The same criminal standard of proof is required for a civil penalty as for prosecution, and therefore, the Council will apply the Code for Crown Prosecutors evidential and public interest tests before proceeding.

Only one penalty can be imposed in respect of each offence, but where the Council is satisfied that more than one offence has been committed it may issue multiple civil penalty notices. However, where the Council considers that issuing multiple penalties concurrently in respect of a single property would result in an excessive cumulative penalty, the Council may issue a combined penalty in accordance with the totality principle.

The amount of penalty will be determined in each case by applying the Civil Penalties Protocol contained in [Appendix 2A](#) of this policy and having regard to the Ministry of Housing Communities and Local Government's statutory guidance⁶.

⁶ Civil penalties guidance for Local Housing Authorities - <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

3.7.2 Civil Penalties under other legislation

Where the Council has the option to issue Civil Penalties in respect of other legislative breaches, Cherwell District Council will issue such penalties as the legislation permits. Where a specific policy has been published this will be applied, otherwise the amount of any civil penalty will be determined by applying the Civil Penalties Protocol contained in [Appendix 2B](#) of this policy.

3.8 Rent Repayment Orders

Local Authorities and tenants can apply to the First-tier Tribunal (Property Chamber) (“the Tribunal”) for a Rent Repayment Order (RRO)⁷. An RRO requires a landlord who has committed certain offences to repay rent (and/or Housing Benefit/Universal Credit payments) received for a period of up to twelve months.

Cherwell District Council must consider applying for a RRO where a landlord has been convicted of a relevant offence in their area, and may also apply for a RRO where an offence has been committed, but the landlord has not been convicted (e.g. where a civil penalty has been issued in lieu of prosecution). Additionally, the Council may support tenants to make RRO claims. In all cases, the Council will apply its RRO Policy⁸ in determining when to apply for a rent repayment order.

3.9 Database of Rogue Landlords and Property Agents

The national database of rogue landlords and property agents allows local authority officers to add, search and keep track of known rogue landlords. The aim is to help authorities target their enforcement activities and to tackle those landlords and agents operating across Council boundaries.

The Council must make an entry on the database where a landlord or property agent has received a Banning Order; and may also make entries where a landlord or property agent has been convicted of a banning order offence, or has received two or more civil penalties within a twelve month period.

The Council will have regard to the government guidance⁹ when deciding whether to include a person on the database, and the duration of any entry.

3.10 Banning Orders

After a landlord or agent has been convicted of a Banning Order Offence¹⁰, the Council can apply to the First Tier Tribunal for a Banning Order¹¹. A Banning Order forbids a landlord or property agent from letting and/or managing property in England. Banning Orders last a minimum of twelve months with no statutory maximum. Breaching a Banning Order is a criminal offence which is liable on

⁷ Rent Repayment Orders guidance - <https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

⁸ Rent Repayment Order Policy - <https://www.cherwell.gov.uk/download/downloads/id/8160/rent-repayment-order-policy.pdf>

⁹ Rogue Landlord Database guidance - <https://www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

¹⁰ Banning Order Offences - <http://www.legislation.gov.uk/ukxi/2018/216/contents/made>

¹¹ Banning Orders guidance - <https://www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

summary conviction to imprisonment for a period not exceeding 51 weeks, or to a fine, or to both; or as an alternative to prosecution, a civil penalty of up to £30,000.

Cherwell District Council will reserve banning for the most serious offenders who have repeatedly breached their legal obligations and continue to rent out accommodation, which is substandard, in accordance with the Council's Banning Order policy¹².

3.11 Interim and Final Management Orders

Interim Management Orders (IMOs) and Final Management Orders (FMOs) transfer management control of a residential property to the Council for a period of between 12 months (for IMOs) and up to five years (for FMOs). The purpose of an IMO is to take immediate steps to protect the health, safety, or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity. FMOs aim to secure the proper management of the house on a long-term basis in accordance with a management scheme contained in the order.

The Council will make IMOs and FMOs where necessary, in accordance with the relevant legislation and government guidance.

3.12 Community Protection Notices

Housing Standards officers may use community protection notices and fixed penalty notices under the Antisocial, Crime and Policing Act 2014 in cases relating to residential premises where there is judged to be unreasonable conduct of a persistent or continuing nature arising which is having a detrimental effect on the quality of life of those in the locality.

3.13 Other enforcement powers

Other enforcement tools and legislative powers will be applied as new legislation is introduced, and/or where the Council considers those other powers to be the most appropriate remedy under the circumstances. Cherwell District Council will ensure that the relevant officers are duly authorised and trained to use such powers, and consultation with Legal Services and approval from the Assistant Director is sought where necessary.

¹² Banning Orders Policy - <https://www.cherwell.gov.uk/download/downloads/id/8161/banning-order-policy.pdf>

4. ENFORCEMENT OF HOUSING STANDARDS

Although housing issues will principally be dealt with under the Housing Act 2004, there are circumstances where other pieces of legislation are more appropriate to use, or where specific duties exist, or breaches are created and enforced under another Act. The following section provides an overview of the different areas of legislation and duties subject to enforcement by the Housing Standards Team.

4.1 Housing Act 2004 Part 1 enforcement of housing standards

Part 1 of Housing Act 2004 provides that, amongst other things, the statutory minimum standard for all homes in England and Wales be assessed by means of the Housing Health and Safety Rating System (HHSRS). The HHSRS is a calculation of the effect of 29 possible hazards on the health of occupiers and visitors to dwellings, and the legislation provides a range of actions for addressing identified hazards. The HHSRS is tenure-neutral and can be applied to owner-occupied properties and empty dwellings, as well as rented accommodation. The forms of enforcement action that can be taken under Part 1 of the Housing Act 2004 are summarised in **Appendix 1**.

The Council has a duty to take action to address Category 1 (the most serious) hazards and discretionary power to take action to address Category 2 (less serious) hazards. A Statement of Reasons will accompany each Part 1 notice or order served explaining why the chosen action was most appropriate.

In the case of Category 2 hazards identified under HHSRS, the Council will generally seek to address higher Category 2 hazards when these are identified; but will exercise its discretion and consider individual cases and circumstances when deciding whether or not to take action in response to any Category 2 hazards found within its district. For example, lower-scoring Category 2 hazards may need to be addressed when found in conjunction with Category 1 or high Category 2 hazards on the same premises. Conversely, it may not be possible to reduce a higher-scoring Category 2 hazard without undertaking significant or costly works to an otherwise satisfactory property. In such cases appropriate advice will be given and the decision recorded.

4.2 Licensing and enforcement of Houses in Multiple Occupation

A house in multiple occupation (HMO) is a property occupied by three or more unrelated tenants. HMOs include shared houses and poorly or partially converted buildings. All HMOs must be kept in good safe repair in accordance with the HMO Management Regulations^{13 14} and failure to comply with a regulation is an offence.

Enforcement of fire safety in HMOs is carried out in partnership with Oxfordshire Fire and Rescue Service in accordance with a Memorandum of Understanding incorporating all five district Councils in Oxfordshire.

¹³ The 2006 HMO Management Regulations (apply to all Section 254 HMOs)
<http://www.legislation.gov.uk/ukxi/2006/372/contents/made>

¹⁴ The 2007 HMO Management Regulations (apply only to Section 257 HMOs)
<http://www.legislation.gov.uk/ukxi/2007/1903/contents/made>

HMOs with five or more occupants sharing facilities must be licensed (unless exempt). Failing to apply for an HMO licence and not complying with HMO licence conditions are offences. The Council will administer HMO licence applications in accordance with its HMO Licensing policy¹⁵.

Licensed HMOs must comply with minimum standards for bedroom sizes and certain other amenities and facilities, as prescribed by Regulation. The Council also has discretion to produce its own HMO standards¹⁶ which are applied to all types of HMO, whether licensable or not. These standards are used by the Council to help in determining whether an HMO is reasonably suitable for occupation by a given number of occupants or households. Having a reference guide also helps achieve consistency and informs landlords and tenants of the expected standards.

Where a property is found to be overcrowded, the Council has a range of options depending on the specific circumstances:

- Licensed HMOs – the Council can impose and enforce licence conditions, or enforce Section 72(2) if landlord knowingly over-occupied the HMO
- Non-licensable HMOs – the Council can serve an overcrowding notice under Section 139 of the Housing Act 2004
- Any properties including single family homes – the Council can use HHSRS and Part 1 of the Housing Act 2004; and/or Part X of the Housing Act 1985

4.4 Electrical Safety Standards in the Private Rented Sector Regulations

Private landlords must ensure that the electrical installations in their rented properties are safe and meet the electrical safety standards at all times while let under specified tenancies. An electrical installation inspection and testing report must be obtained from a qualified person at least every five years, and copies supplied to specified parties.

Where the Council finds a landlord has breached their duties, we have a duty to serve a Remedial Notice. If this is not complied with, and/or there are urgent remedial works required the Council can undertake the remedial action and recover any costs incurred.

If the Council is satisfied beyond reasonable doubt that a private landlord has breached their duties, the Council may impose financial penalties of up to £30,000. Financial penalties under these regulations will be calculated using the Civil Penalties Protocol contained in [Appendix 2A](#) of this policy.

4.5 Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Private landlords must ensure that their rented properties have smoke alarms on every storey, carbon monoxide alarms installed in any room containing a solid fuel

¹⁵ HMO Licensing Policy - <https://www.cherwell.gov.uk/download/downloads/id/9121/hmo-licensing-policy-2018.pdf>

¹⁶ Cherwell District Council's HMO Standards Policy - <https://www.cherwell.gov.uk/download/downloads/id/8196/hmo-standards-2018.pdf>

burning appliance, and that these alarms must be working at the start of any new tenancy.

Where the Council has reasonable grounds to believe that there is insufficient provision of smoke alarms or carbon monoxide alarms in the property as required by the regulations; or the smoke alarms or carbon monoxide alarms were not working at the start of a tenancy or licence the Council must serve 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, the Council must arrange for an authorised person to take the remedial action specified in the remedial notice.

Where the Council is satisfied on the balance of probabilities that a landlord has failed to comply with a remedial notice, the Council may issue a financial penalty of up to £5,000. Financial penalties under these regulations will be calculated using the Civil Penalties Protocol contained in [Appendix 2B](#) of this policy.

4.6 Minimum Energy Efficiency Standards (MEES)

Landlords are prohibited from letting any properties with an Energy Performance Certificate (EPC) rating below E unless they have lodged a valid exemption on the Government's PRS Exemption Register. The Council may issue landlords who are found to have breached these regulations with financial penalties of up to £5,000 and may, either additionally or alternatively, publish details of any breaches on the PRS Exemption Register for 12 months or longer as it sees fit. Enforcement of these standards will be carried out in accordance with the Council's Minimum Energy Efficiency Standards policy¹⁷.

4.7 Drainage defects

A range of notices can be used to require repairs to defective drains including clearing of blockages, CCTV surveys, and structural work relating to both owner occupied and rented properties where necessary.

4.8 Filthy and verminous premises

The Council can use the Public Health Act 1936 (as amended) and the Prevention of Damage by Pests Act 1949 to tackle premises which are filthy or infested with vermin. Notices under these Acts can specify cleaning and treatment, including proofing work and clearance to prevent rodent infestations, and permit the Council to enter and undertake 3.4 Works in default if necessary.

4.9 Hoarding and Dilapidated Properties

These properties are often occupied by vulnerable persons, such as individuals with mental health issues or elderly people who are struggling to cope. The Council will primarily seek to provide signposting to assistance and engage with the relevant agencies to help them deal with any underlying issues. However, we will take enforcement action where there is significant disrepair, lack of hygiene or

¹⁷ Minimum Energy Efficiency Standards Policy - <https://www.cherwell.gov.uk/download/downloads/id/10097/minimum-energy-efficiencies-standards-policy-2020.pdf>

accumulations within properties which are likely to cause harm or ill health to the occupier or where there is a wider health issue or where statutory nuisance may exist. We shall engage with other agencies and refer such cases to them as necessary, particularly when there are safeguarding issues.

4.10 Statutory Nuisance Provisions

If a property or defect is prejudicial to health or is causing (or likely to cause) a nuisance to the locality, it may constitute a statutory nuisance under the Environmental Protection Act 1990. For an issue to constitute a statutory nuisance it must either:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises; or
- injure health or be likely to injure health.

Where the Council finds a statutory nuisance, it must serve an abatement notice requiring whoever is responsible to stop the nuisance or to take specific actions to prevent the occurrence or recurrence of the nuisance.

4.11 Antisocial behaviour

Where antisocial behaviour is associated with a residential property, we will work with other enforcement teams and agencies to address the underlying issues, and where appropriate serve Community Protection Notices¹⁸ on landlords, managing agents and/or occupiers to achieve cessation of the conduct. The Council may also seek injunctions and post-conviction orders where it is judged appropriate.

¹⁸ Under Part 4, Chapter 1 of the [Anti-social Behaviour, Crime and Policing Act 2014](#)

5. ENFORCEMENT OF LANDLORD AND TENANT LAW

The Council is committed to promoting and upholding tenants' rights under housing and landlord and tenant law. Our Tenancy Relations Officer works proactively with landlords and tenants to increase knowledge and awareness of everyone's rights and responsibilities within the private rented sector; thereby helping to improve the quality of tenant experience in the sector, reduce homelessness and promote sustainable tenancies. However, when things go wrong, we will step in to investigate alleged offences and will take robust enforcement action.

5.1 Unlawful eviction and harassment of tenants

Depending on their tenant's security of tenure, most landlords are normally required to give notice and then obtain a court order for possession after the notice has expired. Illegal eviction occurs when the tenant is unlawfully prevented from entering all or part of their accommodation. Examples include:

- The use of violence (or threats of violence) to force the tenant to leave;
- Preventing the tenant from entering accommodation they have the right to occupy;
- Changing the locks while the tenant is out; and
- Evicting a tenant before the proper legal procedures have been followed.

Harassment occurs when a landlord (or someone acting on their behalf) does something that is likely to interfere with the tenant's peace and enjoyment or persistently withdraws or withholds services that the tenant reasonably requires for the occupation of the premises in the knowledge that this is likely to cause them to leave the property or refrain from exercising their tenancy rights. Examples include:

- Forcing the tenant to sign agreements which take away their legal rights;
- Removing or restricting essential services such as hot water or heating, or failing to pay bills in order that these services are cut off;
- Constant visits to the property (especially if late at night or without warning);
- Entering the accommodation when the tenant is not there, or without the tenant's permission; and
- The use of violence or threats of violence.

The Tenancy Relations Officer will work closely with the Police and the Council's Housing Options and Allocations Teams to prevent homelessness, reinstate tenants who have been evicted illegally, and investigate and prosecute offences of illegal eviction and harassment. If conviction is secured the Council will also seek rent repayment orders where housing benefit or Universal Credit has been paid, and will advise tenants in applying for injunctions, compensation and rent repayment orders.

5.2 Tenant Fees Act 2019

The Tenant Fees Act 2019 (“the TFA 2019”) prohibits landlords and letting agents from charging any fees in respect of private rented sector tenancies which are not “permitted payments.” If a payment is not of a type specifically listed in Schedule 1 of the TFA 2019, it is prohibited by default.

The Government has published statutory guidance¹⁹ to which enforcement authorities must have regard in relation to enforcing the TFA 2019. Bristol City Council in its capacity as Lead Enforcement Authority for the TFA 2019 has also produced guidance. This policy has been developed with due regard to these statutory and non-statutory guidance documents.

The duty to enforce the TFA 2019 falls to Oxfordshire Trading Standards as the local weights and measures authority. As a district Council that is not a local weights and measures authority, Cherwell has the power to enforce section 1 (prohibitions applying to landlords), section 2 (Prohibitions applying to letting agents) and schedule 2 (treatment of holding deposits).

A first breach of the legislation will be a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years, enforcement authorities may impose financial penalties of up to £30,000 or prosecute as a criminal offence depending on the breach, as follows:

Breach of TFA 2019	First breach	Further breaches within 5 years
Charging unlawful fees Section 1 or 2	Civil breach Maximum financial penalty up to £5,000	Criminal offence Summary conviction with unlimited fine AND banning order offence under section 14 of the Housing and Planning Act 2016 OR financial penalty up to £30,000
Unlawfully retaining holding deposit Schedule 2	Civil breach Maximum financial penalty up to £5,000	Civil breach Maximum financial penalty up to £5,000

Since a second or subsequent breach, within five years, is a criminal offence, Cherwell District Council will apply the criminal burden of proof (i.e. satisfied beyond reasonable doubt) when imposing sanctions for all initial and subsequent breaches.

The Council will investigate and determine the most appropriate and effective sanction in each case, having due regard to the relevant sections of this Housing Standards Enforcement Policy, the Council’s Banning Order Policy, and any other relevant policies and guidance.

¹⁹ Tenant Fees Act 2019: Statutory Guidance for enforcement authorities - <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

5.2.1 Determining the level of the financial penalty

In accordance with the provisions of the TFA 2019, the level of financial penalties is to be determined by the Council, which is expected to develop and document its own policies on determining the appropriate level of financial penalty in any given case.

Although the statutory guidance recommends factors which may be taken into account it does not go into any significant level of detail in this regard. Each of those factors will be considered as a part of the Council's decision-making process and they are:

- a. The history of compliance/non-compliance
- b. The severity of the breach
- c. Deliberate concealment of the activity and/or evidence
- d. Knowingly or recklessly supplying false or misleading evidence
- e. The intent of the landlord/agent, individual and/or corporate body
- f. The attitude of the landlord/agent
- g. The deterrent effect of a prosecution on the landlord/agent and others
- h. The extent of financial gain as a result of the breach

[Appendix 2](#) of this policy sets out the processes that the Council will use in order to determine the level of financial penalties under the TFA 2019. [Appendix 2B](#) will be used for determining penalties up to £5,000, and [Appendix 2A](#) for penalties up to £30,000. When applying these protocols, officers will have particular regard to the statutory guidance and ensure that the above factors are properly incorporated into the assessment. These appendices may be updated to reflect changes in guidance, best practice and tribunal decisions with approval from the Assistant Director, Housing and Social Care Commissioning.

5.2.2 Recovery of payments

An unpaid financial penalty can be recovered as a civil debt through the County Court. The money from financial penalties must be used to fund further enforcement of the private rented sector.

Prohibited payments can be recovered by tenants through the County Court, and the Council may assist tenants and conduct litigation on their behalf.

5.2.3 Notification of enforcement action

The Council will, wherever appropriate, seek to work with Oxfordshire Trading Standards and the other Oxfordshire district Councils to share information and best practice to maximise enforcement outcomes. The Council may also seek the guidance of the Lead Enforcement Authority if required.

There are certain circumstances in which an enforcement authority must notify another body when relevant enforcement actions are taken or cease. These circumstances are set out in section 14 of the Act. This prevents duplication of work and allows an accurate record of previous enforcement action to be maintained so authorities to check if a breach is a first breach or further offence. The Council will notify Oxfordshire Trading Standards whenever it (Cherwell District Council)

proposes to take enforcement action or decides not to continue with enforcement action relating to breaches of the TFA 2019.

The Council will notify the Lead Enforcement Authority as soon as reasonably practicable if a financial penalty is imposed, withdrawn, quashed; or proceedings for an offence result in conviction.

If the Council takes action relating to breaches occurring outside its district, it will notify the relevant Local Housing Authority whenever relevant action is taken.

5.3 Lettings Agent and Property Management Redress Schemes

It is a legal requirement that all lettings agents and property managers in England join one of two Government-approved redress schemes (The Property Ombudsman - www.tpos.co.uk and The Property Redress Scheme - www.theprs.co.uk).²⁰ The Council can impose financial penalties of up to £5,000 when it is satisfied on the balance of probabilities that a lettings agent or property manager has failed to comply with the requirement to belong to an approved redress scheme. Since letting agents and property managers are professionals running businesses, they are expected to be aware of their legal requirements, and furthermore by failing to join a scheme they are denying landlords and tenants access to fair and independent redress. Consequently, the Council will generally seek to impose penalties when breaches are found, rather than taking informal action.

Where the Council is satisfied on the balance of probabilities that a letting agent has failed to comply with the requirement to belong to a redress scheme, the Council may issue a financial penalty of up to £5,000 per breach. Further penalties can be issued if subsequent or continued non-compliance is found. Financial penalties under these regulations will be calculated using the Civil Penalties Protocol contained in [Appendix 2B](#) of this policy.

²⁰ The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 - <https://www.legislation.gov.uk/uksi/2014/2359/contents/made>

6. EMPTY HOMES

6.1 General approach to tackling empty homes

Our approach will be based on the following principles:

- We want empty homes to be used
- We will encourage and facilitate their re-use (e.g. by providing advice, grants and loans)
- We will take action to resolve specific issues caused by empty homes (where powers permit)
- We will take action to secure re-use of empty homes where a business case exists.

We will seek to work alongside owners of empty homes with a solution-based approach to support and encourage voluntary action. However, we are also committed to using appropriate enforcement action where owners fail to take responsibility for their properties, reasonable negotiations fail or there is little prospect of the property being bought back into use voluntarily.

A number of factors will be considered in deciding the best course of action for an empty home. The Council will provide advice, assistance and has the discretion to provide financial assistance to the owners of empty properties to help bring the home back into use under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002²¹, subject to appropriate funding being available.

We will however also consider using any of the following enforcement options:

6.2 Empty Dwelling Management Orders

Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income.

6.3 Compulsory Purchase Orders

CPOs can be made under s17 of the Housing Act 1985 where it can be shown that there is housing need, rather than proving the property was causing blight or other problems. In cases such as this Cherwell District Council will take account of up-to-date housing statistics, local policies and such other information it judges relevant, the outcome of any voluntary negotiations and the prospect of the property being brought back into use.

Section 226 of the Town & Country Planning Act 1990 permits a local authority, when authorised by the Secretary of State, to compulsorily acquire any land in their administrative area which will facilitate the carrying out of development, re-development or improvement of the area (provided this will contribute to economic,

²¹ Regulatory Reform (Housing Assistance) (England and Wales) Order 2002
<https://www.legislation.gov.uk/ukxi/2002/1860/contents/made>

social or environmental well-being), or which is necessary to achieve in the interests of the proper planning of an area in which the land to be acquired is situated. This power can be used for the acquisition of individual 'problem properties' that can be regenerated to provide much needed affordable housing, improve the appearance of the surrounding area and reduce anti-social behaviour. Cherwell District Council will consider Compulsory purchase orders ("CPOs") under these powers where there is the opportunity to bring individual problematic properties back into use.

Both powers allow the Council to purchase properties in specific circumstances without the owner's consent.

6.4 Enforced Sale Procedure

The Law of Property Act 1925 allows the recovery of debt secured by a registered charge by forcing the sale of a property. In situations where the Council has served notices requiring the owner to ensure that their property is not unsafe or having a negative impact, but they have failed to act, the Council may be forced to carry out the works in default. If the costs incurred are not paid, the Council will register a charge against the property and should the owner still not pay this debt, the Council can commence legal proceedings to sell the property to recover the costs.

7. ADDITIONAL INFORMATION

7.1 Recovery of Enforcement Costs

The Council will generally seek to recover the full costs of its enforcement interventions, in accordance with its policies and guidance provided by Government, with the aim of minimising the cost of non-compliance on the Council and the community. Where a charge has been levied and not paid, the Council will seek to recover any debt owed in accordance with its policies and the relevant debt recovery mechanisms as specified in statute.

The Council will seek to recover all costs incurred from successful prosecutions. Financial penalties will generally be set at a level which is not less than the cost of compliance or the costs incurred by the Council in investigating the contravention, whichever is greater.

7.1.1 Recovery of costs associated with service of notices etc. under Part 1 of the Housing Act 2004

The Housing Act 2004 allows the Council to recover certain costs incurred in the assessment, preparation and service of certain notices and orders dealing with house-condition issues.

The aspects which can be charged for are set out in the Act, and although the government may set a limit on the maximum amount that can be charged it has not done so. However, local authorities are expected only to charge the reasonable costs of enforcement and should take into account the personal circumstances of the person(s) against whom the enforcement action is being taken. Unless the Assistant Director, Housing and Social Care Commissioning considers that there is a legitimate reason for departing from the stated policy, the Council will recover the costs associated with taking all relevant enforcement actions.

The Assistant Director, Housing and Social Care Commissioning will be responsible for periodically determining the average minimum cost of taking the relevant enforcement actions and for approving the specified charge for each notice type accordingly. When determining charges, the following will be taken into account:

- travelling costs (which may be standardised or averaged)
- employment costs of relevant officers (which may be standardised or averaged)
- Corporate overheads (which may be applied as a percentage addition to employment costs)
- estimates of the time typically taken on the various relevant activities (which may be standardised or averaged)

The Assistant Director, Housing and Social Care Commissioning will also specify periodically how, and in what circumstances, costs over and above the specified minimum charge will be determined.

7.1.2 Recovery of costs associated with work-in-default

A number of the statutory notices used by the Council allow it to undertake work-in-default in the event that notice recipient(s) fail to carry out works required by those notices. The Council can then recover the costs it has incurred.

The Council will seek to recover all the costs associated with undertaking work-in-default (including for example, time spent by its officers, administrative costs, contractor's costs, the cost of any specialist reports, supervisory costs etc.)

The Council will calculate the cost of officer time (for activities other than travel) on the basis of the actual time spent by officers on the chargeable activities and will charge that time at an appropriate hourly rate.

The Head of Service will be responsible for determining (periodically) what hourly rate or rates should be applied and in doing so, will take into account:

- employment costs of relevant officers (which may be standardised or averaged)
- Corporate overheads (which may be applied as a percentage addition to employment costs)

The Head of Service will also be responsible for determining (periodically) how travelling cost will be calculated and may determine that a standardised / average travelling cost should be used.

The Council will normally invoice the responsible person(s) for the cost of work but will in addition make the cost of work-in-default a charge on the relevant premises in all cases where the applicable legislation provides for that to be done. Accrued interest will be added to charges at an appropriate rate determined by the Council.

Any exceptions to this approach will be determined by the relevant Head of Service.

7.1.3 Recovery of other costs

The Council may make reasonable charges to cover the costs of providing discretionary services, for example the provision of detailed advice.

7.1.4 Publication of fees and charges

All fees and charges (except for works-in-default which by its nature is ad hoc) will be reviewed periodically and published on the Council's website.

7.2 Proceeds of Crime

The Proceeds of Crime Act 2002 (POCA) allows Local Authorities to recover assets that have been accrued through criminal activity. Where appropriate the Council will consider the use of POCA, however it is expected that in most housing cases this same outcome will be achieved via Rent Repayment Orders.

7.3 Grants and financial assistance

The Council offers a range of grants, loans and other forms of assistance to landlords, homeowners and tenants for a wide range of circumstances, principally

relating to the improvement of housing stock. These are provided in accordance with the Council's grants and assistance policies. Grants are generally not available to landlords who are subject to recent or ongoing enforcement action.

7.4 Monitoring and Review

The Council will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

7.5 Application of the Policy

All officers must have regard to this policy when making enforcement decisions.

7.6 Publicity

Enforcement cases will be publicised in the media in accordance with the Council's media policies.

7.7 Complaints, Representations and Appeals

Where legislation includes a right to make representations these will be considered in accordance with the relevant statute and where appropriate reviewed by a senior officer. Appeals against formal enforcement actions such as civil penalties, notices or prosecutions, must be made to the relevant court or tribunal for determination. Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with the Council's complaints procedures and guidance.

Appendix 1 – Housing Act 2004 Part 1 enforcement options

The forms of enforcement action that can be taken under Part 1 of the Housing Act 2004 are as follows:

Improvement Notices require the recipient to carry out certain works within a specified time period. If works are not carried out to the appropriate standard within that time frame, the Council may issue a financial penalty, prosecute and/or carry out works in default.

An Improvement Notice may be **suspended** depending on the circumstances of the case, e.g. there is a need to obtain planning permission before works can be undertaken, or the personal circumstances of the occupants suggests that works ought to be deferred.

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

Prohibition Orders prevent the use of all or part of a property until such time as works are carried out to remove the hazards identified. They are likely to be used if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). Prohibition Orders can also be used to prevent occupation by particular groups of persons, e.g. those that are particularly vulnerable to the hazard(s) identified.

Prohibition Orders may be **suspended** depending on the circumstances of the case.

Hazard Awareness Notices are advisory notices that inform the owner/landlord that a hazard requires attention, but further formal action is unlikely unless conditions worsen or circumstances change. Hazard Awareness Notices will be reviewed on an ongoing basis to ensure they remain the most appropriate course of action.

Emergency Remedial Action and Emergency Prohibition Orders may be used specifically where the Council is satisfied that:

- A Category 1 hazard exists, and that
- the hazard poses an imminent risk of serious harm to health or safety, and that
- immediate action is necessary.

Demolition Orders and Clearance Areas

The Council has powers to order the demolition of dwellings as a possible response to Category 1 hazard(s); however, these powers are rarely used and unlikely to be a proportionate response to address the majority of hazards identified in the district.

Tenure

The HHSRS is tenure neutral; that is, it applies as much to owner-occupied dwellings as to rented dwellings, so all enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a social landlord (now called Registered Providers or RPs).

Occupiers views will be taken into consideration when considering what action is appropriate. Owner-occupiers are generally considered to be in a position to take informed decisions concerning maintenance and improvement issues which might affect their welfare. Tenants, and particularly non-RP tenants, are not usually able to do so in the same way and the Council judges that it is appropriate for tenure to help inform its decisions about appropriate action; for example, an Improvement Notice may be served where the property is tenanted because the tenant has little control over remedying the defect (and the responsibility to do so is generally the landlord's) but a Hazard Awareness Notice may be served where the occupier is also the owner who may not choose to take remedial action.

The Council will consider other relevant factors when considering the most appropriate course of action, including the vulnerability of occupants, the views of any welfare authority (or other support agency) involved as well as the severity of the hazards identified and potential risks to other people.

Appendix 2 – Civil Penalties Protocols

Appendix 2A: Protocol for determining the level of financial penalty where the maximum fine is £30,000

Guidance for officers when setting financial penalties under the Housing and Planning Act 2016, Housing Act 2004, or in cases where no specific financial penalty policy has been published

Introduction

The statutory guidance²² makes it clear that officers should have regard to the following factors when determining the level of financial penalty:

- Severity of the offence
- Culpability and track record
- Harm caused to the tenant
- Punishment of the offender
- Deter offender from repeating the offence
- Deter others from committing similar offences
- Remove financial benefit the offender may have obtained by committing the offence

These factors have been incorporated into the Council's Financial Penalty Matrix which officers use when determining the level of penalty. The starting point for setting the fine is to establish the level of culpability and level of harm in the case and then to combine these factors to determine the severity. This gives an assumed starting point for the penalty, which is then fine-tuned by considering aggravating, mitigating, and other relevant factors.

1. Culpability

The Authority will have regard to three levels of culpability – high, medium and low. Examples of what constitutes high, medium or low culpability are given below.

High culpability	Deliberate or reckless act. Intentional breach, actively and knowingly evading legal duties and responsibilities. Multiple / relevant / recent convictions or formal interventions Knew of problems but took little or no action to correct. Professional landlord or agent, accredited, national company
Medium culpability	Negligent act. Failure to take reasonable care to avoid committing offence. Should have known better. 'Took their eye off the ball' Attempts to comply, but works are reactive / incomplete / undertaken to poor standard Prior formal or informal interventions. Experienced or established landlord Failed to make themselves aware of legal duties

²² MHCLG guidance on civil penalties under the Housing and Planning Act 2016 for local housing authorities - <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

Low culpability	<p>Little fault of offender</p> <p>Damage caused by tenant</p> <p>Let down by 3rd party e.g. builders/agent</p> <p>No prior / recent formal/informal interventions</p> <p>Active attempts made to avoid committing offence e.g. had attempted to fix disrepair previously but recurred; had some management processes in place</p> <p>Property was otherwise in good order, other properties in portfolio are generally in good order, more likely to be an isolated blip</p>
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2. Harm

The Authority will have regard to the harm caused to the individual, to the community (e.g. economic loss) and other types of harm (e.g. public concern over the impact of poor housing on the neighbourhood). The nature of the harm will depend on the circumstances of the victim (tenant).

Where there is no actual harm, the Authority will consider the relative danger the person was exposed to as a result of the offence (i.e. the likelihood of harm occurring and the seriousness that could have resulted).

High harm	<p>Defects likely to give rise to extreme (class I) or severe (class II) harm outcomes to occupants or visitors, e.g. electrocution or serious fire safety risks.</p> <p>Especially serious physical or psychological effects on victim</p> <p>Vulnerable victims e.g. minors, or members of HHSRS vulnerable groups present/affected</p> <p>Multiple victims exposed to potential harm e.g. large HMO / public at risk</p> <p>High number of serious health and safety HMO Management breaches, and/or breaches have persisted for significant period</p> <p>Multiple or imminent risk Category 1 hazards</p>
Medium harm	<p>Defects likely to give rise primarily to serious (class III) harm outcomes to occupants or visitors, e.g. serious burns, sprains, or gastroenteritis.</p> <p>Fewer number of victims exposed to potential harm e.g. mid-size HMO</p> <p>Lesser health and safety HMO Management breaches, and/or larger number of other breaches which have persisted for significant period</p> <p>Lesser/few Category 1 hazards plus multiple Category 2 hazards</p>
Low harm	<p>Defects likely to give rise primarily to moderate (class IV) harm outcomes to occupants or visitors, e.g. moderate cuts, bruising or discomfort.</p> <p>Minimal victims exposed to potential harm e.g. small HMO or family only</p> <p>Property is structurally compliant, but penalty relates to another non-compliance e.g. failure to have HMO licence, failure to display manager's details etc.</p> <p>Category 2 hazards only</p>

3. Severity

Severity of the offence is established by combining culpability and harm. This will give the Band level and assumed starting point (ASP) of the fine. The mid-point of the band is selected so that when aggravating and mitigating factors are applied, these are given equal weighting and opportunity to affect the overall penalty level.

Band 1 = £0 to £4,999 Assumed Starting Point £2,500	Low Culpability/Low Harm
Band 2 = £5,000 to £9,999 ASP £7,500	Medium Culpability/Low Harm OR Low Culpability/Medium Harm
Band 3 = £10,000 to £14,999 ASP £12,500	High Culpability/Low Harm OR Medium Culpability/Medium Harm OR Low Culpability/High Harm
Band 4 = £15,000 to £19,999 ASP £17,500	High Culpability/Medium Harm OR Medium Culpability/High Harm
Band 5 = £20,000 to £30,000 ASP £25,000	High Culpability/High Harm

4. Aggravating and mitigating factors

Aggravating factors will increase the fine while mitigating factors will decrease it. Examples of each factor are given below (but regard will be given to the full list of such factors given in the Sentencing Council Guidance).

Aggravating Factors	<p>Previous formal or informal action, relevant convictions and other cases taken into consideration</p> <p>Motivated by or made financial gain, no attempts made to resolve problems, no remorse or personal responsibility</p> <p>Deliberate, Negligent, ought to have known</p> <p>Poor communication, obstruction, concealing evidence, uncooperative</p> <p>Other – e.g. Vulnerable tenants, actual harm occurred</p>
Mitigating Factors	<p>No prior action / relevant convictions</p> <p>Remorse, takes personal responsibility, little/no financial gains</p> <p>Voluntary action taken promptly to resolve problems</p> <p>Cooperation, exemplary conduct, good communication, actively assisted enquiries</p> <p>Other – e.g. Medical conditions, disability, immaturity, carer etc.</p>

5. Punishment and deterrence of offender - financial assessment

An assessment of the offender's incomes and assets will be made to ensure a commensurate level of fine that will act as a punishment, deter the offender and ensure the offender did not profit from the offence. An assessment may look at the following:

- Value of the property in question and whether this is above or below the average for that type of property and location
- Value of other properties the offender owns
- Rental income

- Other monthly income
- Whether the property is mortgaged or owned outright
- Evidence of debts, savings or other assets

6. Deterrence of other offenders

Unlike a successful prosecution, the fact that someone has received a financial penalty is not in the public domain (unless they choose to appeal); however, it is likely that other landlords in the local area will become aware through informal channels. Setting penalties at a level appropriate to the severity, harm and culpability and taking the circumstances of each case into account, will act as a deterrent to other landlords. The Council is likely to publish the number and value of any civil penalties imposed.

7. Other reductions and adjustments

Officers may make further adjustments and reductions to the overall penalty level if justified. Reductions following representations may be applied to the penalty subtotal, for instance to reflect works subsequently completed or other new information and mitigating factors. If the subject enters a guilty plea prior to an appeal hearing, a reduction can be made to the overall penalty. The level of reduction decreases on a sliding scale in accordance with the Sentencing Council Guidelines.

Appendix 2B: Protocol for determining the level of financial penalty where the maximum fine is £5,000 or less

Guidance to assist officers to determine appropriate penalties in cases where no specific financial penalty policy has been published.

Setting the penalty level:

In cases where the maximum financial penalty does not exceed £5000, officers will use the table below to set the penalty level. The culpability and harm assessment will take into account the factors listed below, plus and any other factors relevant to the case and specific regulations in question.

	Low culpability	High culpability	Notes
Low harm	25%	50%	% = Proportion of maximum penalty available.
High harm	50%	100%	

Factors affecting culpability:

High: Landlord has a previous history of housing related statutory non-compliance and/or has failed to comply with requests to comply with these regulations. Knowingly or recklessly breached regulations, obstructive conduct, extended period of non-compliance

Low: No prior history of non-compliance with housing related regulatory requirements. Complex issues partially out of control of the landlord have led to non-compliance. Short period of non-compliance. Promptly took steps to remedy deficiencies.

Factors affecting harm:

High: Significant level of non-compliance. Vulnerable tenants occupying property. Potential for severe or serious harm. Evidence of actual harm.

Low: Low degree of non-compliance (e.g. only slightly below minimum standard). No vulnerable tenants. Potential for slight or moderate harm. No evidence of actual harm.

Further adjustments and representations:

Officers may adjust the penalty level up or down from the level determined in the matrix if there are additional aggravating or mitigating factors (up to the maximum/minimum penalty for each offence). The penalty level may also be adjusted in response to representations and new information received after a Penalty Notice has been served.

General principles for determining the level of financial penalty

- The fine should reflect the seriousness of the offence and the financial circumstances of the offender.
- The fine should reflect the level at which the offender fell below the required standard.
- It should not be cheaper to offend than to take the appropriate precautions.
- Landlords will be provided with an explanation of any penalty issued and, in the event of any revisions made in response to representations, with an explanation of any adjustment made.