

Private Sector Housing Enforcement Policy

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Kettering Borough Council Health and Safety Enforcement Policy	

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1 Introduction

- 1.1 This Private Sector Housing Enforcement Policy relates specifically to the enforcement activity of the Council's Private Sector Housing Team.
- 1.2 We are committed to improving standards in private sector housing, bringing empty properties back into use, regulating houses in multiple occupation, and ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable.
- 1.3 The Council has statutory powers and duties to regulate private sector housing. To do this we will request information, carry out inspections, process licence applications, assist in bringing empty properties back into use, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.

2 Scope of policy

- 2.1 This policy sets out the framework in which the Private Sector Housing Team will operate when dealing with hazards which interfere with, or puts at risk, the health and safety, or even the lives, of people living in private sector housing.
- 2.2 This policy focuses on enforcement measures provided by the Housing Act 2004. Where these measures are not appropriate, or do not sufficiently deal with the problem, other enforcement tools are available. In these cases the Private Sector Housing Team will work in partnership with Environmental Health to utilise the most appropriate enforcement tools available.

3 Policy Aims

- 3.1 The aim of this policy is to set out the Council's approach to enforcement within private sector housing and the regulation of housing standards. We aim to ensure that:
 - Tenants of private landlords or a housing association live in homes that are free of hazards which affect their health and safety
 - Privately rented houses, including Houses in Multiple Occupation (HMOs) are managed in accordance with any relevant statutory regulations or other legal requirements
 - All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met

- Private housing is not left empty for an unreasonable amount of time so that the amenity of the area is not adversely affected, the property is safe and secure and not causing a statutory nuisance
- Letting professionals meet the legal requirements that apply to their business such as registering with a Government Redress scheme; advertising fees appropriately; and complying with any other legislation that regulates services they provide
- The Private Sector Housing team fulfils the Council's statutory duties and utilises the powers which are available to it.

4 Role of the Council in dealing with Private Sector Housing

4.1 The main functions of the Private Sector Housing team are:

- **Complaints:** Council officers will respond to complaints from tenants and other residents regarding problem private properties.
- **Inspections:** Where there is a statutory duty to do so, or in cases where the local authority considers that it is appropriate, an inspection will be conducted by officers.
- **Assessing hazards:** Using the Housing Health and Safety Rating System (HHSRS), officers will assess the likelihood of a property to cause a hazard to health. A range of enforcement powers are available under the Housing Act 2004 to remove or reduce any hazards identified to an acceptable level.
- **Houses in Multiple Occupation (HMOs):** HMOs are houses in which the occupants share facilities. Officers will inspect HMOs to ensure they meet health and safety requirements.
- **Mandatory HMO licensing:** Current legislation requires HMOs which have five or more occupants comprising of two or more family units who share basic amenities such as washing and cooking facilities to be licensed. The Council will take steps to ensure that properties that require a licence are licensed and take enforcement action against landlords of unlicensed properties.
- **Empty properties:** At any one time, there are hundreds of vacant properties in the Borough. Properties which remain empty for long periods of time can attract vandalism, crime, and other problems affecting the whole community. In partnership with officers from across the Council, the Private Sector Housing team will work to provide assistance to owners of empty properties to bring them back into use.
- **Overcrowding:** When we identify severe cases of overcrowding we will work with the Council's Housing Options team to ensure customers receive advice and assistance regarding rehousing. Unlike other hazards, formal enforcement action may not bring about the most appropriate solution to the housing problem.

- **Rogue landlords:** The Government has introduced a number of initiatives to crack down on landlords who knowingly flout their obligations by renting out unsafe and substandard accommodation to tenants. These include protections for tenants against “retaliatory eviction”, banning orders, and civil penalties. The Council will use these initiatives to tackle rogue landlords in the Borough.
- **Smoke and Carbon Monoxide alarms:** Private sector landlords are required to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance. The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

5 Principles of good enforcement

- 5.1 When exercising its enforcement powers the Council will have regard to the Regulators Code: this is a statutory Code of Practice introduced under Section 23 of the Legislative and Regulatory Reform Act 2006. The Code requires regulators to perform their duties in a business-friendly way, by planning regulation and inspections in a way that causes least disruption to the economy.
- 5.2 Regulators should also take an evidence-based approach to the use of enforcement tools and base their decisions on the key principles laid down in the Regulators’ Code. These principles are:
- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
 - Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
 - Regulators should base their regulatory activities on risk
 - Regulators should share information about compliance and risk
 - Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
 - Regulators should ensure that their approach to their regulatory activities is transparent
- 5.3 Officers will exercise their duties, enforcement powers and other functions, in a firm, fair, open, consistent and helpful way. Decisions on enforcement action are usually a matter of professional judgement based on available guidance. Discussion of formal action with a senior officer or Head of Service ensures consistency of approach.
- 5.4 Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution, but includes for example, the inspection of premises for the purpose of checking compliance with legislation and the provision of advice.

6 Disrepair in owner-occupied properties

- 6.1 Other than in exceptional circumstances the Council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Private Sector Housing Manager will decide whether there are exceptional circumstances in a particular case.
- 6.2 Occasions arise whereby Category 1 hazards are identified in owner occupied properties where the owner is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the Council. The duty to take action, as required by Section 5 of the Housing Act 2004 still applies. However it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health and safety of the public or visitors to the property (such as postal service workers).
- 6.3 In some exceptional cases, in line with the HHSRS enforcement guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner occupied properties. No charge would generally be made for the service of such a notice and the service will work with the owner to offer advice and assistance in complying with the requirements of the notice.

7 Disrepair in housing association properties

- 7.1 From time-to-time the Council receives complaints about disrepair from tenants of housing associations. Regulatory standards require housing associations to deal with most repair problems which are reported by their tenants. The Council will therefore not normally consider action against housing associations unless:
 - They are satisfied that the problem in question has been properly reported by the tenant to the housing association; and
 - The housing association has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets
- 7.2 If the Council determines that it is appropriate to take action it will then normally notify the housing association that a complaint has been received and /or a hazard identified and seek their comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action, and will then determine which of the available enforcement options is the most appropriate, taking into account the facts of the case.

8 Retaliatory Eviction and the Deregulation Act 2015

- 8.1 The Private Sector Housing team is committed to working with tenants of private landlords to prevent retaliatory eviction - where a tenant makes a legitimate complaint

to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice.

- 8.2 From 1st October 2015, where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months from the date of the service of the notice. The landlord is also required to ensure that the repairs are completed.
- 8.3 Tenants should always report any disrepair or poor conditions that may arise to the landlord as soon as possible. They should put their complaint in writing. In order to rely on the protection against retaliatory eviction that the Deregulation Act 2015 provides, a tenant must approach the landlord in the first instance.
- 8.4 If, after 14 days from the tenant making a complaint, the landlord does not reply, that reply is inadequate, or they respond by issuing a section 21 eviction notice, the tenant should contact the Private Sector Housing team for assistance.

9 Legal and regulatory requirements

9.1 Assessing housing conditions

The Housing Act 2004, together with the regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the effect of housing conditions on the health of occupants. Twenty nine potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in bands; hazards falling into bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed as Category 2. The Council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.

- 9.2 A 'Category 1 hazard' arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A 'Category 2 hazard' arises when a hazard reaches a score of 999 or less under the Housing Health and Safety Rating System.
- 9.3 The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act, the views of the occupiers, the risk to the current and likely future occupiers and visitors and the presence of other significant hazards on the property.

9.4 Investigating breaches of housing legislation

All investigations into possible breaches of legislation will follow best professional practice and the requirements of:

- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Criminal Procedures & Investigation Act 1996
- Criminal Justice Act 2003
- Regulatory Enforcement and Sanctions Act 2008
- Local Government Act 1972
- Equality Act 2010
- Legislative and Regulatory Reform Act 2006
- Housing and Planning Act 2016

9.5 In addition the Council will have regard to current guidance on the particular law being considered. This guidance includes:

- Government guidance, such as the Housing Health and Safety Rating System Enforcement Guidance: Housing Conditions
- Decisions of previous courts that form case law and decisions of the Residential Property Tribunals that may provide direction on principles of enforcement
- Guidance produced by other national bodies such as Homestamp (for fire safety in HMOs).

10 Authorisation of Officers

10.1 Decisions on enforcement action are a matter of professional judgement and officers will exercise discretion. Authorisation of officers will be made under delegated powers to a level that is considered appropriate to the competence of the individual officer. The Council's Constitution details the responsibility for general functions (section 3.1.1) and can be viewed online at:

<http://www.kettering.gov.uk/directory/32/constitution>

11 Our approach to enforcement in private sector housing - Informal action

11.1 The Private Sector Housing team will undertake preventative work and offer information and advice to help service users comply with the regulatory requirements. The team will aim to secure co-operation, thus avoiding unnecessary bureaucracy or excessive cost. The Private Sector Housing team will:

- discuss compliance failures or problems with anyone experiencing difficulties
- arrange appointments, within office hours, at times convenient to people using the service

- comply with the Council's Customer Service Standards
- perform inspections on an advisory basis
- supply literature and information.

11.2 In addition, we provide advice and assistance through the DASH (Decent and Safe Homes) Landlord Accreditation Scheme.

11.3 Circumstances when informal action as described above will be deemed appropriate include:

- the act or omission is not serious enough to warrant formal action
- the individual or company's past history is good
- confidence in management's/owner's ability to correct a defect is high
- standards are generally good suggesting a high level of awareness of statutory responsibilities
- the consequence of non-compliance are acceptable, e.g. minor matters, or the time period allowed to seek compliance does not present a risk to public health.

11.4 Persons in receipt of an informal notice (verbal or written) will be given every opportunity to discuss the requirements with the inspecting officer to agree an appropriate programme and timetable. Encouragement will be given to recipients to seek advice at each stage of the process.

12 Our approach to enforcement in private sector housing – Formal action

12.1 When a contravention of housing law has been identified and informal action is either inappropriate or has been unsuccessful, the Private Sector Housing team will tackle the issue through formal action. The choices available for enforcement are:

- Housing Act 2004 Statutory Notices (Chapter 13)
- Works in default of a Statutory Notice (Chapter 14)
- Management Orders (Chapter 15)
- Prosecutions (Chapter 16)
- Simple Cautions (Chapter 17)
- Civil penalties (Chapter 18)
- Financial penalties (Chapter 19)
- Rent Repayment Orders (Chapter 20)
- Banning Orders (Chapter 21)
- Powers of Entry (Chapter 22)
- Power to require Information (Chapter 23)

12.2 Whatever action is deemed to be appropriate, the decision to take it will need to stand up to a test of consistency, and must demonstrate both a balanced and fair approach to enforcement.

12.3 When considering which of these actions is appropriate the Private Sector Housing Team will consider the factors listed below:

- The significance of the hazard(s) – the rating score & band
- The extent and location of the hazard(s) within the premises
- The range of hazards identified within the premises
- Whether the Council is under a duty or has a power to take formal action in respect of the hazard(s) identified
- The level of risk posed to the current occupiers, including whether there is an imminent risk of serious harm
- The views and intentions of the occupier(s) (or occupiers representative(s))
- The risk of social exclusion of a vulnerable group or individual
- The availability of alternative accommodation
- The views and intentions of the owner(s) (or owner's representative(s))
- The compliance record of the person(s) in control of the premises
- Whether the chosen option is practical, reasonable and proportionate in reducing the hazard(s) to an acceptable level
- The building is listed or located within a conservation area
- The potential for alternative use of the premises or site
- The physical impact on adjoining buildings
- The longer term viability of the [premises] [and] [area]
- The impact on the local community and on the appearance of the local area
- The extent of hazards within neighbouring premises and the general condition of the neighbourhood
- Availability of alternative housing for current occupants
- Likely demand for accommodation if the hazards were remedied
- Prospective use of the site if cleared

13 Statutory Enforcement Action (Housing Act 2004)

- 13.1 The Housing Act 2004 is the principal Act covering statutory action. If a Category 1 Hazard is identified the Council has a duty to require the owner to remedy the defect. The Council has discretionary powers to deal with Category 2 hazards, and the most appropriate course of action will be decided on a case-by-case basis. Where an improvement notice is served, the Council will require sufficient works to abate the hazard for five years.
- 13.2 It is for the Council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors and the most recent published guidance.
- 13.3 There are a number of different notices available to the Council which require a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards:
- **Hazard Awareness Notice** (*Sections 28 & 29 of the Housing Act 2004*): this is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action.
 - **Improvement Notice** (*Sections 11 & 12 of the Housing Act 2004*): this is used where reasonable remedial works can be carried out. An Improvement Notice will provide the most appropriate action for Category 1 Hazards; where repair or renewal is generally cost effective.
 - **Prohibition Order** (*Sections 20 & 21 of the Housing Act 2004*): this order may prohibit the use of part or all of premises for some or all purposes of occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specific dwelling units.
 - **Suspended Notice** (*Sections 14 & 23 of the Housing Act 2004*): Notices may be suspended where enforcement action can safely be postponed until a specified event or time (such as a change in occupancy or programmed maintenance). The suspensions must be reviewed at least every 12 months.
 - **Emergency Remedial Action** (*Section 40 of the Housing Act 2004*): when the Council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or

in the same building containing one or more flats. The order specifies prohibition (s) on the use of part or all of the premises with immediate effect.

- **Demolition Orders** (*Section 46 of the Housing Act 2004 and Part 9 of the Housing Act 1985*): A demolition may be an appropriate course of action where a category 1 hazard exists on residential premises, where no management order is in place under Part 4 of the Act and the property in question is not a listed building.
- **Clearance Areas** (*Section 47 of the Housing Act 2004, and Part 9 of the Housing Act 1985*): This may be declared when the Council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health and safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

14 Works in default of a statutory notice

14.1 Section 31 and Schedule 3 of the Housing Act 2004 gives local authorities power to take action to resolve housing defects with or without the owner's agreement. The Council can recover the costs of such action from the relevant person.

14.2 The Council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:

- The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate; and
- Works in default powers are provided by the specific legislation being used in relation to the case; and
- The Council will register a charge against the premises for the costs incurred in undertaking the works.

14.3 In emergency situations, where it is not possible to contact the relevant person and gain their cooperation, enforcement action may be taken immediately without notice for example, where there is an imminent risk of serious harm to the health and safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004). We would look to take this approach in cases where the household could lose their accommodation as a result of the disrepair in the property. Any decision to undertake Emergency Remedial Action would be made in partnership with Housing Options.

14.4 In most instances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence

for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.

14.5 In the majority of cases the Council will seek to recover the full costs incurred in undertaking works in accordance with the relevant statutory provisions. This will include an administration fee of £125 or 20% of the cost of works in default, whatever is greater.

14.6 The Council may recover the costs incurred in carrying out works in default by one of the following methods:

- Invoice for the applicable amount and County Court action if the invoice is not settled in full.
- A charge put on the property. The charge remains in place until the debt is cleared. The debt will accrue compound interest at 8% until the debt is settled.
- By serving notice on the tenant requiring them to pay rent direct to the Council until the costs are recovered.

14.7 The Council is not obliged to carry out works in default of a notice and reserves the right not to do so. Where the cost of the works is likely to be high or there may be difficulties recovering the costs, the Council may consider removing serious hazards only.

15 Management Orders

15.1 If a property should be licensed, but for whatever reason there is no prospect of granting a license, the Council must introduce a Management Order. The Council also has a duty to make an Order where the health and safety condition as described in Section 104 of the Housing Act 2004 is met. Similarly, the Council can also decide to take over the management of some empty properties in order to bring them back into use and those properties where it decided the Council should intervene for anti-social behaviour reasons.

15.2 Management Orders effectively mean that the Council takes over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters.

15.3 Management and empty dwelling management orders available to use are:

- Interim Management Orders
- Final Management Orders
- Special Interim Management Orders
- Interim Empty Dwelling Management Order
- Final Empty Dwelling Management Order

16 Prosecution

16.1 The potential for taking a prosecution is an important part of enforcement. The purpose is to punish wrong doing, to avoid a recurrence and to act as a deterrent to others. Where the matter is of a serious nature, there have been persistent breaches by the same offender or where the suspect does not accept his guilt for offences, a prosecution may be commenced.

16.2 A decision to prosecute will take account of the Code for Crown Prosecutors and other relevant guidance as well as legal advice from the Council's own solicitors. Decisions will be taken in accordance with the two principles set out below.

- **Sufficiency of evidence**

As a public prosecutor we will only commence a prosecution when it is satisfied that there is a "realistic prospect of conviction" on the available evidence. If the case does not pass this evidential test it will not go ahead, no matter how important or serious the allegation may be. If the sufficiency of evidence test is met, then the public interest test will be considered.

- **Public Interest factors**

In addition to the personal circumstances of the offender and the circumstances of the offence, we will also consider the following factors in deciding whether or not to prosecute. These factors include:

- The impact or potential impact of the offence on health and safety of the public, the environment or local amenity.
- The implications of the offence for the enforcement of the regulatory regime (e.g. although no tangible harm comes of it, a failure to register a registerable activity undermines the integrity and efficiency of a regulatory regime and may deprive the Council of fee income.)
- Other financial aspects of the offence e.g. the benefit obtained from not seeking the requisite licence and undercutting legitimate operators.
- Whether the offence was committed deliberately or officials obstructed.
- The previous enforcement record of the offender.
- The attitude of the offender, including his behaviour towards officials and whether corrective measures to remedy the offence or prevent any reoccurrence are being put in place.
- Where offences are prevalent or difficult to detect, the general deterrent effect on others by a well-publicised prosecution.
- If the offence arose from unusual or mitigating circumstances.
- The health of the offender may be considered as a mitigating circumstance.

16.3 When determining whether to prosecute for an offence the decision will be made jointly by the case officer and the Head of Housing.

17 Simple Cautions

17.1 A caution is the written acceptance by a person that they have committed an offence and may only be used where a prosecution could properly have been brought. The Council will consider simple cautions in the following circumstances:

- There is sufficient evidence to prove the case
- The offender has admitted the offence
- The offender has agreed to be cautioned
- The offence has not been committed by the offender before

17.2 For those who have offended for the first time or where there are 'sympathetic considerations' (for example, the defendant is very old or is showing signs of severe emotional distress) then a caution may be appropriate. We will consider each case on merit and will complete a written assessment of the factors taken into consideration when making our decision. The decision to issue a formal caution will be made jointly by the case officer and the Head of Housing.

17.3 In considering whether a simple caution is appropriate, the investigating officer must consider the following facts:

- Is there sufficient evidence of the suspect's guilt to meet the Evidential Test (as outlined in the Directors Guidance)?
- Is the offender indictable only?
- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)?
- Is it in the public interest to use a Simple Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors.
- Is the suspect 18 years or over? Where a suspect is under 18, a reprimand or final warning would be the equivalent disposal.

17.4 When considering Simple Cautions the Council will have regard to the rules covering this enforcement tool which are provided on the Home Office web site or in Home Office Circular 30/2005.

18 Civil Penalties

18.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 has given Local housing authorities the power to impose a civil penalty as an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO offences. A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation. A civil penalty can be issued as an alternative to prosecution for each separate breach of the regulations. The Council can determine the amount of penalty in each case: the maximum penalty is £30,000.

18.2 Under the Housing Act 2004 the Council can impose a civil penalty as an alternative to prosecution for the following offences

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

18.3 When exercising our functions in respect of civil penalties we will have regard to the statutory guidance 'Civil Penalties Under the Housing and Planning Act 2016' (DCLG, 2017).

18.4 Before taking formal action we will apply the same criminal standard of proof for a civil penalty as for prosecution. This means that before taking formal action, the Council should be satisfied that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction. We will have regard to the Crown Prosecution Service Code for Crown Prosecutors' which provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction.

18.5 Our policy on determining the appropriate level of civil penalty in a particular case is included in Appendix A.

19 Financial penalties

19.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

From 1 October 2014 all agents who carry out letting agency or property management works are required to be a member of a Government approved Redress Scheme.

Where it is understood that a company is not a member of the scheme the Council will investigate and determine whether they are a member.

19.2 If, on the balance of probabilities, a person has failed to be a member of a scheme a notice of intent to impose a fine will be served by the Council. The fine is set at £5,000. If after 28 days no appeal has been lodged and they are still not a member of a scheme a final notice imposing the fine will be issued.

19.3 Penalties issued under the Smoke and Carbon Monoxide Alarm Regulations 2015

Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, premises occupied under a tenancy must have:

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

- 19.4 Under the Regulations, local authorities are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations. The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements of the regulations are met and can issue a civil penalty of up to £5,000.
- 19.5 For a first offence the fine applied will be £2,500 and an early payment will attract a discount of 50 per cent making it £1,250. For subsequent offences the penalty will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50 per cent making it £2,500.
- 19.6 Landlords can request a review of the Council's decision to serve a penalty notice.
- 19.7 The Council's Statement of Principle (Appendix B) sets out the principles that the Council will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

20 Rent Repayment Order

- 20.1 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent in addition to prosecuting the landlord.
- 20.2 Since 2004 councils have had the option of registering a Rent Repayment Order on landlords who have failed to license a licensable HMO. Through the Housing and Planning Act 2016 (Chapter 4 of Part 2) Rent Repayment Orders have been extended to cover a wider range of offences which are described below:
- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
 - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
 - Breach of a banning order made under section 21 of the Housing and Planning Act 2016
 - Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
 - Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977
- 20.3 If a local housing authority becomes aware that a person who is a landlord has been convicted of any of the offences listed above, and the offence was committed in their area, there is a statutory duty for it to consider applying for a rent repayment order.

When deciding whether or not to apply for an RRO, the Council's policy is to:

- Treat each case in its own merits.

- Ensure that applying for an RRO would meet the enforcement objectives in this policy.
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- Consider the level of resources it will take to make a successful application.
- Consider whether it is more appropriate for the tenant to apply for the order themselves.

20.4 .The Council is also obliged to have regard to the statutory guidance issued to local authorities on applying for a rent repayment order under the [Housing and Planning Act 2016: Guidance for Local Authorities](#)

21 Banning Orders

21.1 The Housing and Planning Act 2016 introduced a power for the first-tier tribunal to serve a banning order on a landlord or property agent. The order can only be made by the first-tier tribunal after a case is brought by the local authority. These orders will enable local authorities to effectively tackle rogue or criminal landlords and property agents.

21.2 The implications of a banning order are set out in s14(1) of the Act and prevent a person from:

- (a) letting housing in England;
- (b) engaging in English letting agency work;
- (c) engaging in English property management work; or
- (d) doing two or more of those things.

21.3 A banning order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. They are listed at Annex A of the [Banning Orders Guidance](#).

22 Minimum Energy Standards

- 22.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018.
- 22.2 The current domestic regulations are based on a principle of ‘no cost to the landlord’, this means that landlords of F or G rated homes will only be required to make improvements to these properties where they can do so entirely using third party finance from one or more sources.

23 Powers of Entry

- 23.1 In most cases, the exercise of powers of entry is unnecessary because access to a property is voluntarily given.
- 23.2 In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation. 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
 - Carry out works
- 23.3 Section 239(5) of the Housing Act 2004 requires that at least 24 hours notice of intention to enter is given to the owner (if known) and occupier of premises for the purpose of carrying out a survey or examination. Exceptions to this requirement are made for investigations into offences against the management or licensing of HMOs.
- 23.4 The Council will seek to obtain a warrant to enter premises where legislation provides for this and the circumstances justify the action.

24 Power to require information

- 24.1 Councils have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:
- Any purpose connected with the exercise of its functions under Part 1-4 of the Housing Act 2004

- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

24.2 Councils also have powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the Council to carry out its functions in relation to these parts of the Act.

25 Charges for notices

25.1 The Housing Act 2004 allows local authorities to charge for any enforcement action that is carried out by way of the servicing of improvement notices, prohibition orders, hazard awareness notices, taking emergency remedial action and making an emergency prohibition or demolition order. This power concerns purely the costs incurred to serve these documents and not for any works in default, which are covered by a separate procedure.

25.2 The Council will charge a fixed fee of £250 for notices served under the Housing Act 2004 Part 1. The amount charged takes into account the average number of hours taken to complete notices, the hourly rate of the Officers involved and the service on-costs.

25.3 Hazard awareness notices will be excluded from the charging policy, this is because they are used mainly to advise owner occupiers of disrepair to their properties.

25.4 In exceptional circumstances, the Council may exercise its discretion and decide not to charge for the cost of enforcement. Such decisions will be made by the Council's Head of Housing and will be based on the individual circumstances and merits of each case.

26 Mandatory licensing of Houses in Multiple Occupation

26.1 Anyone who owns or manages a licensable House in Multiple Occupation (HMO) must apply for a Licence from the Local Housing Authority in which the property is situated. An application for a HMO Licence has to be made under Part 2 of the Housing Act 2004 which has made it compulsory for local authorities to licence larger, high risk HMOs.

26.2 Properties that are operating without a licence will be subject to an offence that is liable to a fine not exceeding £20,000.

26.3 To make sure that the most vulnerable tenants living in the highest risk properties are protected, the following definition, as set out in The Housing Act 2004, makes it compulsory for certain HMOs to be licensed, if:

1. it is occupied by five or more persons comprising more than one household; and
2. the tenants are living in the dwelling as their main or only residence.

26.4 The HMO License fee is £1,000.00 for a five year license. With a reduced fee of £800.00 for 3 or more applications received for the same person managing the HMOs.

26.5 Houses in Multiple Occupation will be assessed using Amenities and Space in HMOs (Housing Act 2004 Guidance) (available to download here). These are minimum requirements for Houses in Multiple Occupation in Kettering Borough.

27 Right of appeal

27.1 There is a right of appeal against any notice, order or decision made by the Council. All appeals are made to the Residential Property Tribunal (RPT). The RPT may confirm, quash or vary the notice, order or decision. Information on how to appeal will accompany every notice or order where appeal provisions are available.

28 Compliments and complaints

28.1 We welcome any comments or complaints about this policy. Residents have the right to make a complaint through the Council's Complaints process by contacting us in one of the following ways:

In writing:	Customer Service Centre, Kettering Borough Council, Municipal Offices, Bowling Green Road, Kettering, NN15 7QX
In person:	visit our Customer Service Centre
By telephone:	01536 410333
By email:	customerservices@kettering.gov.uk

28.2 If at the end of the complaints process if they are still not satisfied, they have the option of taking their case to the Local Government Ombudsman. The Local Government Ombudsman Advice Team can be contacted on 0300 0610614 or 0845 602 1983 website: www.lgo.org.uk

29 Monitoring and review of the policy

29.1 This policy will be regularly reviewed by the Private Sector Housing Manager. As a minimum, the review will be carried out annually, and in response to new legislation, good practice or changes to other policies.

Appendix A - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Statement of principles for determining financial penalties

1. Introduction

The purpose of this statement of principles for determining financial penalties

This statement sets out the principles that Kettering Borough Council (the Council) will apply in exercising its powers to require a relevant landlord (the landlord) to pay a financial penalty.

The legal framework

Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) provides that the Council may require the landlord to pay a penalty charge if the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified.

The scope of this document

Regulation 13 of the regulations requires the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

Where a penalty charge is made, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

In particular the Council will have regard to:

- Satisfying the balance of probabilities that the landlord has failed to take the remedial action required in the notice.

This document sets out the principles which the Council will apply and will have regard to when exercising its powers under regulation 8 of the regulations.

2. Applicable principles

The purpose of imposing a financial penalty

The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect.

The primary aims of financial penalties will be to:

- Change the behaviour of the landlord.
- Eliminate any financial gain or benefit from non-compliance with the regulations.
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- Aim to deter future non-compliance.
- Reimburse the costs incurred by the Council in undertaking work in default.

Criteria for the imposition of a financial penalty

By virtue of regulation 8, a failure to comply with the requirements of a remedial notice allows the authority to require payment of a penalty charge. In considering the imposition of a penalty the authority has regard to:

- The evidence of a breach of the requirement of the notice.

In deciding whether it would be appropriate to impose a penalty, the authority will take full account of the particular facts and circumstances of the breach under consideration. Factors which the authority will take into consideration are:

- The Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified.

A financial penalty allows the Council, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in the following circumstances:

- The landlord has failed to comply with the requirements of a remedial notice.

Criteria for determining the quantum of a financial penalty

Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to the Council) and a cost element relating to the works carried out by the Council.

The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served.

The Council has a discretion to specify that if a landlord pays the penalty charge within a specified earlier period a reduction in the penalty charge may be applied.

The Council may also exercise a similar discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the penalty charge notice.

Of these two discretions, the Council will, as a matter of course, exercise the discretion to reduce the penalty charge in relation to payment within a specified “early payment” period.

The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served.

For a first offence the fine applied will be £2,500 and an early payment will attract a discount of 50% making it £1,250.

For subsequent offences the penalty will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50% making it £2,500.

Procedural matters

The regulations impose a number of procedural steps which must be taken before the Council can impose a financial penalty. Before imposing a requirement on a landlord to pay a penalty charge the Council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- The reasons for imposing the penalty charge;
- The premises to which the penalty charge relates;
- The number and type of prescribed alarms (if any) installed at the premises;
- The amount of the penalty charge;
- The obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- How payment of the charge must be made; and
- The name and address of the person to whom a notice requesting a review may be sent.

Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified the Council will, on written notice from the landlord served with a penalty charge notice, review the penalty charge imposed. In conducting the review, the Council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord.

A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.

Appendix B - Civil Penalties: Statement of principles for determining financial penalties

Determining an appropriate sanction

Kettering Borough Council is committed to improving standards in private sector housing, bringing empty properties back into use, regulating houses in multiple occupation, and ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable.

Civil penalties will serve as a punishment to those who offend while acting as a deterrent to offending. Civil penalties also seek to remove any financial gain caused by the offence.

Kettering Borough Council will seek to use Civil penalties to deal with offences as listed at 18.2 and through the application of this matrix, all Civil penalties will be fair and proportionate to the offence committed.

Prosecutions

A civil penalty can be issued as an alternative to prosecution however there will be offences where Kettering Borough Council will continue to prosecute offenders. This may be in the following circumstances:

- Where the offence is not covered by applying a Civil Penalty.
- Where the case also involves offences applied by other agencies i.e. Trading Standards, Northamptonshire Fire and Rescue Service etc. as well as Private Sector Housing Offences and the case is multi agency set of prosecutions heard on the same day.
- Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public;
- Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged;
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in relation to the carrying out of the requirements;
- Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate;
- Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

Determining the level of penalty: Civil penalty matrix

To determine the level of financial penalty Kettering Borough Council has developed a 4 tier assessment process (referred to as the matrix) in accordance with the Housing and Planning Act 2016.

Case officers will use the matrix to determine the level of financial penalty.

Verification

The case Officer will apply the matrix to each offence; offences will be subjected to a verification process by an equal member of staff to the case officer. If the officers impose a penalty within £1000 of each other, the case officer's original penalty will be formalised. If the difference between the officer's penalties is more than £1000, the penalty will be referred to a panel of senior Officers / Managers for consideration.

Band 1: Severity of offence

The severity of offence has been broken down into three levels. The more serious the offence, the higher the penalty will be:

- **Severity Level 1:** these are low - moderate offences such as failure to display the name and contact details of the licence holder as required under the Management of Houses in Multiple Occupation (England) Regulations 2006
HMO regulation breaches
- **Severity Level 2:** these are serious offences such as failing to deal with serious damp and mould.
- **Severity Level 3:** these are severe / extreme offences such as failure to provide adequate fire detection in a HMO / failure to adhere to a notice.

Severity Level	1	2	3
Level of penalty	£300	£600	£1200

Band 2: Culpability and harm

Culpability and Harm will be dealt with by two separate assessments; Culpability and track record of the offender and the harm caused to the tenant.

Culpability and track record of the offender:

Culpability will consider the record of the offender, previous breaches of their obligations, deliberately avoiding their responsibility as a landlord and being ignorant of a relevant fact relating to the operating of their business as a landlord.

Category 1 penalties will only be used for 1st time offences. In cases where multiple breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 are identified, all penalties will be calculated under Category 1 if it is a first offence.

Category 2 penalties will be used for subsequent offences

Culpability has been separated into three levels:

- **Severity level 1:** these are low offences committed with little fault, for example because:
 - i. Significant efforts were made to address the risk although they were inadequate on this occasion
 - ii. There was no warning/circumstances indicating a risk
- **Severity Level 2:** these are medium offences that are committed through act or omission which a person exercising reasonable care would not commit
- **Severity Level 3:** these are very high offences where the offender intentionally breached, or flagrantly disregarded, the law and knew their actions were unlawful

Culpability

Severity Level	1	2	3
Category 1: 1st offence	£300	£600	£1200
category 2: Subsequent offence(s)	£900	£1800	£3600

The harm caused to the tenant

Harm will consider the harm or the potential harm the offence did or could have caused the tenant, the higher the risk of harm, the higher the penalty. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

Harm has been separated into six levels:

- **Severity Level 0:** these are offences that present no risk of harm
- **Severity Level 1:** these are offences that present a low to moderate risk of harm

- **Severity Level 2:** these are offences that present a serious risk of harm
- **Severity Level 3:** these are offences that present a severe / extreme level of harm and have scored a band C under the HHSRS*
- **Severity Level 4:** these are offences that present a severe / extreme level of harm and have scored a band B under the HHSRS
- **Severity Level 5:** these are offences that present a severe / extreme level of harm and have scored a band A under the HHSRS*

*HHSRS: Housing and Health Safety Rating System

Harm

Severity Level	0	1	2	3	4	5
Level of penalty	£0	£300	£1000	£3000	£5000	£10000

Band 3: Punishment / Deterrent

Band 3 will consider:

- **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 demonstrate the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence:**
The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- **Deter others from committing similar offences:**
While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists

and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Band 3 will give consideration to all 3 components and apply a multiplier to the amount already accrued. The amount of the fine must be sufficient to have a real economic impact on the offender to act as a sufficient deterrent to reoffend. Furthermore, the penalty must be sufficient to deter others.

This band will be applied based upon the size of the portfolio held or managed by the offender; landlords will be required to provide evidence as requested by the Local Authority to determine the portfolio size. If the landlord fails to cooperate with this request Severity level 5 will automatically be applied.

Punishment / deterrent have been separated into five levels:

- **Severity Level 1:** Portfolio 1
- **Severity Level 2:** Portfolio 2 - 5
- **Severity Level 3:** Portfolio 6-14
- **Severity Level 4:** Portfolio 15-100
- **Severity Level 5:** Portfolio 101+

Punishment / Deterrent

Severity Level	1	2	3	4	5
Level of penalty*	X 2	X 3	X 4	X5	X6

*Severity level: No multiplier will be used in the following circumstances:

- Severity, Culpability and Harm have all scored level one or below and,
- It is a landlords first offence (this includes penalties in other LA areas), and,
- The penalty relates to a single offence and not multiple offences.

Band 4: Removal of Financial Gain

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

Consideration will be given to the total penalty versus the income received during the “offence period”. The “offence period” will commence from the earliest date the landlord

was made aware of the offence. The level of penalty will be awarded to ensure the penalty removes the financial gains made by the offender as a result of committing the offence. The landlord will be required to provide evidence as requested by the Local Authority to determine the financial gain. If the landlord fails to cooperate with this request Severity level 5 will automatically be applied.

Removal of financial gain has been separated into five levels:

- **Severity Level 1:** No financial gain
- **Severity Level 2:** Financial gain between £1 - £1000
- **Severity Level 3:** Financial gain between £1001 - £2499
- **Severity Level 4:** Financial gain between £2500 - 4999
- **Severity Level 5:** Financial gain between £5001 - £10000

Removal of Financial Gain

Severity Level	1	2	3	4	5
Level of penalty*	£0	£1000	£2500	£5000	£10000