

Private Sector Housing Enforcement Policy

For the Regulation of Housing Standards

June 2023

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Introduction

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

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

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

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

Our Objectives

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

Decision Making

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

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

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

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

Principles of Good Enforcement

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

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

Principles underpinning Enforcement Action

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

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

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

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

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

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

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

Phone: 0191 278 7878 and ask for Complaints

Email: complaints@newcastle.gov.uk

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

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

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

- Unlicensed properties.
- Poorly managed privately rented properties.
- Private rented properties subject to incidences of anti-social behaviour.
- Properties where tenants receive Local Housing Allowance/Housing Benefit/Universal Credit. These tenants are more vulnerable to lower standards of accommodation and can consequently face greater risks to their health safety and welfare.
- Properties poorly or illegally built or converted that may not comply with planning or building regulation requirements.
- Household types such as shared accommodation.
- Properties with an EPC energy efficiency rating of F or G, of where no EPC is in place.
- Construction type – where there is a known issue associated with methods of construction.
- Where a style of renting or rental model causes risk to health, safety, or welfare.

Dealing with Requests for Service

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

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

Housing, Health, and Safety Rating System (HHSRS)

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

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

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

Enforcement Options

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

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

- Informal action, written guidance, and advice
- Refusal, revocation, or the attachment of conditions to a Selective or HMO licence
- The issuing of licences for a reduced term
- Issuing fixed penalty notices
- Using civil legislation
- Management Orders under the Housing Act 2004
- The use of statutory notices
- Issuing simple cautions
- Carrying out work in default
- Prosecution
- Civil penalties
- Enforced sales, Compulsory purchase, or Empty Dwelling Management Orders.

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

Informal action

Informal action includes:

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

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

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

- The consequences of non-compliance will not pose a significant risk

Powers of Entry

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

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

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced. Notice will be provided in line with the relevant statutory provision.

The powers of entry can be enforced with a warrant. The Police will accompany officers where appropriate. It is an offence to obstruct an officer in the course of their duty.

Civil Legislation

Where appropriate, the City Council will use civil legislation in the fulfilment of its duties.

Statutory Notices

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

Notices will normally be served where:

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

Realistic time limits will be attached to notices and wherever possible. In some circumstances, requests for extension of time can be made. These should be made in

writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include officer contact details

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

Where a notice is not complied with by the expiry date, a prosecution may be considered appropriate.

Work in Default

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

Fixed Penalty Notices

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

A fixed penalty notice will be issued only when the offender is unable to provide a satisfactory explanation or defence. The notice will be issued with verbal and where possible, written advice.

Simple Cautions

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

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

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

- The views of the victim about the offence,

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

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

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

Prosecutions

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

- It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence.
- There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm.
- There has been failure to comply with a legal notice or a repetition of a breach that was subject to a formal caution, or failure to pay a fixed penalty notice within the permitted payment period.
- There is a blatant disregard for the law.
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk.
- Officers have been intentionally obstructed in the lawful course of their duties.
Where inspectors are assaulted, we will seek prosecution of offenders.

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

Rent Repayment Orders

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

Rent repayment orders cover the following offences:

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

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

The Council will offer information to tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

Publicity and Sharing of Evidence

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

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

Property Licensing

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

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

The HMO and Selective licensing regimes include arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

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

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

Licences Issued for a Reduced Term

Cause for concern test

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

Cause for concern would arise in circumstances where there is evidence that the persons involved have contravened housing, landlord and tenant law or other law and such contraventions conflict with the objectives of the licensing scheme, or where there is concern that adequate management arrangements are not in place.

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

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

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

18-month licences

The Council may also issue a licence for a period of 18 months if the property fails to meet the necessary standard.

From the 1st October 2018 additional mandatory Conditions were applied to new HMO licences. This includes conditions as to the minimum room size which may be occupied as sleeping accommodation in the HMO. The local housing authority must allow an initial period of up to 18 months for the overcrowding to be remedied before considering formal action.

If applications for a licence are submitted where the above breach is identified an 18-month licence will be issued with a condition that the property must be brought into compliance. If prior to the end of the licence the landlord can demonstrate that compliance has been achieved the licence will be varied and increased to the full 5-year term. Property compliance inspections may take place to ensure compliance.

If licence expires prior to the council being notified of compliance a new licence application will be required. At this time the Council will determine the most appropriate occupancy levels for the property.

- To ensure consistency with other breaches of property conditions, 18-month licences will also be issued in the following situations habitable inner room has been found which prevents a fire risk to the occupants
- the kitchen is below the required size for the number of occupants.

Licence reviews

Selective and HMO licences will constantly be reviewed if evidence comes to light that persons involved with the property are no longer deemed to meet the fit and proper test, or where concerns exist regarding property management. Evidence relating to properties outside of the licensing scheme will be taken into account where appropriate.

Following this review the following action may be taken

- no action
- Licence(s) may be revoked
- A licence may be varied / granted with additional conditions

Civil Penalties

Introduction

This policy has been created in accordance with the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance"), published by the Department for Communities and Local Government. Since that time other legislation has been introduced, widening the range of offences which can be subject to a Civil Penalty. This policy applies to all legislation relating to the private rented sector which can be subject to a Civil Penalty. This includes but is not limited to offences under the Housing Act 2004

- The Energy Performance of Buildings (England & Wales) Regulations 2012
- Energy Efficiency Regulations 2015.
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

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

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

What is a civil penalty?

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

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

The Government's intentions and expectations

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

The Housing and Planning Act 2016 introduces a number of measures to help local authorities deal more robustly with criminal, rogue and irresponsible landlords. When introducing civil penalties through the Housing and Planning Act 2016, Government

Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords.

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

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

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

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

Principles of Civil Penalties

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

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

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

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

The use of civil penalties will not only prevent criminal, rogue and irresponsible landlords from profiteering from illegal and dangerous practices, but it will also demonstrate the Council’s commitment to ensuring that it is offenders who pay for the cost of housing enforcement.

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

Deciding on an appropriate sanction

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

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

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

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

The punishment of the offender

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

Consideration of a Civil Penalty

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

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

- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e., the offence is particularly serious, and the landlord has committed similar offences in the past and/or a banning order should be considered.

The Totality Principle

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

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

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

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

Determining a civil penalty

The civil penalty is made up of two distinct components.

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

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

- The severity of the offence
- The culpability and track record of the offender

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

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

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

Punitive charges Table

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

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

Appeals

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

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

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

Financial means to pay a civil penalty

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

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

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

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

Debt recovery

Debts incurred from work in Default

Where works in default are carried out by the Council in exercise of its statutory powers, the expense of such works are often recoverable as a debt against the owner of the property concerned. In many cases the empowering statute also provides that until recovered, such expenses will stand as a charge on the property which gives the Council the same rights as if it held a mortgage over the property. These charges are recorded in the Council's local land charges register, which is searchable by any prospective purchaser of a property and can be registered against the property at Land Registry.

Enforced Sales

Where a local land charge has been created, Section 1 and Section 7 of the Local Land Charges Act 1975 and Section 101 of the Law of Property Act 1925 allow the Council to enforce a sale of the property and recover the debt from the proceeds of the sale.

Using an enforced sales procedure would potentially ensure that any debt owed to the Council would be paid, either by the owner under threat of an enforced sale or through an actual enforced sale, sooner than is presently the case. It is of note that a charge created under legislation is a priority charge and will be repaid from any sales proceeds before any mortgages or other charges registered against the property.

The criteria for carrying out an enforced sale would be:

- Property is vacant and has been void for more than 12 months.
- Owner unwilling or unable to deal with property/engage.
- Work in default carried out under a relevant statute (see Section 2) with costs of £1000 or more registered in Part 2 of the local land charges register.
- The above debt remains unsettled after 3 months and there appears no reasonable prospect of the debt being paid.
- The right to receive the relevant debt must not have accrued more than 12 years ago (normally from the date the work was carried out).
- The location of the property and the prevailing conditions of the area indicate that sale and occupation would be readily achieved.
- The action is in the interests of the community and local environment.

Where the minimum criteria are met, matters would only proceed to enforced sale by way of the Delegated Decision of the Director of Operations and Regulatory Services.

If all of the criteria have not been met a Compulsory Purchase or an Empty Dwelling Management Order may be considered. However, if an empty property is derelict and causing a major problem, the owner is missing or refusing to co-operate, the use of an enforced sale would still be considered providing there was justification for doing so.

Whilst there is no statutory appeal procedure in respect of the demand notice served under s.103 Law of Property Act 1925, there is opportunity to appeal matters earlier in the process as dictated by the legislation which gives power to do work in default. The process for such appeals varies depending upon the statute with some Acts providing opportunity to appeal to court against the service of the enforcement notice served before works are carried out, whilst others provide opportunity to appeal to a court or tribunal against the initial notice of the charge/ demand for payment which in some cases must be served before a local land charge is deemed to be created.

The owner could also choose to apply to court for an injunction to prevent the sale should he consider that the Council does not have legal right to proceed in that way.

The Council are required to take reasonable precautions to obtain a market price for the property. In most cases this would involve selling the property at auction to ensure a transparent sales process and ensuring that market value has been achieved. If there is a preferred bidder, three independent property valuations will be obtained, and the average price used to determine market value.

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

Alternative Debt Recovery Methods

Where a debt is incurred as a result of works in default, and a local land charge has been created, certain circumstances allow the Council to recover the debt from any rent payable in respect of the property.

The circumstances are that the person who failed to comply with the notice requiring works to be carried out is the landlord of the property, the property is occupied by a tenant, and the tenant of the property pays their rent directly to the same landlord that failed to carry out the relevant works. In this situation, the Council can serve notice on the tenant(s) of the property requiring the tenant(s) to stop paying their rent to their landlord, but instead to pay it directly to the Council until such time as their landlord's debt to the Council is paid in full.

It is anticipated that there will be limited situations in which this method of recovery may be appropriate. For example, if the tenant pays their rent to a managing agent, rather than directly to the 'defaulting' landlord, the rent cannot be diverted using this method. There is an additional concern that the legislation does not provide for a tenant who pays their rent to the Council following service of a statutory notice to be exempted in any way from proceedings brought by their landlord for non-payment of rent. The Council may therefore be drawn into independent legal proceedings to support the tenant in asserting that rent was paid, albeit not to the landlord, or forced to provide homelessness assistance if a tenant is evicted for non-payment of rent.

Civil Debt Recovery for Works in Default

As stated above, many of the sections of legislation permitting works in default allow for a local land charge to be registered. Once this charge is registered any reasonably prudent prospective purchaser would identify a debt registered against the property when carrying out searches. (Searches with the local authority are not a compulsory part of purchasing a property, so it is possible that a property could be purchased without the purchaser becoming aware of the existence of the local land charge. The charge is, however, binding on the property, rather than any individual's interest in that property, and so would remain in existence past the point of purchase and would then be enforceable as against the new owner of the property.)

Works in Default debts can also be recovered in the same way as any other civil debt through the issue of proceedings in the County Court. If proceedings are issued, the Defendant will have the opportunity to defend the proceedings, albeit the Court may consider it an abuse of the Court's process for a Defendant to seek to argue against recovery of the debt on any basis on which they could have mounted a statutory appeal against the original notice or demand for payment. In the event the Council is successful in any proceedings against a Defendant for recovery of the costs of works in default, the Council could reasonably expect to obtain a Judgment Order in the sum of the amount outstanding on an unpaid invoice for works carried out, plus the Council's costs of the legal proceedings. If the Defendant fails to make payment of the amount specified in the Judgment Order, the Council could seek to enforce that Judgment Order using any of the methods prescribed in the Civil Procedure Rules. This could include Attachment of Earnings if the Defendant is in employment, a Charging Order (or more than one Order) to secure the Judgment debt against any property owned by the Defendant, a Third Party Debt Order to freeze the contents of any bank account held in England and Wales by the Defendant and to require the bank to pay the Judgment debt (or part of it) from the frozen funds, or the use of Enforcement Agents (commonly known as bailiffs) to attend the Defendant's property to remove money or goods, or any combination of the above.

Civil Penalty Debt Recovery

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. An unpaid financial penalty issued under the Housing Act 2004 is recoverable as if it were payable under a Court Order. There is, therefore, a shortened process provided for in the Civil Procedure Rules which allows the Council simply to register its outstanding financial penalty with the County Court without giving notice to the respondent landlord. A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Once registered, the County Court will serve the respondent landlord with an order requiring payment of the outstanding civil penalty, plus a small additional amount for costs.

If the landlord fails to pay in response to the County Court's Order, the Order is enforceable in the same way as any other 'regular' Judgment Order made by the County Court (commonly referred to as a CCJ). Some of the methods the Council could use to enforce the Order are as follows:

1. Have the Defendant ordered to attend Court for questioning about their finances,
2. Secure money from any bank accounts they hold in England and Wales by way of a Third Party Debt Order (the bank is served with the Order at least a week before the Defendant and is required to locate any money they hold in the Defendant's name – if the bank holds more than the Order requires, they must freeze the amount required under the Order; if the bank holds less than the amount the Order requires, the bank must freeze all of the money they hold – the Court will then order the bank to pay the money directly to the Council from the Defendant's account(s) in payment of the debt
3. Secure the debt(s) against any property they own in England and Wales with a Charging Order, or more than one Charging Order if they own more than one property.
4. Following a successful application for a Charging Order, an application to the County Court for an order for sale for one or more properties with the intention that the debt will be paid from the sale proceeds
5. Issue a warrant of control (or have the case transferred up to the High Court for a writ of control) to send enforcement agents (formerly bailiffs) to his property to try to recover money or goods
6. Issue an Attachment of Earnings Order to deduct money from the Defendant's salary derived from direct employment.
7. Petition for the Defendant's bankruptcy if the debt exceeds £5,000

Where a Charging Order has been made over a property, the Council can consider a further application to the County Court for an Order for Sale in respect of the property in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Any unpaid penalty, whether appealed to a Tribunal or not, is registered and will impact a credit rating at the point we apply to the County Court to register it for enforcement purposes.

Banning Orders

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

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

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

Determining when to commence the banning order procedure.

When a Banning Order offence has been committed consideration will be made if a Banning order is appropriate.

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

- Case Officer
- Senior Practitioner
- Team Manager
- Representative from Legal Services

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

- The seriousness of the offence
- Previous convictions/rogue landlord database & track record
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences

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

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

Where the council proposes to seek a banning order, an application will be made to the First-tier Tribunal.

Management Orders

Management Orders Under the Housing Act 2004

Part 4 the Housing Act 2004 provides provisions which enable a local housing authority to make an interim management order and final management order in respect of

- a House in Multiple Occupation (HMO)
- a property designated under Part 3 of the Act
- or a property let in breach of a banning order under the Housing and Planning Act 2016.

A management order will be made in the following circumstances

Property Licensing

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

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

Special Interim Management Orders

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

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

Empty Property Management Orders

An Empty Dwelling Management Order will be made if considered the most appropriate action to bring an empty property back into use. If after serving an interim empty dwelling management order the officer considers that there are no steps it can appropriately take under the order to ensure that the property becomes occupied, it will either make a final empty property management order, or revoke the order without taking any further action

Interim Management Orders

An interim management order is made for the purpose of securing that the following steps are taken in relation to the house.

- 1) any immediate steps which the authority considers necessary 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 and
- 2) any other steps which the authority thinks appropriate with a view to the proper management of the house pending the grant of a licence under Part 2 or Part 3 of the Housing Act 2004 in respect of the house or the making of a final management order in respect of it (or, if appropriate, the revocation of the interim management order).

An Interim Management Order expires not more than 12 months after it is made.

While an interim management order is in force a person who is an immediate landlord of the house or a part of it:

- 1) is not entitled to receive any rents or other payments from persons occupying the house
- 2) may not exercise any rights or powers with respect to the management of the house or part; and
- 3) may not create any leasehold interest in the house or any licence or other right to occupy it.

Making of interim management orders.

A local housing authority is under a duty to make an interim management order in the following circumstances.

- 1) it is an HMO or a Part 3 house which is required to be licensed but is not so licensed, and they consider that there is no reasonable prospect of it being so licensed in the near future, or that the health and safety condition is satisfied, or
- 2) It is an HMO or a Part 3 house which is licensed, and:
 - a) the authority has revoked the licence concerned but the revocation is not yet in force; and
 - b) it considers either that, on the revocation coming into force, there will be no reasonable prospect of the house being licensed in the near future, or the health and safety condition will be satisfied.

An interim management order may also be made:

- 1) in respect of an HMO that is not required to be licensed, and, on an application to the First Tier Tribunal the tribunal authorises it to make such an order,
or

- 2) in respect of a house to which the provisions as to special interim management orders apply, and on an application to the First Tier Tribunal the tribunal authorises it to make such an order,
- 3) in respect of any property let in breach of a banning order.

Final Management Orders

A final management order will be made to secure the proper management of the house on a long-term basis. It will expire no more than five years after it is made.

The property will be managed in accordance with the management scheme for the property. The management scheme will include

- a plan giving details in which the property will be managed
- details of any works, an estimate of the capital and other expenditure
- the amount of rent and other payment the LA will seek to obtain
- the amount of compensation payable to any third party
- provisions of payments
- A description of how we will address the matters which caused the making of a Final Management Order

The Final Management Order will be periodically reviewed to ensure the operation of the order and the management scheme are still the most appropriate course of action.

Financial arrangements while an order is in force.

Rent or other payments collected or recovered from the occupants may be used to meet relevant expenditure and any compensation payable to a third party. The authority will pay the landlord:

- 1) any rent or other payments collected or recovered that remains after deductions to meet relevant expenditure and compensation
- 2) where appropriate, interest on that amount at a reasonable rate fixed by the authority.

The frequency of payments will be determined on a case-by-case basis.

The authority will keep full accounts of its income and expenditure in respect of the house, and ensure the landlord, and other person who has an estate or interest in the house has the opportunity to inspecting, taking copies of, and verifying the accounts.

On the termination of an Order if the total amount of rent collected is less than the authority's relevant expenditure then the amount is recoverable from the landlord. Until the sum is recovered a charge can be placed on the property which takes effect as a local land charge.