



**Rochford District Council
Private Sector Housing
Enforcement and Civil Penalties Policy
Version 1
2024**

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1. What is the purpose of this Enforcement Policy?

This document provides a framework for Rochford District Council to fulfil its legal responsibilities to regulate housing conditions across the district. It aims to ensure that our enforcement activity is proportional, consistent, transparent and fair.

It acts as a reference for officers undertaking enforcement activity.

It explains why and how the Council will take action to regulate housing conditions to ensure a level playing field for property providers which will help to enhance the economic vitality of local communities.

It is based on the principle that no-one who breaks the law should gain a financial advantage over someone who does not.

It aims to ensure that enforcement decisions are fair and objective and not affected by undue influence. Enforcement decisions will not be affected by improper or undue pressure from any source.

The Council believes in firm but fair regulation and the principles of proportionality, transparency, consistency and targeting enforcement.

2. What guidelines have been followed when drafting this Policy?

The Legislative and Regulatory Reform Act 2006 requires regulatory activities to be carried out in a way which is transparent, accountable, proportionate and consistent. It also states that regulatory activities should be targeted only at cases in which action is needed.

Transparency

We will publish and regularly update advice and guidance about our requirements and how to meet them on our website here <https://www.rochford.gov.uk/private-sector-Housing>

Accountability

We will explain why we are taking enforcement action or carrying out an investigation.

Any complaints or comments about our actions or the conduct of our officers will be taken seriously and investigated. The Council has an established compliments, comments and complaints process which can be easily accessed.

In addition, there is usually a statutory right of appeal to formal enforcement action and we will always ensure that those rights are detailed in relevant correspondence.

Proportionality

We will ensure that any action we require, or take, is proportionate to the seriousness of the breach and the risk to health, safety and welfare or the effect on the local neighbourhood.

The most serious formal action will be for serious breaches of the law where there is a significant risk to health and safety and welfare or where there has been a flagrant disregard for the requirements of the law.

We will seek to create an environment in which those we regulate feel able to seek advice without fear of triggering enforcement action. However, in some circumstances we will be under a duty to take action if we become aware of a breach or of a failure to comply with the law or the existence of a hazard.

We will provide the opportunity for response to any proposed enforcement action unless that action is required to prevent or respond to a serious breach, where immediate action is required or where doing so would defeat the purpose of the proposed action. In practice this means that we will normally give reasonable notice of inspections (where legally required) and we will normally consult interested parties before serving notices or orders.

Consistency

We will do the following to ensure a consistent approach to our enforcement decisions:

- We will discuss and compare enforcement decisions within the team. We may also do so externally through liaison and in benchmarking with other local authorities and enforcement bodies.
- All staff undertaking enforcement duties will be suitably trained, qualified and authorised to ensure that they are fully competent to undertake their enforcement duties.
- We will have regard to statutory guidance, relevant tribunal decisions, case law and current good practice.

Targeting

We may target our enforcement action towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organised breaches of the law.

Other factors also determine priorities for enforcement activity, including government targets and priorities, new legislation, national campaigns and public concerns.

Targeting may be based on a number of factors, for example:

Inspections may be targeted at premises - based on their age, size or other characteristics that may make the existence of a hazard more likely.

Previous performance - where a landlord or managing agent is identified to be responsible for premises which do not comply with the law, then the inspection of these and other premises owned or managed by them may be prioritised.

Where complaints have been received.

Where intelligence from other sources has highlighted potential non-compliance with legal requirements.

This Policy has been developed in accordance with the Regulators Code issued by the Better Regulation Delivery Office, April 2014, which sets out 6 principles:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

More information is available here: [Regulators Code](#)

This Policy has been developed with regard to the Principles of Good Enforcement detailed within the Enforcement Concordat and associated Good Practice Guide issued by the Dept. for Trade and Industry which has been adopted by Rochford District Council.

1. Setting clear standards. This Policy sets out the standards that those regulated or affected by it can expect.
2. Openness – The provision of clear information. The Council's website has a range of information and advice to assist property owners in ensuring they are compliant. Our fees and charges are published on the website and we will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
3. Helpfulness – Recognising that in many cases prevention is better than cure and that our role therefore involves working with property providers to advise and assist with compliance.
4. Complaints about service – We have an effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups including an escalation process. There is a link to this process on the relevant web pages.
5. Proportionality - Ensuring that enforcement action is proportionate to the risks involved. As far as the law allows, we will take account of the circumstances of the case and the attitude of the housing provider when considering action.
6. Consistency - Ensuring fair, consistent and equitable enforcement practice. Whilst officers are expected to use their professional judgement in individual cases, we will have arrangements in place to promote consistency.

More information is available here: [Enforcement Concordat Good Practice Guide](#)

3. What types of housing are covered by the Policy?

This Policy applies to all types and tenures of housing, including those owned and controlled by registered providers of social housing.

We would expect tenants in properties owned and controlled by registered providers of social housing (Housing Associations) to have followed and exhausted the appropriate repairs complaints process before they approach the Council. Assistance may be provided in a support capacity.

Leasehold properties should take their own civil action where matters relating to the freeholder are concerned. Where a leasehold property is rented to a private tenant by the leaseholder the tenant may approach the Council.

The way this Policy is applied will take into account the specific circumstances in each case. Important considerations are:

- Who is at risk and how much control do they have over their housing conditions?
For example, owner-occupiers are responsible for their own housing conditions and have a greater degree of control and choice over them than tenants or licensees.
- Any additional responsibilities that the Council and any of its partners have for placing residents in suitable accommodation.

Housing providers (landlords and their agents) working with the Council to provide permanent and temporary accommodation for residents must meet all legal requirements to provide safe, healthy and energy efficient accommodation and will be subject to action under this Policy if hazardous conditions arise.

4. Context of the Policy

Good housing is a prerequisite of good health and wellbeing and recognised as one of the wider determinants of health.

Conversely, poor housing can cause poor health and increase the risks of ill health and injury. It can be an obstacle to the improvement of some health conditions, or a barrier against general wellbeing.

This Enforcement Policy details how the Council will use the range of powers available to improve housing conditions within the District.

Government Ministers have made it very clear that they expect local housing authorities to use their enforcement powers robustly, including those introduced by the Housing and Planning Act 2016.

High profile cases have shown how poor housing conditions can lead to ill health and death. A letter sent from Sir Michael Gove, the Secretary of State for Levelling Up, Housing and Communities, to all Local Authorities in November 2022 urged Local Authorities to prioritise enforcement action to improve housing conditions:

“I am writing to you to request you do everything in your power to prioritise the improvement of housing conditions for the millions of private and social tenants, in line with existing duties in the Housing Act 2004.”

5. What are the Objectives of enforcement action?

The Council have a legal obligation imposed by the Housing Act 2004 to keep the housing conditions in their area under review. In addition, we have a duty to take action where Category 1 hazards exist, as assessed under the Housing Health and Safety Rating System.

Through the effective implementation of this Policy, we aim to:

- a) Ensure private rented sector tenants and owner-occupiers have a safe and healthy home
- b) Improve housing conditions within the private sector by taking action to deal with Category one and higher Category two hazards as assessed using the Housing Health and Safety Rating System (HHSRS) to ensure that they are removed or greatly reduced. This may be through reacting to complaints from tenants and their advocates, inspections as requested by other agencies or partners, inspections of properties to be used by the Council’s own services such as the Housing Options Service.
- c) Through a lighter touch enforcement approach, bring long term empty properties back into productive residential use and ensure that whilst empty they do not cause an unreasonable adverse effect on the neighbourhood on receipt of complaints. Whilst recognising that taking action on long term empty properties will always be a lower priority to the Council than dealing with occupied homes.
- d) Ensure that Houses in Multiple Occupation comply with the law including the requirement to be licensed where appropriate. Through a combination of advisory inspections, proactive/planned inspections undertaken on a risk assessment basis, annual and ad hoc monitoring of conditions imposed by licences and reacting to complaints.
- e) Undertake risk based targeted enforcement activity where identified to be appropriate or necessary, through the use of local intelligence, various sources of information and research, emerging good practice or changes to legislation.
- f) Work with other enforcement agencies as required, or make referrals as appropriate, to ensure a holistic and joined up enforcement approach.

6. What rights do Council officers have to enter privately owned homes and what to expect on an inspection?

In most cases, a property inspection will be conducted in response to an invitation to enter a home by the occupier. Our officers are authorised to enter premises under a number of laws. Under Part 1 of the Housing Act 2004, officers will provide a minimum of 24 hours advance notice (usually in writing by email) to the owner (or their appointed agent) and the occupier of an inspection that could result in enforcement action, unless there is an imminent risk to the health and safety of the occupier, when no prior notification is required.

No prior notice is required where an offence is being investigated. For example, under Section 72 of the Housing Act 2004 - breach of licensing requirements, or, under Section 234(3) of the Housing Act 2004 - failure to comply with the [HMO Management Regulations 2006](#).

Where entry is refused, or prior notification would defeat the purpose of entry or in specific other circumstances, officers are authorised to obtain a warrant from a Justice of the Peace to enter premises, by force if necessary. Please refer to [Section 239 Housing Act 2004](#) for further information.

It is a criminal offence to obstruct an officer who is legitimately carrying out an investigation in accordance with these legal powers.

All officers carry an ID card with their name and photo and detailing the legislation they are authorised to enforce.

An officer who is authorised to enter may take other persons with them, bring equipment or materials, take measurements, photographs or make recordings and take samples of any articles or substances found on the premises and may also ask to see a copy of any relevant documentation during the inspection.

Officers will require access to all parts of the property in order to carry out a full inspection. This will include loft spaces, cellars, gardens and outside spaces where appropriate.

7. The Enforcement Procedure

Whilst every case will be different, the same basic steps will be followed in any enforcement case as detailed below:

Receipt of request and Inspection

When an enquiry or request for service is received, we decide on whether we need to take action by asking relevant questions and collecting information.

Except in emergency situations, we will ask the tenant to contact their landlord or agent to report defects if they have not already done so. We will not normally continue to receive their request unless they have followed this route, unless there are extenuating circumstances. We will ask for a copy of their correspondence with their landlord or agent.

We will research who is responsible for the property and write to them advising them that we intend to inspect their property. This correspondence will be issued under Section 239 of the Housing Act 2004 as notification of entry, normally by email.

If the tenant has asked for advice about items in disrepair in order to explain them to their landlord, then the Council may choose to provide that advice and not contact the landlord.

Follow up action

Normally, we will contact the landlord or managing agent as appropriate following an inspection.

If there are no deficiencies noted, or they are considered to be minor in nature and not within the remit of this Enforcement Policy then an informal correspondence may be issued with advice only. No further follow up action would be taken in such cases.

If deficiencies are noted that fall within the remit of this Enforcement Policy then correspondence will be issued that includes a schedule detailing the deficiencies identified and the hazards which they contribute to and the works required to remedy the deficiencies.

In most instances, this correspondence offers the opportunity for discussion and engagement between the person/s or organisation/s responsible for the works and the Council. This gives the responsible party the opportunity to advise the Council of any reason for the defect or issue, how they plan to deal with it, including timescales for action (these will need to be reasonable and proportionate to the defects found), and to discuss any works they consider to be an acceptable alternative to those given by the Council.

This length of the consultation period will depend on the circumstances of the case.

If reasonable proposals are received from the landlord/agent to complete the works, we will always monitor that these are complied with. We will either undertake a further visit or require proof such as photographs and/or invoices for work to check that the works have been completed to a satisfactory standard within an acceptable timeframe, to ensure that they reduce the assessed hazard(s) to an acceptable level.

If the responsible party does not continue to cooperate or fails to comply with the timescales that have been agreed, a formal notice may still follow.

Each case will be considered individually. The course of action taken may change as the investigation progresses depending on the level of cooperation received from the responsible party.

In certain circumstances, we may consider that a formal notice is more appropriate in the first instance without going through the consultation process. Or we may reduce the consultation time period accordingly. These circumstances include where an informal consultation would cause undue delays leaving the tenants exposed to hazards, or, informal case management through this process would increase the time spent on resolution and multiple visits.

Previous poor compliance or lack of cooperation of the responsible person could also affect our approach such that a formal notice is served in the first instance. The time of year could also affect our approach, for example if there is an Excess Cold hazard identified in the winter as opposed to the summer.

The following sections of the Policy detail the range of enforcement options available.

8. What are the main legal requirements for letting out homes?

The law does not set a minimum standard for the condition of homes. Instead, it requires the use of the Housing Health and Safety Rating System (HHSRS). This is a risk assessment tool to assess homes, to determine the likelihood of a hazard occurring and the likely harm outcome, and severity of that harm if the hazard did occur.

The HHSRS considers whether the risk of accidents and ill-health, due to the design or condition of the property, is acceptable or too high. The HHSRS is based on evidence of what has caused illnesses and injuries in housing in the UK and compares the property being assessed with the average of a property of its age and type.

The HHSRS considers the risks to occupiers and their visitors over a 12-month period.

We encourage landlords and property managers to find out more about HHSRS so that they can use it to inform investment and maintenance of their properties. The Government has published a useful document available here: [HHSRS guidance for landlords and property professionals](#)

Whilst there are 29 hazards that can be assessed using the HHSRS, the following hazards are those most frequently identified in Rochford:

- **Excess cold**
(due to low energy efficiency from expensive or inadequate heating and/or inadequate insulation)
- **Damp and Mould**
- **Falls on stairs and steps**
- **Falls on the level**
- **Fire**

A summary table showing legal requirements is given at Appendix 1 to this Policy.

The Code of Practice for the Private Rented Sector provides more detail and links to useful information: [Code of Practice on Private Rented sector](#)

9. How does the Housing Health and Safety Rating System (HHSRS) affect the law on housing conditions and how do we decide what action to take?

Under the Housing Act 2004, Councils have a duty to take enforcement action where conditions mean that people are much more likely to experience harm and where death or serious illness or injury could be anticipated. These are classified as Band A, B or C hazards and are known collectively as Category 1 hazards: [Housing Act 2004 \(Part 1 - Housing conditions\)](#)

Councils also have a legal power to take enforcement action in response to less hazardous housing conditions, hazard Bands D-J, known collectively as Category 2 hazards.

We will undertake our legal duty and take enforcement action to reduce Category 1 hazards.

We will be minded to take enforcement action to reduce Category 2 hazards where:

- They are high Category 2 hazards in Bands D, E or F; **and**
- An assessment of the risk indicates that current occupiers or their visitors are likely to be particularly at risk of harm (including impact on mental health and wellbeing) from the hazards identified; **or**
- An assessment of the risk, taking national guidance into account (e.g. [LACORS Fire Safety Guidance](#)) indicates that those risks are not adequately controlled.

For lower Category 2 hazards, Bands G-J, we are minded not to take enforcement action but may consider advising the responsible person of those hazards on an informal basis.

However, it may be considered appropriate in certain circumstances to take action for lower Category 2 hazards, Bands G-J, **if** there are a number of such hazards **and** it is considered by their cumulative effect that they could adversely affect the health, safety and welfare of the occupier (including their mental wellbeing), **or**, they exist alongside other hazards that are being enforced as detailed above (i.e. Category 1 and higher Category 2 hazards)

All officers who are authorised by the Council to undertake this work have received HHSRS practitioners training and passed an assessment of competency. The HHSRS Operating Guidance issued by the Government is used together with emerging case law and good practice to inform our assessments. This Guidance is available here: [HHSRS Operating Guidance](#)

10. What enforcement options are available to the Council to take in response to hazardous housing conditions?

Under the Housing Act 2004, under Sections 5 and 7, the following enforcement options are available in response to Category 1 or Category 2 hazards:

<p>Hazard Awareness Notice (HAN) Sections 28 and 29</p>	<p>A notice to inform all persons with a legal interest in a property that a significant hazard(s) exists together with an indication of the works required to reduce the hazard(s) to an acceptable level. A HAN carries no requirement to undertake hazard reduction works.</p> <p>This could be appropriate where an owner-occupier has responsibility for their own living conditions and other parties are not considered at significant risk</p>
<p>Improvement Notice Sections 11 and 12</p>	<p>A notice requiring works to be undertaken to reduce Category 1 or Category 2 hazard(s) to an acceptable level within a set timescale.</p> <p>This could be appropriate in rented homes where the works required can be achieved at reasonable cost so that the home can continue to be occupied.</p>
<p>Suspended Improvement Notice Section 14</p>	<p>As above but where the notice only becomes active after a specified event or timescale.</p>
<p>Prohibition Order Sections 20 and 21</p>	<p>A notice that restricts the use of a dwelling or part of a dwelling for a particular purpose (e.g. habitation) or that limits the number or type of occupiers to control one or more hazards.</p> <p>This could be appropriate where it is not economic to undertake required works to remove serious hazards, or where a building is vacant and works are required before reoccupation.</p>
<p>Suspended Prohibition Order Section 23</p>	<p>As above but where the notice only becomes active after a specified event or timescale.</p>
<p>Demolition Order Section 46 and Section 265 of Housing Act 1985</p>	<p>A notice requiring the demolition of a property. Limited use where, relative to the value of the property, it is not economic to repair.</p>
<p>Clearance Area Section 47 and Section 289 of Housing Act 1985</p>	<p>A notice requiring the clearance (demolition) of two or more properties. Very limited use where, relative to their value, it is not economic to repair the properties located in the clearance area.</p>
<p>Prosecution under the Management of Houses in Multiple Occupation (England) Regulations 2006</p>	<p>A power to prosecute without the need for service of a formal notice. To be used where contraventions of the Regulations are noted that evidence poor management practices.</p>

In addition, the following options are available in response to Category 1 hazards only, where there is an imminent risk of serious harm:

<p>Emergency Remedial Action</p>	<p>This provides the power for the Council to act quickly on behalf of the owner (with or without their consent) to take reasonable action to remove an imminent risk of serious harm and serve notice after the event and recover costs.</p>
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Section 40 and 42	
Emergency Prohibition Order Section 43	This provides the power for the Council to act quickly to restrict the use of a dwelling or part of a dwelling for a particular purpose (e.g. habitation) or that limits the number or type of occupiers to control an imminent risk of serious harm. This order is effective immediately.

More information is available here: [Housing Act 2004 \(Part 1 and Part 2\)](#)

The following table sets out a number of other pieces of legislation that officers are authorised to use where considered appropriate:

Law	Applied to
Environmental Protection Act 1990, sections 79 & 80	Premises which are found to be causing a Statutory Nuisance or to be prejudicial to health, due to their condition, either to their occupier or to the occupier of a neighbouring dwelling
Public Health Acts 1936 & 1961(as amended) and Building Act 1984	Deal with a range of drainage defects
Local Government (Miscellaneous Provisions) Act 1982, section 29	Empty properties which need to be boarded up/made secure against intruders
Prevention of Damage by Pests Act 1949	Deal with circumstances where there is evidence to indicate a risk of infestation by rats and/or mice and remedial works are required
Public Health Act 1936	Where a premises is assessed as being filthy and verminous and therefore pose a significant risk to the occupier(s) or people in neighbouring dwellings
Housing Act 1985 Parts 8 & 9	Action where a group of homes or a wider area requires improvement or clearance and redevelopment
Town and Country Planning Act Section 215	Power to deal with a property or land which is adversely affecting the neighbourhood – for example long term vacant properties.

In addition to those shown above, some additional subject/hazard specific enforcement actions are detailed later in this Policy.

11. How will the Council decide which enforcement option to take in response to hazardous housing conditions?

Where there is an imminent risk of serious harm, we will assess the options and act decisively to reduce or control the hazard by the most effective method available.

In all other circumstances we will consult with the occupier(s), the owner(s) (via their appointed agent if appropriate) so that we can take an informed view of how best to reduce the hazard(s) to an acceptable level. We may ask for supporting documentation to be submitted, see below.

When taking enforcement action under Part 1 Housing Act 2004, we will provide a statement of reasons which sets out the decision that has been made.

Officers will use their professional judgement and have regard to the range of enforcement powers available to them to determine the most appropriate course of action to take. They will have reference to any appropriate guidance, in particular the guidance issued by Government on making HHSRS enforcement decisions and this Policy when deciding on the most appropriate course of action to take available here: [HHSRS Enforcement Guidance](#)

Officers are duly authorised to take most types of enforcement action in their name. Certain actions are only delegated to the Environmental Health Team Manager.

To assist in consistency, officers will all be adequately trained, will discuss cases with their peer colleagues and/or the Environmental Health Team Manager if required and team workshop sessions may be held on specific issues to benchmark decision making as required.

The Environmental Health Team Manager will provide a second opinion on cases, undertake case reviews as required and respond to any concerns raised by persons subject to enforcement action and undertake joint visits with officers where required.

12. The use of Housing Act 2004 Section 235 and other powers used to obtain information etc.

When considering the most appropriate course of action to be taken and the works required to remedy a hazard, we may require documents to be submitted to assist our decision making. Examples of documents we may require include but are not limited to - copies of tenancy agreements, Landlord's Gas Safety Record, Electrical Installation Condition Report or other documentation relating to the electrical installation, fire alarm or emergency lighting documentation and PAT certificate.

The Housing Act 2004, Section 235, gives the power to the Council to ask for appropriate documents to be submitted on a given date.

We may use this power as appropriate and all officers are duly authorised to do so.

In addition, Section 237 of the Housing Act 2004 allows us to use information obtained through the Council's Housing Benefit or Council Tax duties for our enforcement purposes. We may use this as a source of information to identify landlords or persons in receipt of rent for a property.

We may also use the powers within the [Local Government and Miscellaneous Provisions Act 1976](#) to require information if required for enforcement purposes.

13. How does the Council recover costs for enforcement action taken in response to hazardous housing conditions?

[Section 49 Housing Act 2004](#) allows for the Council to make a reasonable charge for certain enforcement action.

Our fees and charges are reviewed and adopted by Cabinet annually. These are set to reflect the cost of work involved in securing compliance and are regularly benchmarked against those of other Essex Local Authorities.

Fees and charges apply per property and not per notice. If similar notices are being served on a number of recipients for the same property at the same time, only one fee will be charged.

Our Fees and Charges are published on the Council's website here www.rochford.gov.uk/financial-information

To recover the costs incurred in taking enforcement action, an invoice will normally be issued and the debt secured on the property as a local land charge and followed up through the Council's standard debt recovery process. The charge will remain as a local land charge until the debt is recovered.

14. How long will the Council give for remedial works to be undertaken?

Unless emergency action is required to reduce an imminent risk of harm, then for most types of enforcement action we are legally required to give a minimum of 28 days before works are required to commence.

In practice, a longer timescale to start and complete works is more likely to be given having regard to:

- The seriousness and nature of the hazard and when it is likely to impact on occupiers (e.g. A requirement for additional heating may not be so urgent during summer months compared to winter months)
- The circumstances of the occupier(s) (if any) and any consideration to their preferences
- The time needed to organise the works and apply for any consents required (e.g. Building Regulations approval or Listed Buildings consent)
- The extent and nature of the works and subsequently the time needed to complete the works
- The likely cost of the works
- Whether the responsible person has a number of properties with similar hazards and a hazard reduction programme can be planned across those properties

15. What are the consequences of failing to comply with enforcement action?

Where a Housing Act notice or order has not been complied with, the following options are available to the Council:

1. Undertake the work on behalf of the person responsible (with or without their consent – known as Works in Default) and invoice them for the cost of the work and for the cost of arranging and overseeing that work and/or
2. Prosecute the person or company responsible, which could result in an unlimited fine and further legal sanctions
3. Issue a Civil Penalty Notice rather than taking prosecution proceedings, for certain offences
4. Apply for a Banning Order
5. Apply for a Rent Repayment Order
6. Issue a “simple” caution

These options are also available in relation to most of the other types of enforcement action available under other pieces of legislation referred to in this Policy and are described further below.

16. When will the Council undertake works on behalf of the person or organisation responsible for a property (known as Works in Default)?

We will take emergency remedial action where there is an imminent risk of serious harm and the responsible person cannot be contacted or is unable or unwilling to take remedial action quickly enough.

Where the requirements of a Housing Act notice or other notice have not been met to start and/or complete remedial works by a certain date or to an adequate standard, then we will consider undertaking the work in default of the owner or person responsible.

In addition, we will consider undertaking works at the request of an owner if they are unable or unwilling to arrange for the works themselves.

Works undertaken in default of the responsible person will carry an administration charge calculated on officer time spent on the arrangement of the works, plus any additional costs incurred in this work and any professional fees incurred (for example Planning application fees or structural engineers' costs). The total cost of the work and fees is recoverable from the person on whom the notice was served and/or the owner. Please refer to [Schedule 3, Housing Act 2004](#) for further details relating to Housing Act notices.

A local land charge will be secured on the property until the debt is paid and debt collection procedures will be undertaken. The securing of a charge on the property gives the Council the same powers as a mortgagee under The Law and Property Act 1925, including the power to enforce sale to recover our debt. Under some pieces of legislation, the charge secured attracts interest until the debt is paid.

Note that undertaking the work on behalf of the person/company on whom the notice was served in order to address hazardous housing conditions, does not prevent prosecution, the issuing of a civil penalty, or the issuing of a simple caution to that person/company where the circumstances justify both courses of action.

17. When will the Council take action to prosecute or issue a civil penalty notice?

The use of the criminal process to instigate a prosecution or the issue a civil penalty notice is an important part of the enforcement process.

It aims to punish landlords who chose not to comply with their legal obligations, it aims to prevent a recurrence of the offence and to act as a deterrent to others, through the use of positive publicity of such cases.

Taking prosecution action or issuing a civil penalty notice will be the default choice of action considered in response to:

- Breach(es) of the terms of an enforcement notice (e.g. Housing Act Improvement Notice or Prohibition Order)
- Breach(es) of HMO Management Regulations – unless they are minor or there are no aggravating factors, in which case we may send a warning letter asking for the contraventions to be addressed by a certain date.
- Failure to licence a licensable HMO – action may be instigated without prior warning and is presumed where the person responsible for the property owns other licensed/licensable properties
- Breach(es) of HMO licence conditions
- Obstruction and failure to supply information required by law.
- Breaching a Banning Order

In all prosecution cases the Council will look to recover its costs incurred.

When considering whether to take either proceedings, the Council will apply two tests – The Evidential Test and the Public Interest Test.

The Evidential Test

We must be satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge.

A realistic prospect of conviction is an objective test that means that a First-tier Property Tribunal, a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

If the case does not pass this evidential test, it will not proceed, no matter how important or serious it may be.

Where there is sufficient evidence, a prosecution or civil penalty notice will not be commenced or continued by the Council unless it is also in the public interest to do so.

The Public Interest Test

If a case passes the Evidential Test, in deciding whether to proceed and which option to take, we will also consider what is in the public interest having regard to a number of factors, including:

- The seriousness of the offence
- The impact on the occupier's health, safety and wellbeing
- The foreseeability of the offence or the circumstances leading to it
- The intent of the offender, individually and/or corporately
- The history of offending
- The attitude of the offender
- The deterrent effect of a prosecution, on the offender and others
- The personal circumstances of the offender.

We will always consider taking action against both company directors or officers of companies as well as the company itself. This is particularly the case where there are previous convictions or the offence is serious or the director/officer is, or has been, involved with other companies.

Prosecution of a director/officer will also be considered where, for whatever reason, the company is at risk or going into liquidation.

A person who is believed to have committed an offence for which we are considering taking prosecution proceedings or issuing a civil penalty notice, may be formally interviewed under caution in accordance with the requirements of the [Police and Criminal Evidence Act \(PACE\) Code E](#). This will be to establish the facts of the case, the person responsible for any offence and whether there are any circumstances that would influence a decision to prosecute or to impose a civil penalty.

Any formal interview will normally take place at the Council offices and will be conducted under the rules of the Police and Criminal Evidence Act 1984. It will be recorded and the person being interviewed will have the right to be accompanied by a legal representative. In some circumstances PACE by letter may be appropriate.

18. Once the Council has decided that formal action will be taken, how does it decide whether to issue a Civil Penalty Notice or to take prosecution proceedings and how will we determine the level of Civil Penalty to charge?

The [Housing and Planning Act 2016](#) enables the Council to issue a civil penalty as an alternative to taking prosecution for certain offences under the Housing Act 2004.

The burden of proof is the same for issuing a civil penalty as for taking prosecution proceedings .i.e. Beyond reasonable doubt.

The following offences could result in the issue of a civil penalty:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004),
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004),
- Offences in relation to selective licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004) (Rochford does not currently have a selective licensing designation in place)
- Offences of contravention of an Overcrowding Notice (section 139 of the Housing Act 2004),
- Failure to comply with Management Regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004) – for which a separate penalty can be imposed for each offence
- Breach of a Banning Order (section 21 of the Housing and Planning Act 2016)

The maximum penalty that can be imposed is £30,000 for each separate offence, there is no minimum penalty, but the amount to be imposed is determined by the Council in each case. This means that a civil penalty can be imposed for each separate breach of the Houses in Multiple Occupation Management Regulations.

The level of civil penalty for each case will be decided in line with this Policy.

Where we are in a position to prosecute a landlord and a property management/letting agent for an offence, then the civil penalty can be imposed as an alternative on either or both parties. The amount of the penalty may differ for different parties, depending on the circumstances.

We will be minded to issue a civil penalty rather than take prosecution proceedings for the above offences, unless:

- The maximum financial penalty that can be imposed (£30,000) fails to redress any quantifiable financial benefit that has been gained by the commission of the offence.
- Where civil penalties have previously been issued and have had little or no effect on compliance.
- If there is likely to be a difficulty in recovering the civil penalty - such as overseas operators, internet-based companies or those organisations with no legal entity
- Where the offence is ongoing – for example, an HMO licence has not been applied for after a previous civil penalty has been issued or an improvement notice has yet to be complied with after a civil penalty has been issued.
- The offence is a failure to comply with a Banning Order. This offence is punishable in the Magistrates Court by an unlimited fine and prison sentence. Banning Orders are reserved for the most serious offences. If an order is breached, the presumption would be to prosecute rather than to issue a civil penalty. However, if a civil penalty is considered more appropriate to be issued, it would normally be set at the maximum £30,000 to reflect the seriousness of the offence, without following the normal steps below.

The following offences are deemed serious and warrant enforcement action, but do not fall within the remit of Civil Penalties. In these cases, prosecution will be taken:

- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information, such as required by Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or Section 235 Housing Act 2004. It is essential that lawful requests for information by the Council are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
- Obstruction of Council staff in carrying out their powers. The Council regards the obstruction of, or assaults on its staff while lawfully carrying out their duties as an extremely serious matter.

We will have regard to the guidance issued by MHCLG when considering the level of penalty to impose: [MHCLG Guidance Civil Penalties](#)

The guidance requires that the following factors should be considered to ensure the civil penalty is set at an appropriate level in each case:

1. The severity of the offence. The more serious the offence the higher the financial penalty should be.

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

3. The harm caused, or risk being caused, by the offence. This is a very important factor when determining the level of penalty. The greater the harm, or the potential for harm, the higher the amount the financial penalty should be.

4. Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution, whilst 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 failing to comply with their legal obligations

5. Deter the offender from repeating the offence. The ultimate goal of enforcement action is to prevent any further offences being committed and to help ensure that the offender fully complies with their legal responsibilities in future. The level of the penalty therefore needs to be high enough to deter the offender from repeat offending.

6. Deter others from committing similar offences. It is important that landlords and others who may be flouting their legal obligations are aware that the Council will issue civil penalties and see that that this is an action the Council is prepared to take and that the level of penalty is set at a high enough level to deter offending.

7. Remove any financial benefit the offender may have obtained as a result of committing the offence. The principle here is that the offender should not benefit as a result of committing an offence. It should not be cheaper to offend than to ensure compliance with legal provisions.

When the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of penalty for each individual offence will be determined by following the steps below.

Step 1 – Calculate the score

A score is created having regard to this matrix:

Factors	Low seriousness	Medium seriousness	High seriousness
1. Severity of offence (This factor has higher weighting)	Score 5 Low level offence Eg Failure to comply with an Improvement Notice for Cat 2 hazard, or, Minor breach of HMO Management Regulations (such as Regulation 4), or, Failure to licence an HMO – late in submitting a renewal application once	Score 15 Medium level offence Eg Breach of licence conditions, or, Failure to licence an HMO – late in submitting a renewal application on more than one occasion, or, Starting up a licensable HMO and not submitting a licence application until prompted, or, Non submission of an EICR, or provision of an Unsatisfactory EICR with no evidence of works having been completed, as required by a Remedial Notice issued under Regulation 6 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	Score 25 Serious offence Eg Major breach of HMO Management Regulations, or, Failure to comply with an Improvement Notice for Cat 1 hazard, or, Breach of an Overcrowding Notice (s.139) or, Failure to licence an HMO – ignoring reminders to submit application, submitting an incomplete application and not providing documents / payment when requested, or, Submission of an EICR requiring urgent remedial with no evidence of works having been completed under Regulation 6 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
2. Deterrence and prevention	Score 5 High confidence a penalty will deter repeat offending	Score 10 Medium confidence a fine will deter repeat offending	Score 15 Low confidence a fine will deter repeat offending
3. Harm caused or posed to the tenants (This factor has higher weighting)	Score 5 Low level of harm Eg Single family household with no vulnerabilities or members of the vulnerable age group for any relevant	Score 15 Medium level of harm Eg Failure to maintain/clean HMO common parts, or, Failure to comply with an Improvement Notice served under Section 12 (Category 2 hazard), or,	Score 25 High level of harm, or, Tenants in vulnerable age group for hazard present, or, Other tenant vulnerabilities, or, Widespread impact, or,

	HHSRS hazards present, or, Minor inconvenience caused to tenants by breach of licence condition or non-renewal of a licence	The Council's work as a regulator is undermined by the offender's behaviour.	Failure to comply with an Improvement Notice served under Section 11 (Category 1 hazard), or, Failure to maintain or provide fire precautions in an HMO – high risk, or, Breaches of Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
4. Size of business	Score 5 Own or control 1 rental property anywhere in the UK	Score 10 Own or control 2-5 rental properties anywhere in the UK	Score 15 Own or control 6+ rental properties anywhere in the UK
5. Culpability	Score 5 Low culpability: Little fault of offender, Significant efforts had been made to address the issue but were inadequate on this occasion, or, Failings were minor/occurred as an isolated incident. Eg Failure to display information required by legislation	Score 10 Medium culpability: The offence was committed through an act or omission which a person exercising reasonable care would not commit, or, Systems were in place to manage risk, or comply with legal duties but these were not followed. Eg Failure to inspect common parts of an HMO and remedy issues, or, Failure to comply with a notice start date, but works were completed within timeframe given	Score 15 High culpability: The offender intentionally breached or flagrantly disregarded the law, or, Has a high profile and knew that their actions were unlawful, or, Moved a tenant into a property before a known hazard had been remedied, or, Deliberately avoided compliance due to the cost
6. Track record of the offender	Score 5 First time offence. No previous history of non-compliance or enforcement action relating to PSH	Score 10 Second time offence Previous relevant civil penalty within last 2 years under any of: Housing Act 2004, The Smoke and CO Alarm (England) Regulations 2015), or, The property management redress scheme requirements.	Score 15 Second time offence Previous conviction in the Magistrates Court within the last 5 years

Step 2 – Identify the penalty according to the score

The score for each of the six factors are totalled and the total score is found on the chart below. The corresponding penalty is the starting level of penalty to be charged for each individual offence:

Score for each offence	Penalty to be incurred
30 Lowest score for all 6 factors	Up to £5,000
30-35	£6,000
40-45	£8,000
50-55	£10,000
60-65	£14,000
70-75	£16,000
80-85	£20,000
More than 85	£30,000

Step 3 – Obtain financial information on the means/financial circumstances of the offender.

We may undertake credit checks, use information held by Council Tax and Revenues and Benefits, undertake Land Registry checks and use the NAFN subscription service for this purpose, or other online sources of information. We may require information from the offender directly.

We will consider whether the level of penalty set removes any quantifiable financial benefit that has been gained by the commission of the offence and whether the amount meets the objectives of civil penalties as set out in the statutory guidance. It should meet in a fair and proportionate way the objectives of punishment, deterrence's and the removal of gain derived through the commission of the offence.

If the penalty calculated using the above charts is less than the economic benefit gained, then the penalty amount should be adjusted to ensure that it is set at a level which removes the financial benefit (subject to the £30,000 maximum that can be applied.)

When considering the economic benefit gained from the commission of the offence, the following factors will be considered:

- The cost of the works required to comply with the legislation
- Any licence fees avoided
- Rent received v Costs ie. Profit gained for the full period of the non-compliance
- Potential cost of re-housing any tenants by the Council
- Any other factors resulting in a financial benefit

When considering the offence period for failure to licence an HMO, this ends when a licence application has been "duly made". This phrase is not defined in the Act and it is for the Local Authority to specify the requirements of an HMO licence application. We consider an HMO Licence application to be "duly made" when the following have been submitted:

A correctly completed application for an HMO licence
Floor plan that meets the guidance published on our website.
Management agreement (if applicable)
All of the required supporting documentation required to enable us to assess the licence application including; satisfactory gas certificate (if applicable), satisfactory EICR or other satisfactory form of electrical certification, PAT documents (if applicable) satisfactory certification re automatic fire detection and emergency lighting systems (if applicable) and a copy of the current/sample tenancy agreement
Satisfactory proof of address for the proposed licence holder
Satisfactory proof of address for the proposed manager

Any other documents specific to the case
First stage payment fee.

In all instances, it should not be cheaper to offend than to comply with legal requirements.

If setting the maximum £30,000 penalty does not remove the economic benefit of committing the offence, then a prosecution for which the Magistrates Court can impose an unlimited fine, is likely to be the preferred option over the issue of a civil penalty.

In setting the penalty, we may increase or reduce the penalty to be proportionate to the overall means/financial circumstances of the offender.

In setting the civil penalty, the Council may conclude that the offender can afford to pay the penalty unless they supply sufficient financial information or evidence to the contrary.

It is for the offender to disclose to the Council any relevant information to their financial position as this will enable us to determine if they can reasonably afford to pay and the opportunity is given for representations to the Notice of Intent.

As many landlords will own more than one property, it is likely that they will be able to sell or borrow against these assets to pay the penalty. If an offender claims they are unable to pay the penalty and can evidence that they have a low income, after taking into account any mortgages on such properties, we will determine the amount of equity that could be released. We will consider if any of their properties could be sold or financed when assessing their ability to pay the penalty.

Step 4 – Consider whether it would be appropriate to make a reduction

Consider any factors which may make it appropriate to allow a reduction to the penalty.

These may include:

- An admission of guilt – consider the stage in the investigation when the offender admitted their guilt, the circumstances in which they admitted their guilt, if they immediately rectified the issue and the degree of their cooperation with the investigation. This will only be allowed for the first offence. Any subsequent offence will not be subject to any reduction.
- Any impact on innocent third parties by setting the financial penalty, such as the impact of the financial penalty on the offender's ability to comply with the law
- Any impact of the penalty on employment of staff,
- Any impact on the tenant, other customers or the local economy.
- Any significant impact on the work of Housing Options in its duties to prevent and reduce homelessness.

The maximum level of reduction that can be allowed is one third of the calculated penalty. This reduction will only be implemented if the reduced penalty still removes the financial gain from the offence.

Whether the civil penalty will put the offender out of business should be considered, but in some instances, this may be an acceptable outcome.

Step 5 – The Totality Principle

Where the offender is to be issued with more than one financial penalty, we will consider if the cumulative penalty is just and proportionate. If it isn't, the penalty should be adjusted.

There are a number of ways in which this can be achieved. For example:

Where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. We will add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate, we will consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be issued.

Where separate financial penalties are issued, we will ensure that there is no 'double-counting'.

Step 6 – Consideration of penalty being proportionate & reasonable for the offence

In all instances we will consider whether the level of civil penalty calculated is proportionate and reasonable for the offence.

It is recognised that certain offences or circumstances may warrant a lower penalty than that calculated through the above process.

A review of the calculation of the civil penalty will be made by a second officer and by the Environmental Health Manager

The process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty, we will give the person or company notice of our intention to do so by serving a "Notice of Intent". This will detail:

- i) The amount of the proposed financial penalty
- ii) The reasons for proposing the financial penalty
- iii) Information about the right to make representations to the Council

The person or company on whom this is served may make representations to the Council about the proposal within 28 days starting the day after the date on which the Notice of Intent was served. They may provide evidence of their income and profit/loss for the property or other financial information

Representations should be addressed as detailed in the Notice and will be reviewed by the case officer, the Environmental Health Manager and, where considered appropriate, a representative from the Council's Legal services.

In the event of two or more persons being served with a "Notice of Intent" for the same offence, a different level of penalty may be imposed on each party depending on their relative culpability for the offence.

The acceptance of payment of the penalty by one person will not negate the Council's intention to impose the penalty on further persons. Each person served with a "Notice of Intent" is considered individually liable to pay the penalty, therefore, any recipient should take the opportunity to make representations should they consider for any reason that the penalty should not be individually imposed on them.

In the event that the Council has served "Notice of Intent" on two or more persons for the same offence, the Council's decision on consideration of any representations will be based on the individual circumstances of each person/company served. So, a different decision may be made with regard to each set of representations.

If, having considered any representations made (if any) the Council decides to proceed in imposing the financial penalty, a Final Notice will be served. This will detail:

- i) The amount of the financial penalty
- ii) The reasons for imposing the penalty
- iii) Information about how to pay the penalty
- iv) The period for payment of the penalty (28 days from the date of the final notice)
- v) Information about rights of appeal to the First Tier Tribunal
- vi) The consequences of failure to comply with the notice

The Council can, at any time, withdraw either the Notice of Intent or Final Notice or reduce the level of penalty imposed. This will be in the form of a written notice to the person on whom the notice has been served.

Implications of the issue of a civil penalty

The Council will use all existing powers and resources at its disposal to, as far as possible, make an assessment of a landlord's assets and any income they receive (not just rental income) when determining an appropriate level of penalty.

This may include the use of Section 235 Housing Act 2004 (power to require documents to be produced), Housing Benefit and Council Tax information (permitted by Section 237 of the Housing Act 2004), service of a Requisition for Information under section 16 of the Local Government (miscellaneous provisions) Act 1976 and the use of the NAFN subscription service or other information openly available online and on social media.

Payment must be made within 28 days, unless the penalty is appealed to the First Tier Property Tribunal, which suspends the requirement for payment, until the appeal has been determined.

Recovering the civil penalty will be via the county court and county court appointed bailiffs if appropriate. We will also seek to recover the costs of this debt collection action.

All income received via the issue of civil penalties will be used for the Council's statutory functions in relation to enforcement activity in the private rented sector.

The issue of a civil penalty will be taken into account when considering if an applicant for an HMO licence is a fit and proper person to hold that licence. Whilst being in receipt of a civil penalty notice will not automatically lead the Council to determine that a licence applicant is not fit and proper to hold a licence, the reasons for the issue of the civil penalty notice and the extent of the persons involvement with the property will be considered to determine if they are fit and proper to hold such a licence or be involved in the management of the property.

The same considerations will apply if a civil penalty notice is imposed on an existing licence holder or named manager of a licensed HMO, when consideration is being given to whether they are fit and proper persons and if it is appropriate for them to remain as such.

19. When will the Council apply for a Banning Order?

The Council can apply to the First-tier Tribunal for a Banning Order when an offence has been committed as described in [The Housing and Planning Act 2016 \(Banning Order Offences\) Regns 2017](#)

The impact of a banning order is to prevent the landlord from letting housing in England or engaging in letting agency and/or property management work in England. It also means that a landlord is unable to hold an HMO licence such that their property may become subject to a management order.

An application for a Banning Order will be made only for the most serious offenders and we will follow the guidance issued by DCLG when considering when to take this action:
[DCLG Guidance Banning Orders](#).

An application must be made within 6 months of the conviction.

The following factors will be considered in each case:

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.

Deter 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.

Deter 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.

20. When will the Council apply for a Rent Repayment Order?

We will consider applying for a Rent Repayment Order if a person is convicted of a relevant offence and we may consider if a person is not convicted of an offence, for example, if they have been issued with a civil penalty instead of taking prosecution proceedings.

These offences include:

- 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)
- Operating or managing an unlicensed HMO
- Breach of a Banning Order made under Section 21 of the Housing and Planning Act 2016
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

Under the provisions of the Housing and Planning Act 2016, the Authority may choose to apply to the First Tier Tribunal to make a Rent Repayment Order in the event it has sufficient evidence that a relevant offence has been committed.

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant.

Where rent has been paid by Universal Credit or Housing Benefit, an application for a Rent Repayment Order will generally be considered appropriate, to underpin the principle that state benefits should not be used to finance substandard accommodation. The rent would then be repaid to the local housing authority.

If an application for a Rent Repayment Order is to be made, the following factors will be taken into account when considering how much rent the Authority will seek to recover:

a) Punishment of the Offender

This should have a real economic impact on the offender, and the conduct of the offender, offending history and their financial circumstances will be considered

b) Deter the Offender from repeating the offence

The level should be high enough to deter further offences being committed

c) Dissuade others from committing similar offences

d) Remove any financial benefit the offender may have obtained as a result of committing the offence

We will first issue a Notice of Intent stating that we intend to apply for a Rent Repayment Order and consider any representations made during the notice period before determining whether to apply to the Residential Property Tribunal for the Order.

We do not have the resource to assist tenants to apply for a Rent Repayment Order. However, we will signpost tenants to other agencies which may be able to assist them with this process

21. When will the Council issue a simple caution?

A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

The Council can issue a simple caution when all of the following criteria have been satisfied:

- Sufficient evidence must be available to prove the case
- The offender must admit the offence
- It must be in the public interest to use a simple caution
- The offender must be 18 years or over.

If the offender has received a simple caution from the Council for a similar offence within the last 2 years, then a further simple caution will not be offered.

Simple cautions are intended to:

- Deal quickly and simply with certain, less serious offences where the offender has admitted the offence;
- Avoid unnecessary appearance in criminal courts;
- Reduce the chance of offenders re-offending and
- Record an individual's criminal conduct for possible reference in future criminal proceedings.

The reason for issuing a caution instead of taking a prosecution in the courts would commonly be that the offender has no previous history in relation to a minor offence and had done everything in their powers to make amends - such as undertaking the required works.

We will follow the guidance issued by the Ministry of Justice in November 2013 that is applicable to all regulators regarding the implementation of a caution. For more information:

[Ministry of Justice Guidance.](#)

22. What is the Council's approach to tackling Damp and Mould?

The Government has made it clear that tenants should not automatically be blamed for damp and mould. Damp and mould in the home are not always the result of 'lifestyle choices' and it is the responsibility of landlords to identify and address the underlying causes of the problem, such as structural issues or inadequate ventilation.

The Government issued guidance sets out what is expected of landlords. [Understanding and addressing the health risks of damp and mould in the home - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/understanding-and-addressing-the-health-risks-of-damp-and-mould-in-the-home)

Landlords must ensure that their properties have all the measures in place to ensure that damp and mould have been minimised.

Landlords should regularly inspect their properties, remedy deficiencies promptly and ensure that they have a regular programme of maintenance and management.

If a tenant reports damp and mould, landlords should establish the source of the damp, whether there is any defect to the property that is causing it, and then carry out the appropriate remedial work.

The causes of this hazard are varied and often this hazard will co-exist with an Excess Cold hazard as a number of the contributory factors are similar.

The Council's enforcement procedure to complaints alleging damp and mould, or where damp and mould are identified on inspection, will be broadly similar as for all other hazards.

However, certain additional pieces of information may be used to assist in the assessment of the hazard, including the Energy Performance Certificate. We may also use pieces of specialist equipment, such as damp meters, temperature and humidity data loggers and thermal imaging cameras to assist in our assessment.

We may also require a landlord to provide a specialist report from a suitably qualified and competent person to assist us in our consideration of the most appropriate work to be required to remedy the deficiencies causing the hazard.

Action may be taken using the Housing Act 2004 if the damp and mould hazard falls into a banding for which we are minded to take action. The assessment of the hazard of damp and mould, and all hazards under the Housing Health and Safety Rating System, is based on the risk to the potential occupant who is most vulnerable to that hazard. Any particular vulnerabilities or health conditions experienced by the current occupiers cannot be taken into account. However, in determining what action to take, we will use our judgement and the current occupants may influence our choice of enforcement action.

Damp and mould may not score highly enough to fall within a hazard banding that we are minded to take action for under this Policy. However, damp and mould will often co-exist with an excess cold hazard which is more likely to score as a higher Category 2 or a Category 1 hazard which are hazard bandings that we are minded to take action for. Therefore, by requiring works to remove the excess cold hazard, this will also mitigate the damp and mould hazard.

Typical works that may be required to remedy a damp and mould hazard may include:

1. Installing an efficient, controllable and programmable heating system that is appropriate for the dwelling.
2. Improving thermal insulation to the structure including walls, roofs, etc
3. Improving ventilation, including by openable windows, air bricks, trickle vents or mechanical extract ventilation to kitchens, bathrooms/shower rooms.
4. Repairing external structural defects that may be causing penetrating dampness – such as defective rainwater goods and drainage, defective pointing/rendering/roof coverings etc.
5. Installing a damp proof course or membrane.
6. Replacement of internal finishes such as wall and ceiling plaster.

However, if there are no deficiencies noted to the property that are contributing to the presence of damp and mould and there are no improvements that are appropriate to require the responsible person to make, there may still be steps that would be appropriate for the Council to recommend.

An appropriate response may be to:

1. Recommend that the landlord arrange for a fungicidal wash of mould affected internal surfaces of the property, such as walls, ceilings, window reveals etc using a proprietary product following manufacturers' recommended method of use.
2. Recommend that the landlord have a competent person install a suitable positive pressure ventilation system of a capacity and design that suits the property and provides guidance to the occupiers in its use.

Damp and mould growth may also be considered to fall within the definition of Prejudicial to Health and warrant action under the Environmental Protection Act 1990.

23. What is the Council's approach to tackling overcrowding?

Overcrowding or the hazard of Crowding and Space as assessed using the HHSRS is due to a mismatch between the size of the accommodation and the number of residents.

The causes of this hazard are varied but the solution usually involves some or all of the residents moving out of a home.

Where overcrowding has been caused because a family has outgrown the size of its home (due to birth of children or moving relatives into their home) then a likely response is for the Council to serve a Hazard Awareness Notice in recognition of the problem but without placing any obligation on the landlord to take action to reduce overcrowding that they have not caused.

In circumstances where a landlord has caused overcrowding by knowingly permitting too many people to occupy a home, then other enforcement options will be considered to remedy the hazard. Any action that could result in tenants requiring alternative accommodation would be undertaken in discussion with the Housing Options service.

The relevant guidance issued by LACORS will be followed.

24. What is the Council's approach to enforcing the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022?

The Regulations [The Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022](#) require property owners/landlords to:

1. Ensure at least one smoke alarm is equipped on each storey of their properties where there is a room used as living accommodation.
2. Ensure a carbon monoxide alarm is equipped in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers).
3. Ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty

There is Government issued guidance for landlords and tenants here [Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: Guidance for landlords and tenants](#)

We will presume to take enforcement action when these requirements are not met and serve a Remedial Notice. Failure to take action to install detectors within 28 days will result in a £2,000 financial penalty being charged.

25. What is the Council's approach to tackling harassment and illegal eviction?

Whether it is due to ignorance or wilful disregard for the law, there is potential for this problem to increase in Rochford's private rented housing market if demand outstrips supply and rents continue to increase.

The Deregulation Act 2015 [Deregulation Act 2015](#) protects tenants from retaliatory eviction in certain circumstances if they have made a complaint to the Council about their housing conditions.

If a relevant notice has been served by the Council, landlords and managing agents are not able to serve an eviction notice under Section 21 Housing Act 1988, where hazardous housing conditions exist that have resulted in an improvement notice.

If a tenant contacts the Council about an alleged illegal eviction or case of harassment, we will signpost them to other agencies such as Shelter, Citizens Advice or the Police.

26. What additional requirements are there for Houses in Multiple Occupation?

Broadly speaking, a House in Multiple Occupation (HMO) is a house, bungalow or flat that is occupied by three or more unrelated people who share basic amenities such as kitchens and bathrooms. The full definition is detailed within the Housing Act 2004: [Section 254 Housing Act 2004](#)

The Management of Houses in Multiple Occupation (England) Regulations 2006 require owners and managers of all HMOs to undertake regular checks to ensure that HMOs are properly managed and services, communal areas and escape routes in particular are maintained in safe working order and clean condition. The Regulations are here: [HMO Management Regulations](#)

Where there is evidence of a breach of the Regulations, enforcement action will be considered; where breaches are considered serious, are repeated breaches, or are numerous, then the imposition of a civil penalty (per offence) or a prosecution may be considered.

Certain HMOs also require a licence. The mandatory licensing scheme which applies across England and Wales currently requires that all HMOs where five or more unrelated people, forming two or more households, who share one or more basic amenity (e.g. toilets, bathrooms or kitchens) are licenced.

There is more information available on the Council's website including a link to the HMO licence application form <https://www.rochford.gov.uk/houses-in-multiple-occupation-hmo>

In deciding whether to grant a licence, Council's assess whether the applicant/proposed manager(s) is/are suitable to hold a licence and whether the house is reasonably suitable for occupation by the number of occupiers being proposed.

When considering whether the applicant/proposed manager(s) is/are fit and proper to hold a licence, we will consider all factors detailed within Section 66 of the Housing Act 2004. Evidence that the applicant/proposed manager has committed any of the offences detailed within this Section will not automatically suggest that the person is not "fit and proper".

However, more weight would be given to the following offences that could determine a person to not be fit and proper:

- Convictions relating to fraud
- Offences relating to running an unlicensed HMO
- Violent offences
- Convictions for harassment and/or illegal eviction
- A conviction based upon the existence of a significant hazard

More than one contravention or conviction will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious.

Essex Councils have worked together to develop a Code of Practice on Amenity Standards which helps to inform their decisions about whether HMOs are reasonably suitable for occupation by the number of occupiers being proposed. Where HMOs do not meet this code then they are much less likely to be granted a licence.

This is available on the Council's website here <https://www.rochford.gov.uk/houses-in-multiple-occupation-hmo>

Specific controls are also available to enable Councils to serve a notice where rooms in non-licensable HMO are not large enough or the facilities in an HMO are inadequate for the number of people. The notice may prescribe which rooms can be occupied and by how many people or may state that certain rooms are unsuitable to be occupied.

The guidance issued by Lacors, developed in conjunction with various partners, including the Chief Fire Officers' Association, is used by officers to inform their judgement with regard to works required to reduce the hazard of fire in HMOs and all residential properties. This is available here - [Fire safety law and guidance documents for business](#)

27. What steps will the Council take to ensure appropriate standards in all HMOs and to ensure licensable HMOs are licensed?

There is no Article 4 Planning Direction in force in the District, which means conversion of a single dwelling house into a small HMO (with no more than 6 residents) does not require any change of use in planning terms as this falls within permitted development rights under [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#)

However, conversion of a property to an HMO will generally require planning permission if the HMO is to be occupied by more than 6 persons. We will offer advice to property developers on receipt of planning consultations for conversion to HMO use.

We will also offer advice to owners who approach us directly.

The Council has a legal duty to ensure that HMOs within the District that are required to be licensed are licensed. It is a criminal offence not to licence a HMO that is required to be licenced.

A licence application is deemed to have been duly made if the following have been submitted:

- A correctly completed application for an HMO licence
- Floor plan that meets the guidance published on our website.
- Management agreement (if applicable)
- All of the required supporting documentation required to enable us to assess the licence application including; satisfactory gas certificate (if applicable), satisfactory EICR or other satisfactory form of electrical certification, PAT documents (if applicable) satisfactory certification re automatic fire detection and emergency lighting systems (if applicable) and a copy of the current/sample tenancy agreement
- Satisfactory proof of address for the proposed licence holder
- Satisfactory proof of address for the proposed manager
- Any other documents specific to the case
- First stage payment fee.

Licences are generally issued for the maximum 5-year term, unless there are reasons to issue for shorter time period, for example:

- Renewal applications where the applicant has delayed in submitting all required supporting documentation
- There is a history of problems at the property with regard to conditions or facilities or disrepair;
- There is a history of statutory enforcement action against the owner or manager;
- There are concerns about the current or proposed management arrangements for the property;
- The owner, licence holder or manager has unspent convictions other than those considered in the fit and proper person assessment;
- The owner or manager has only made the application as a result of a written warning letter from the Council.

We may work with internal and external agencies to proactively identify new licensable and non-licensable HMOs where resources allow. For example, Council Tax and Planning Enforcement teams.

HMO owners and managers who ignore the requirement to obtain a licence are also more likely to put residents at risk in unhealthy, unsafe or overcrowded conditions. As a result, we will gather evidence and prioritise enforcement action on unlicensed HMOs. Where we find evidence that a licensable HMO is operating without a licence, formal proceedings will be immediately considered against the owner or manager, when in the public interest. This is likely to be the issue of a civil penalty notice

When a licence is issued, conditions will be attached to the licence and these conditions will be monitored. Inspections after a licence has been issued may be undertaken on a risk assessed basis and to monitor licence conditions.

If it is found that a licence holder is failing to comply with any licence conditions, the following action may be taken:

- For a minor first-time breach that doesn't put the residents' health and safety at risk, the licence holder will usually be advised in writing that he is failing to comply with a licence condition and the steps required to remedy the breach.
- If the licence holder fails to comply with this communication, or the breach is considered serious, or this is not the first-time breach of conditions, then prosecution or imposition of a civil penalty may be considered.
- If there is a successful conviction for a breach of a licence condition, or a breach is considered to be serious, or a repeated breach of conditions occurs, the Council may consider revoking the HMO Licence.

HMOs that do not fall within the remit of the mandatory licensing regime may be identified by a landlord approaching us for advice, through a complaint received from an occupier or neighbour or advocate or targeted action. These HMOs will be required to be brought up to appropriate standards. They will subsequently be risk assessed for inclusion within a planned inspection program, staffing resources permitting.

The Housing Act 2004 allows for the introduction of Selective Licensing Schemes and Additional Licensing Schemes. These are not currently considered appropriate to be adopted within Rochford, but this matter will be kept under review.

Our Policy with regard to the refund of HMO licence application fees/part payments is that we will provide a refund if you make a duplicate application or you make an application for an exempted property by mistake.

We will not give you a refund and we will continue to take final payment of the balance fee and determine the licence application if you request to withdraw your application after it has been "duly made". For example, if you have decided since submitting your licence application to sell the property or return it to single family use.

We will not give you a refund if we revoke (take away) your licence or you are refused planning permission for a house in multiple occupation with 7 or more occupiers.

If you cancel your licence before it expires, we cannot give you a refund for any unused time.

28. Caravan Site Licencing

Planning permission must be granted before consideration to licensing a site.

- Upon receipt, the application will be assessed, where incomplete the Council will return the application to the applicant requesting the additional information
- The licence or refusal shall be issued within 6 weeks of receiving a complete and proper application, unless agreement in writing is sought and an extension of time agreed.

- A fee will be charged reflective of the costs incurred in processing the application, the application will not be considered complete until the fee is received.
- The Council has standards site licence conditions for Residential Park Home Sites and Holiday sites and the sites are inspected in general annually or at a frequency dependent on risk to ensure compliance with licence conditions.

Compliance Notices: Residential Park Home Sites

The Mobile Homes Act 2013 allows a Local Authority, where it considers that a park owner is failing or has failed to comply with a site licence condition to serve a Compliance Notice on the park owner listing the steps to be taken to rectify within a specified time, to comply with the requirements of the site licence. The Council will in the first instance will advise in writing that he is failing to comply with the licence condition, if the licence holder fails to comply with this communication a Compliance Notice will be considered.

29. What action does the Council propose to undertake in response to empty homes?

Improving conditions in occupied properties will always be of higher priority than the resource intensive and complex nature of enforcement action generally required to bring empty homes back in to use.

However, a light touch enforcement approach may be used to engage with owners of long- term empty homes to give them advice on their options to bring their property back in to use.

In addition, more formal enforcement action may be considered if the long-term empty dwelling is causing an adverse effect on neighbouring properties or the neighbourhood in general, for example, with an over grown garden or untidy frontage. In such cases, a referral for Planning Enforcement action may be appropriate.

If the property has accumulations on the land that may be prejudicial to health or attract vermin, then a referral for action by the Environmental Protection Team may be appropriate.

If the property is insecure, enforcement action may be appropriate to ensure that the property is made secure.

The Council does have the power to serve an Empty Dwelling Management Order (EDMO), an order that gives the Council the management of a vacant property and allows it to carry out repairs and arrange for it to be let and undertake all of the duties of a landlord. The use of this power is unlikely to be considered a priority. It may only be considered where –

- The property has been vacant for at least 2 years, and
- All discussions with the owner to bring the property back in to use have failed, including the offer of financial assistance or referral on to other agencies, or
- The owner cannot be traced after all reasonable enquiries have been made, **and**
- The property is having a significant detrimental effect on the neighbourhood and is the subject of multiple complaints from neighbouring residents and the detrimental affect cannot be rectified by the use of other enforcement powers.

The use of the EDMO power is extremely resource intensive and not one that would be considered to be a high priority. Each case will be considered on its merits.

30. What sources of information might we use to identify when enforcement activity may be appropriate

Much of our enforcement action will be reactive, responding to service requests from residents or advocates on their behalf.

However, we may also take proactive enforcement action where considered appropriate and we may use a range of sources of information to enable us to identify which properties, property owners/managers to take action against.

We may search and may use the full range of information available on the internet including on social media sources such as Facebook and LinkedIn. This will be undertaken in accordance with the Council's own Policy on the use of social media.

We may use Energy Performance Certificate information which is publicly available here: [EPC Open Data Communities](#)

We may use tenancy deposit data available from the three schemes to identify privately rented properties.

We may use the NAFN subscription service, which may include checks with credit reference agencies and other sources of information to assist in investigating offences.

31. What other agencies may we work with to improve housing standards in the private sector?

We may liaise with the Essex County Fire and Rescue Service when enforcing works to reduce the risk of fire in HMOs and other accommodation.

The Council has signed up to an Essex wide protocol that adopts the approach detailed in the Lacors fire guidance to be taken when enforcing fire standards in residential accommodation.

We may make referrals to, and engage with, the Health and Safety Executive as the enforcing authority with regard to gas safety in residential properties.

We may make referrals to Trading Standards at Essex County Council as the enforcing authority with regard to the provision of Energy Performance Certificates.

We may receive referrals from Citizens' Advice or other advocates on behalf of residents that need our assistance and we may also sign post to these agencies.

We are increasingly working with our health and social care partners to receive referrals regarding housing conditions on behalf of occupiers and we may make referrals to those agencies to ensure the holistic needs of occupiers are met.

We may liaise with both UK Border Force Immigration Enforcement and the Gangmasters' and Labour Abuse Authority regarding non-UK Nationals who may be living in overcrowded or otherwise unsuitable housing.

We may work with Essex Police where appropriate.

Where appropriate, enforcement activity may be planned and co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of enforcement.

We may work with other Council Services who may also make referrals to us, for example Planning enforcement regarding the inappropriate conversion of a property or Council Tax regarding change of

use to an HMO. We may also receive intelligence from other Local Authorities regarding concerns about landlords operating in their area that may also have properties within Rochford District.

We may work with the Councils Housing Options Service to ensure that our activity is coordinated with theirs.

We may also inspect properties being used by Rochford Council Housing Options Service to house people on a temporary or longer-term basis within the private rented sector, to ensure those properties meet required standards.

32. What rights do I have if I am facing enforcement action under this Policy and how can I contact the Private Sector Housing team?

You have a right to discuss the Council's involvement with your property with the relevant officer.

They may be contacted by email, telephone or by letter. Their contact details will be included in any correspondence they send you.

Email: privatesectorhousing@rochford.gov.uk

Telephone: 01702 318050

In writing: Rochford District Council South Street Rochford SS4 1BX

In person: Currently we do not have facilities to meet you in our offices in person.

If you have been served with a legal notice or order, you may have grounds to make an appeal to the Courts and Tribunals Service against enforcement action if you consider it has not been taken correctly. The notes accompanying each type of enforcement action set out the grounds for an appeal, how to make an appeal and the timescales in which this can be made.

33. Quality of Service and how to offer feedback or complain

The Private Sector Housing team aims to provide a professional and efficient service within the resources available within the team.

As with any other aspect of service provided by the Council, if you wish to make a comment, compliment, offer feedback or if you are dissatisfied with the way in which your case has been handled and wish to make a complaint, here is how to do this: <https://www.rochford.gov.uk/comments-compliments-and-complaints-procedure>

34. Publicity and Rogue landlord database

The Council will consider publicising any conviction, banning order or civil penalty notices which could assist in drawing public attention to the need to comply with legal requirements, or to deter others from non-compliance.

To assist other agencies, we will add details to the MHCLG rogue landlords' database of persons against whom a banning order has been made, or who have been convicted of a banning order offence or who have received two or more financial penalties over a 12month period.

35. How will the Council review this Policy?

This Policy will be subject to ongoing review to ensure that the Council is able to make effective use of its legal powers to reduce the incidence of accidents and ill-health arising from unsafe or unhealthy housing conditions. We will take into account:

- Tribunal decisions, especially higher-level Tribunals
- Magistrates' Court decisions
- Changes in legislation
- Emerging good practice and learning from the outcomes of corporate complaints
- Opportunities to work with partner organisations
- Local intelligence and data which helps to better target our resources

36. Privacy Notice

Information obtained in connection with our enforcement activity will be stored, used and retained in accordance with our Privacy Notice available on the Council's website here : www.rochford.gov.uk/privacy-notice-environmental-health

Appendix 1: Summary of Legal Requirements for Safe Letting

	Legal Requirement	Penalty	Other legal implications	
1.	Fire safety - Working smoke detectors must be installed on every floor level within the home	Up to £5,000 fixed penalty for failure to comply with a remedial notice		
2.	Carbon Monoxide Safety - Carbon monoxide detectors must be installed in all rooms where there is a combustion appliance, other than gas cooker	£5,000 fixed penalty for failure to comply with a remedial notice		
3.	Gas safety - A landlords gas safety inspection must be undertaken each year on all gas appliances supplied with the accommodation and the certificate must be provided to tenants (including new tenants at the start of a tenancy)	Subject to criminal conviction, fines and/or 1 year imprisonment	<p>For tenancies granted since 1 October 2015:</p> <p>A breach of any of these requirements will also invalidate a section 21 “no-fault possession notice”. This means that eviction may not be legally possible if you require possession of the property</p>	
4.	Electrical Safety – An Electrical Installation Condition Report to be obtained prior to occupation and every five years.	Up to £30,000 financial penalty for non compliance		
5.	EPC - An energy performance certificate must be provided to prospective tenants before any tenancy agreement is signed. (Does not apply to houses in multiple occupation with individual tenancies)	£200 fixed penalty		
6.	Deposit protection - The tenancy deposit must be protected in a government approved scheme	Compensation of up to 3 times the deposit		
7.	Before the tenancy starts tenants must be provided with the Government’s booklet “How to rent: the checklist for renting in England” available here How to Rent			
8	Health and Safety Hazards - The home must not present any significant health and safety hazards when assessed using the Housing Health and Safety Rating System (HHSRS).	Subject to initial enforcement notice fee. Further penalties for failure to comply – Civil Penalty or Prosecution with unlimited fines		
9	HMOs - Additional requirements apply to homes that are shared by 3 or more people who are not all members of the same family (known as Houses in Multiple Occupation or HMOs). These include The Management of Houses in Multiple Occupation (England) Regulations 2006 . These are strict requirements which reflect the increased landlord responsibility for this type of letting and help to control a variety of management problems.	Civil Penalty or Prosecution with unlimited fines.		Section 21 “no-fault possession notice” is invalid where an HMO which requires a licence is not licensed.

