

Report of:	Meeting	Date
Councillor Roger Berry, Neighbourhood Services and Community Safety Portfolio Holder and Marianne Hesketh, Corporate Director Communities	Cabinet	4 December 2019

Introduction of New Enforcement Powers Policy under the Housing and Planning Act 2016

1. Purpose of report

- 1.1 To seek approval that the council use new enforcement powers contained in the Housing and Planning Act 2016 (HPA2016) allowing the Council to impose civil penalties for housing enforcement and to apply for Rent Repayment Orders and Banning Orders.
- 1.2 To seek approval for the delegation of authority to develop, implement and further amend the council's policy in respect of the new Housing enforcement powers to the Corporate Director Communities in consultation with the Cabinet Member for Neighbourhood Services and Community Safety and the Legal Services Manager, such policy to be in accordance with Schedule 13A of the Housing Act 2004, and any other guidance issued by the Secretary of State.
- 1.3 To seek approval to authorise the Corporate Director Communities to authorise the Head of Housing and Community Services to discharge the relevant powers detailed in this report.

2. Outcomes

- 2.1 The adoption of civil penalties and the use of Rent Repayment Orders and Banning Orders will be a powerful deterrent to negligent landlords and managing agents and will support the council's commitment to improving standards in the private rented sector.

3. Recommendations

- 3.1** To agree that the council adopts new enforcement powers contained in the Housing and Planning Act 2016 allowing the council to impose civil penalties and to apply for rent repayment orders and banning orders.
- 3.2** To approve and agree the adoption of a Policy and Matrix for the use of the new powers in Housing Enforcement at Appendix 1.
- 3.3** To approve and agree that any revenue arising from Civil Penalties and Rent Repayment Orders will be reinvested by the council to further regulate and improve the private rented sector as set out in Regulation 4 of the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.
- 3.4** To approve and agree that delegation of the authority to develop, implement and further amend the council's policy in respect of the new enforcement powers be given to the Corporate Director Communities, in consultation with the Cabinet Member for Neighbourhood Services and Community Safety and the Legal Services Manager and that such policy to be in accordance with Schedule 13A of the Housing Act 2004, and any other guidance issued by the Secretary of State.
- 3.5** To approve and agree that authorisation be given to the Corporate Director Communities to authorise the Head of Housing and Community Services to discharge the relevant powers detailed in this report.

4. Background

Civil Penalties

- 4.1** The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences. The same criminal standard of proof is required for a civil penalty as for prosecution.
- 4.2** The list of offences that may be dealt with under the Housing Act 2004 by way of a financial penalty are as follows:
 - Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses in Multiple Occupation (Part 2 section 72); this relates to mandatory Licensing that is currently undertaken in Wyre
 - >Failure to Licence
 - >Failure to comply with Licence conditions
 - Offences in relation to licensing of houses under Part 3 (section 95); relates to selective licensing not currently adopted in Wyre)
 - Offences of contravention of an overcrowding notice (section 139);
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234);

- Breaching a Banning Order (section 23 of the Housing and Planning Act).
- 4.3** When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made it very clear that they expected this power to be used robustly as a way of clamping down on negligent and rogue landlords. In view of this the proposed Policy and fee Matrix has been designed to allow for the worst offences or repeat offences to receive the maximum penalty.
- 4.4** It is the responsibility of the individual authority to determine the financial penalty. The penalty must be relevant to the particular offence that has been committed meaning there will be variations and a single fee cannot be set. In determining whether to impose a financial penalty the council, must have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil Penalties under the Housing and Planning Act 2016 (Background Paper 1).
- 4.5** To ensure that there is clarity and the council can demonstrate fairness within the process a proposed matrix system has been designed (Appendix 1) that will allow a penalty charge to be made in line with the level of the offence. The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty the council must consider:
- the severity of the offence;
 - the culpability and track record of the offender;
 - the harm caused to the tenant;
 - the punishment of the offender;
 - the deterrent effect on the offender from repeating the offence;
 - the deterrent effect on others from committing similar offences;
 - the removal of any financial benefit the offender may have obtained as a result of committing the offence.
- 4.6** The Matrix has been designed taking into account those used by other local authorities and is in line with statutory guidance.
- 4.7** The introduction of imposing financial penalties as an alternative to prosecution will mean that in suitable cases, the process of enforcement action will be faster.
- 4.8** Should the Housing and Planning Act 2016 Enforcement Powers Policy 2019 be adopted it is proposed that the authority to issue the Civil Penalty Notices listed in paragraph 4.2 will rest with the Head of Housing and Community Services, in accordance with the Scheme of Officer Delegation.

Rent Repayment Orders

4.10 The Housing Act 2004 introduced Rent Repayment Orders (RRO) to recover Housing Benefit/Universal Credit that was paid to landlords convicted of running unlicensed properties. The Housing and Planning Act 2016 places a new obligation on Local Authorities to give consideration to seeking a RRO following conviction for a much wider range of offences, these include:

- Using violence for securing entry
- Eviction or harassment of occupiers
- Failure to comply with an improvement notice
- Failure to comply with a prohibition notice
- Failure to licence or be licensed in respect of an HMO
- Failure to licence or be licensed in respect of a Landlords Selective Licensing Scheme
- Breach of a Banning Order

4.11 RROs can be granted to either the tenant or the council, although a tenant may apply for an RRO only if the offence relates to housing that, at the time of the offence, was let to the tenant, and the offence was committed within twelve months of the application. If the tenant's rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent is repaid to the council. If the tenant paid their own rent themselves, it is repaid to the tenant. If the rent was paid partially by the tenant with the remainder through Housing Benefit/Universal Credit, the rent will be repaid on an equivalent basis. The amount awarded under this power will be dependent upon the offence committed, the amount of rent paid during the specific twelve month time period and who is applying (whether it is a local authority or tenant). The amount the First Tier Tribunal may require the landlord to repay must not exceed the amount of rent paid (by the tenant) or the amount of housing benefit or housing component of Universal Credit that the landlord received (from the local authority) in respect of rent. Under the HPA2016, a RRO can be sought even when the Landlord has not been convicted of one of the offences listed above. Where this is the case, the First Tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

4.12 Section 48 of the HPA2016 also places a new duty on local housing authorities to consider applying for a rent repayment order if they become aware that a person has been convicted of one or more of the offences set out at 4.10 above in relation to housing in that authority's area. Tenants also have a right to apply to the First Tier Tribunal to make a RRO and Section 49 of the same Act specifies that local housing authorities may help a tenant to apply for an RRO by, for example, giving advice to tenants or conducting proceedings on a tenant's behalf.

- 4.13** A landlord may appeal against a decision of the First-tier Tribunal to the Upper Tribunal provided that permission to appeal has been given by the First-tier Tribunal or the Upper Tribunal.
- 4.14** The HA2004 requires that local authorities have regard to any guidance given by the Secretary of State when deciding whether to apply for an RRO. Section 3.1 of that guidance document states that local housing authorities should develop and document their own policy on when to prosecute and when to apply for a RRO, and should decide each case on its merits.
- 4.15** The Policy for the use of the new enforcement powers at Appendix 1 has been drafted and developed having regard to the said guidance.

Banning Orders and the National Database of Rogue Landlords

- 4.16** Section 15(1) of the HPA2016 provides local authorities with a power to apply for a banning order against a person who has been convicted of a banning order offence. The order is made by the First Tier Tribunal (for a period of no less than 12 months) and operates to ban a landlord (and managing agent) from letting housing; engaging in letting agency or property management work or both. A banning order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. These Regulations specify a range of housing, immigration and other serious crimes. Statutory guidance has been issued on the exercise of this power.
- 4.17** Chapter 3 of the HPA2016 enables the Secretary of State to create a central database of rogue landlords and agents. The purpose of this is to provide local authorities with a tool for keeping track of known rogue landlords so that enforcement action and resources are focused on those individuals and organisations who knowingly flout their legal obligations and to assist in the identification of such individuals especially those who operate across council boundaries.
- 4.18** Local authorities must make an entry on the database for a person or organisation that has received a banning order and otherwise have a discretion to do so where a person has been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or property agent. Non-statutory guidance has been issued on the operation of the database.
- 4.19** The penalty for breaching a Banning Order, upon summary conviction, is either a fine, or possible imprisonment for a period not exceeding 51 weeks or both.

5. Key issues and proposals

- 5.1** Each local authority may set their own fee levels for Civil Penalties up to the maximum £30,000. The proposed fee levels have been developed in conjunction with other local authorities across Lancashire to ensure consistency.
- 5.2** As each local authority may set their own fee levels up to the maximum of £30,000 it is necessary to carry out a consultation process to seek the views of the public and stakeholders. Public consultation on the proposed policy and fee structure took place for five weeks between 16 September and 21 October 2019. Although there were only a small number of responses (7) to the consultation, all respondents agreed that the new powers were fair. The majority agreed with the proposed charges, although one thought the minimum penalty was too low. The majority also agreed that they thought the new powers would improve housing standards. It was felt that no changes to the draft policy were necessary following the public consultation.
- 5.3** The imposition of a civil penalty could potentially provide a way to deal with offences in a more straightforward and efficient manner without the need for criminal proceedings. Criminal proceedings would still be considered for serious breaches.
- 5.4** The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of civil penalties can be retained by the local authority to be spent on private sector housing enforcement work. However, any income that a local authority receives from civil penalties but fails to spend, must be paid into the Government's Consolidated Fund.
- 5.5** A right of appeal exists against any penalty imposed. Parties to an appeal are normally expected to bear their own costs and in most cases, it is unlikely that the council will be able to recover any costs in relation to such appeals.
- 5.6** It is anticipated that enforcement will be undertaken utilising existing staff resources. In the event that the scale of enforcement activity necessitates additional staffing resources, these costs can be met from income generated through the imposition of civil penalties.

Financial and legal implications	
Finance	Any revenue arising from Civil Penalties and Rent Repayment Orders will be reinvested by the council to further regulate and improve the private rented sector, and any enforcement will be undertaken utilising existing staff resources and budgets. In the event that the scale of enforcement activity necessitates additional staffing resources, any additional costs will be met from any revenue received.
Legal	<p>Section 126 of the Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the HPA2016.</p> <p>Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are set out in paragraph 4.2.</p> <p>The method of applying for a Rent Repayment Order and Banning Order are set out in Part 2 of the HPA2016.</p>

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	✓
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
ICT	x
data protection	x

Processing Personal Data

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

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List of background papers:		
name of document	date	where available for inspection
Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Authorities	April 2018	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

List of appendices

Appendix 1 – Housing and Planning Act 2016 Enforcement Powers Policy

dem/cab/cr/19/0412dm1

Housing and Planning Act 2016 Enforcement Powers Policy 2019 - 2024

Civil Penalties Policy and Matrix

Rent Repayment Orders Policy

Banning Orders Policy

Date:	November 2019
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Civil Penalties

Introduction

The Housing and Planning Act 2016 introduces Civil Penalties of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 offences from 6th April 2017.

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

These are:

- Section 30 failure to comply with an Improvement Notice
- Section 72 offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 offences in relation to licensing of houses under part 3 (Selective Licensing)
- Section 139(7) failure to comply with an overcrowding notice
- Section 234 Management Regulations in respect of HMOs

In determining the Civil Penalty amount the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and the Civil Penalty Matrix developed by the Department for Communities and Local Government.

Burden of Proof

The criminal burden of proof, beyond all reasonable doubt must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Local Housing Authority must satisfy itself that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

In determining whether the issue of a civil penalty is appropriate or not, due regard must be given to any potential defences available and, where available any interview under caution in accordance with PACE (Police & Criminal Evidence Act) codes of practice.

Factors to consider when determining to prosecute or issue a civil penalty

Each case will be determined on its own merits taking into account all available evidence.

Prosecution is likely to be the most appropriate action where the offence is particularly serious and/or where the landlord has a history of non-compliance in relation to property condition or property management.

In this policy the term 'landlord' also includes property agents, letting agents and property managers defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty:

- The offender had no evidence of previous non-compliance with appropriate legislation
- The offender had no previous convictions recorded
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The offenders co-operation is beyond what would be expected
- The offender does not need continuous chasing to rectify the offence

Factors to consider when determining the level of civil penalty

The actual amount levied in any particular case should reflect the severity of the offence, as well as the landlord's previous record of offending. The Council should consider the following factors to help ensure the civil penalty is set at an appropriate level:

- Severity of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- Punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent from others committing similar offences
- Removing any financial benefit obtained from committing the offence

These factors are contained in the financial penalty matrix which helps officers to determine the level of fine that should be imposed by creating a score and band for each case.

Financial Penalty Matrix

Officers should first determine the severity of the offence by looking at the harm and culpability categories.

Examples of Harm Categories

The table below contains factors relating to both actual harm and risk of harm.

High	<p>Serious adverse effect on individuals and/or having a widespread impact.</p> <p>High risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Housing defect giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example Housing Health and Safety Rating System (HHSRS) imminent category 1 hazards such as danger of electrocution, carbon monoxide poisoning, serious fire safety risk or excess cold with vulnerable resident.</p>
Medium	<p>Adverse effect on individuals.</p> <p>Medium risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Tenant misled/disadvantaged by the failing.</p> <p>The housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example HHSRS category 1 hazards, multiple high category 2 hazards such as falls between levels, excess cold, asbestos exposure.</p>
Low	<p>Low risk of an adverse effect on individuals.</p> <p>The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example low category 2 hazards under the HHSRS, localised damp and mould.</p>

Examples of Culpability Categories

Very High (Deliberate Act)	<p>Where the offender intentionally breached, or flagrantly disregarded, the law.</p> <p>For example repeatedly ignored reminders to apply for a property or HMO licence. Failure to comply with a correctly served improvement notice. No attempt made to contact the local authority to discuss breaches.</p>
High (Reckless)	<p>Actual foresight of or wilful blindness to the risk of offending but risks nevertheless taken by the landlord or property agent, for example failure to comply with HMO Management Regulations.</p>

Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems that prevent the offence being committed, for example part compliance with a schedule of works but failure to fully complete all schedule items within notice timescale. Partially completed licensing application forms.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent, for example significant efforts were made to address the risk but they were obstructed by the tenant to allow contractor access or damage caused by tenants. Failings were minor and occurred as an isolated incident such as low category 2 hazards under the HHSRS found in one property from a large portfolio.

Having determined the category the officers should refer to the following starting points to reach a penalty band. Officers should then consider whether further adjustments should be made for aggravating and mitigating features.

Starting Points

Culpability	Harm Category 1	Harm Category 2	Harm Category 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Banding Levels

Band 1	£0 to £4,999
Band 2	£5,000 to £9,999
Band 3	£10,000 to £14,999
Band 4	£15,000 to £19,999
Band 5	£20,000 to £24,999
Band 6	£25,000 to £30,000

The starting point for each band will be the mid-point e.g. for Band 1 the mid-point will be £2,450.

An offender will be assumed to be able to pay any financial penalty imposed unless they can demonstrate otherwise.

Aggravating Factors

The factors listed below are a non-exhaustive list of factual elements that should result in an upward adjustment from the starting point:

- Relevant previous conviction/civil penalties
- Motivated by financial gain
- Failure to respond to warning
- Deliberate concealment of illegal nature of activity
- Obstruction of investigation
- Falsification of documentation
- Targeting vulnerable groups
- Poor housing record

Mitigating Factors

The factors listed below are a non-exhaustive list of factual elements that should result in a downward adjustment from the starting point:

- No previous relevant convictions or no relevant housing enforcement history
- Evidence of steps taken voluntarily to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good housing record
- Self-reporting, co-operation and acceptance of responsibility

Rent Repayment Orders

Introduction

The Housing Act 2004 introduced rent repayment orders to cover situations where the responsible person for a property had failed to obtain a licence for a property that was required to be licensed.

These orders can be imposed for offences specifically relating to:

- licensing of HMO (section 72(1))
- houses under part 3 of the act (section 95(1))

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover these additional offences:

- Section 30 Housing Act 2004 - Failure to comply with an improvement notice
- Section 32 Housing Act 2004 - Failing to comply with a Prohibition Order
- Section 21 Housing and Planning Act 2016 - Breach of a banning order made by the First-Tier Tribunal (Property Chamber)
- Section 6 Criminal Law Act 1977 - Using violence, or threatening to use violence, to secure entry to a property
- Section 1 Protection from Eviction Act 1977 - Illegal eviction or harassment of the occupiers of a property

Applications for an order must be made to the First-tier Tribunal. An order can be applied for when one of the above offences has been committed, whether or not the landlord has been convicted. Where the landlord has not been convicted of the relevant offence, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

If all of the rent is paid through either housing benefit or universal credit, any rent recovered must be repaid to the Council. If the tenant paid the rent in full (no HB or UC) any amount recovered must be paid to the tenant. If the rent was paid partly through HB/UC and by the tenant, the amount recovered must be repaid on an equivalent basis to each party. If there are multiple tenants in the property, each must apply for a RRO to recover the rent they have paid.

The maximum amount of rent that can be recovered is capped at 12 months. Any income received from a RRO can be retained by the Council provided it is used towards private sector housing enforcement activities.

When to Apply for a RRO

The Council will apply for a RRO in all cases where the landlord has been convicted of a relevant offence and some or all of the rent was paid through housing benefit/universal credit. Where a landlord has not been convicted, the Council will take the following factors into account in deciding whether a RRO is appropriate and how much should be recovered:

- **Punishment of the offender** – RROs should have a real economic impact on the offender. The Council will consider the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has been convicted of similar offences
- **Deter the offender from repeating the offence** – the level of the penalty should be set at a high enough level to deter the offender from repeating the offence
- **Dissuade others from committing similar offences** – the issue of a RRO will be in the public domain therefore robust and proportionate use of the orders is likely to help others comply with their responsibilities
- **Remove any financial benefit the offender may have obtained as a result of committing the offence**

Civil Penalty and RRO

The Council can impose a civil penalty and apply for a RRO for the following offences:

- Section 30 failure to comply with an Improvement Notice
- Section 72 offences in relation to licensing of Houses in Multiple Occupation
- Section 95 offences in relation to licensing of houses under part 3 (Selective Licensing)

Prosecution and RRO

The Council can prosecute a landlord and seek a RRO for the same offence.

Banning Orders

Introduction

Chapter 2 of the Housing and Planning Act 2016 enables Local Authorities to apply to the First Tier Tribunal to impose a banning order on a landlord following conviction for a banning order offence. This policy takes account of the non-statutory guidance issued by the Government which makes clear that banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government's expectation that banning orders will be used for the most serious offenders.

Effect of a banning order

A landlord subject to a banning order is prevented from

- Letting houses in England
- Engaging in English letting agency work
- Engaging in English property management work
- Doing two or more of those things

Where a banning order is made, the individual will be determined not to be 'fit and proper' to hold a licence under Part 2 or 3 of the Housing Act 2004 and any licences in force under those parts will be revoked.

It is a Criminal Offence to breach a banning order.

A banning order offence

A 'relevant housing offence' is a conviction for any of the following offences:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977 or;
- Any of the following offences under the Housing Act 2004:
 - i) Offences in relation to licensing of Houses in Multiple Occupation (HMOs) (section 72)
 - ii) Offences in relation to licensing of houses under Part 3 of the Act (section 95)
 - iii) Allowing a HMO that is not subject to licensing to become overcrowded (section 139)

- iv) Failure to comply with management regulations in respect of HMOs (section 234)
- v) Failure to comply with a Prohibition or Emergency Prohibition Order under sections 20, 21 and 43 of the Housing Act 2004;
- If a person has committed a serious criminal offence they must have been sentenced in the Crown court to be regarded as a banning order offence
- Spent Convictions should not be taken into account
- If a landlord receives an absolute/conditional discharge for a relevant housing offence then that offence cannot be regarded as a banning order offence.

Length of a banning order

The Council is not able to determine the length of a banning order but can make a recommendation to the First-tier Tribunal as to how long the banning order should be imposed for. A banning order must be for a minimum period of 12 months. There is no statutory maximum period

Decision making

As recommended by the Government's guidance, the Council will consider the following factors when deciding whether to apply for a banning order and when recommending the length of any banning order:

- **The Seriousness of the Offence** - All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself.
- **Previous convictions/rogue landlord database** - A local housing authority should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may 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.

The Council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order and will take into account the following:

- **The harm caused to the tenant** - This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud)
- **Punishment of the offender** - A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- **Deterring the offender from repeating the offence** - The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence
- **Deterring others from committing similar offences** - An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

Process for imposing a civil penalty

Stage 1 – serve a notice of intent

The notice must set out:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the penalty
- Information about the right of the landlord to make representations

The notice must be served no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

Stage 2 – right to submit written representations

The person served with the notice of intent may make written representations to the Housing Services Team about the intention to impose a financial penalty. Any representations must be made within 28 days from when the notice was given.

Stage 3 – end of written representation period

Once the 28 day period for receiving written representations has expired, the Corporate Director of Communities must decide whether to impose a penalty, and if so, the amount of the penalty. If a financial penalty is to be imposed, a final notice must be served.

Stage 4 – final notice

The final notice must set out:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information about how to pay the penalty
- The period for payment of the penalty (28 days)
- Information about rights of appeal
- The consequences of failure to comply with the notice

Stage 5 – right of appeal

A person who receives a final notice may appeal to the First-tier Tribunal against:

- The decision to impose a penalty
- The amount of the penalty

If the person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Withdrawing or varying a Notice of Intent or Final Notice

The Council can at any time:

- Withdraw a notice of intent or final notice; or
- Reduce the amount specified in a notice of intent or final notice

Refusal to pay

Where the person refuses or fails to pay a civil penalty, the Council should refer the case to the county court for an official Order of that court. If necessary, county court bailiff's can be used to enforce the order and recover the debt. A certificate signed by the Chief Finance Officer stating that the amount due has not been paid by a specified date will be treated by the courts as conclusive evidence of that fact.

Works in default

The Council can still carry out works in default, s.31 and Schedule 3 of the Housing Act 2004 are not affected by the Housing and Planning Act 2016.

Rogue landlords database

The rogue landlords' database was introduced in October 2017. Where a person receives two or more civil penalties over a 12-month period, the Council may include their details in the database. It is not compulsory to do so but it is encouraged to ensure all local authorities are aware of any enforcement action that has been taken.

Fit and proper person test

The issuing of a civil penalty can be taken into account when deciding whether someone is a fit and proper person to be a licence holder for a HMO.

Process for applying for a RRO

Stage 1 – serve a notice of intent

Before applying for a RRO, the landlord must be served with a Notice of Intent. The notice must be served within 12 months of the date on which the landlord committed the offence to which it relates.

The notice must:

- Inform the landlord the Council is proposing to apply for a RRO and the reasons why
- State the amount the Council is seeking to recover
- Invite the landlord to make representations within a period specified in the notice which must be at least 28 days

A RRO can only be applied for in the name of the landlord of the property.

Stage 2 – right to submit written representations

The landlord may make written representations to Housing Services Team about the intention to apply for a RRO. Any representations must be made within 28 days from when the notice was given. The Council cannot apply for a RRO during this period.

Stage 3 – end of written representation period

Once the 28 day period for receiving written representations has expired, the Corporate Director of Communities must decide whether to proceed with the application for a RRO.

Stage 4 – right of appeal

The landlord can appeal against the decision of the First-tier Tribunal to the Upper Tribunal provided permission to appeal has been given by either the First-tier or Upper Tribunal.

Refusal to Pay

Where the landlord fails to pay the RRO, the Council or tenant can refer the case to the County Court for an Order of that Court. County Court bailiffs can be used to enforce the Order and recover the debt.

Tenants and RROs

Tenants can apply directly for a RRO providing that:

- The offence relates to housing that was occupied by the tenant at the time of the offence; and
- The application for a RRO is made within 12 months of the date that the offence has been committed

The tenant does not have to go through the same process as the Council. The tenant only needs to submit a claim form to the First-tier Tribunal which sets out the reasons for the claim and the dates to which it relates.

There is no statutory obligation on the Council to support the tenant in making a claim, however, where the Council has evidence in support of the tenant's case, it will make this available to the tenant for the purposes of the claim.

RROs and Universal Credit

The Council will not have access to UC data, therefore, where the Council wishes to apply for an RRO and some or all of the rent has been paid via UC, the tenant will need to provide the information from their benefit statements or request the information required direct from the DWP.

The following formula should be used to calculate the amount of rent that should be repaid to the tenant and the amount to the local authority. This information should be on the tenant's benefit statement.

$$a/c*d = x (y=x-b)$$

a = rent liability

b = rent allowance

c = maximum UC award

d = net UC award

x = amount to be retained by Council

y = amount to be paid to tenant (x-b)

Process for applying for a Banning Order

Stage 1 – serve a notice of intent

Before applying for a Banning Order, the landlord must be served with a Notice of Intent. The notice must be served within 6 months of the landlord being convicted of the offence.

The notice must:

- inform the landlord that the Council is proposing to apply for a banning order and explaining why
- stating the length of each proposed ban
- invite the person to make representations within a period specified in the notice which must be at least 28 days.

Stage 2 – right to submit written representations

The landlord may make written representations to Housing Services Team about the intention to apply for a Banning Order. Any representations must be made within 28 days from when the notice was given. The Council cannot apply for a Banning Order during this period.

Stage 3 – end of written representation period

Once the 28 day period for receiving written representations has expired, the Corporate Director of Communities must decide whether to proceed with the application for a Banning Order.

Stage 4 – right of appeal

The landlord can appeal against the decision of the First-tier Tribunal to the Upper Tribunal provided permission to appeal has been given by either the First-tier or Upper Tribunal.

Requests for Information

Section 19 of the Housing and Planning Act 2016 provides that a local housing authority (the Council) can require a landlord to provide information for the purpose of enabling the Council to decide whether to apply for a banning order. This can include requiring the landlord to provide information on all the properties that the landlord owns.

It is an offence to ignore a request for further information unless the landlord can provide a reasonable excuse.

It is also an offence to provide false and misleading information

Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine

Publicity following a banning order

Subject to the Governments guidance and guidance provided by the Ministry of Justice details of all banning order offences will be published and held on a national register. Also subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/ any business (managing or lettings agency). The Council will also consider making information on banned landlords available on request by a tenant.