

Calderdale Council

Housing Enforcement Policy

Revised: January 2023

**THE HOUSING ENFORCEMENT POLICY FORMALLY RECEIVED APPROVAL
FOR ISSUE ON:**

Monday 10th July 2023

Introduction

Local housing authorities are the primary enforcement agency for ensuring the protection of the health, safety and welfare rights for occupiers of and visitors to dwellings within England and Wales. For Calderdale Council, this responsibility resides with Environmental Health, which is part of the Community Protection Team within the Public Services directorate (“the Service”).

Authorised Officers within the team have both duties and discretionary powers to take enforcement action, using a range of legislation to address issues arising from all types of dwellings (e.g., houses, flats, bedsits, houses in multiple occupation (HMOs) etc.) and tenures (e.g., owner-occupied, private rented, social housing etc.).

Aims of the Policy

This enforcement policy aims to:

- demonstrate the transparency of enforcement with respect to dwellings in the borough of Calderdale, comprising the townships of Brighouse, Elland, Halifax, Hebden Bridge, Sowerby Bridge and Todmorden, by outlining legal requirements, policies and principles that owner-occupiers, landlords, letting and managing agents, and tenants must adhere to, when Officers regulate housing-related legislation.
- improve housing conditions and raise the standard of property management
- assist in the provision of safer, healthier, affordable, and warmer dwellings to enable people within Calderdale to benefit from healthy housing and environments.
- contribute to the growing housing demand by helping to bring empty domestic dwellings into use.

Equality statement

The Council is committed to treating everyone fairly and all enforcement decisions will be fair, independent, and objective. A priority for Environmental Health is to improve the standards in private rented accommodation that is occupied by the most disadvantaged persons.

What is enforcement action?

Enforcement in the simplest sense is the process of ensuring that a law or rule is met or complied with. For the purpose of this Policy, it means an action carried out by the Council using prescribed statutory powers. Enforcement is not limited to formal action, such as a prosecution or service of a legal notice. It includes inspections, investigations, and a range of other interventions such as the provision of advice and assistance, with the aim that ensures service users comply with regulatory requirements.

Enforcement objectives

The primary objectives of this enforcement policy are to ensure that:

- all dwellings, including houses in multiple occupation (HMOs), privately owned homes, homes within the private rented sector, and accommodation provided by registered providers of social housing, are free from actionable hazards* that affect the health and safety of the occupant or any visitor.
- private rented accommodation and tenancies are managed in accordance with relevant statutory requirements.
- privately rented accommodation meets minimum energy efficiency ratings.
- all licensable properties are licensed, and all licence conditions are met.
- Empty properties are tackled with the aim of addressing security, visual amenity, and statutory nuisance issues, to help to return them back into occupation.
- Owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety or to the environment or neighbourhood.
- Lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice.
- That appropriate, proportionate, and where necessary, robust, interventions will be taken in accordance with this policy and relevant statutes and statutory instruments to ensure that occupants of domestic dwellings, as much as reasonably practicable, are protected from unscrupulous landlords' or their agents.

*An "actionable hazard" is one that has been assessed to be a Category 1 or Category 2 hazard using the Housing Health and Safety Rating System (HHSRS) under the Housing Act 2004 and the Housing Health and Safety Rating System (England) Regulations 2005. The Council has a duty to act where Category 1 hazards are identified, and a discretionary power in respect of Category 2 hazards. The Council will take enforcement action where there is a significant risk to the health and safety of the occupiers.

Regulators Code

The Legislative and Regulatory Reform Act 2006 (the 2006 Act) requires the Council to have regard to the Regulators Code, produced by the Better Regulation Delivery Office in April 2014, when developing its policies and procedures to guide regulatory activity.

This enforcement policy has regard to the Regulators Code in that it:

- follows the principles of good regulation defined in the 2006 Act, in that regulatory activities are carried out in a way that are transparent, accountable, consistent, proportionate to risk and targeted at cases where action is required.
- supports businesses to comply and grow.

- provides simple ways to communicate and share information amongst regulators to reduce duplication.
- provides clear information and guidance.

Enforcement Approach

Officers within Environmental Health and the Community Protection Team have investigative and enforcement powers relating to all dwellings regardless of tenure. However, the approach taken by the Service will vary depending on the tenure of the household.

Private landlords and tenants

Tenants within rented accommodation do not have the same level of control of their homes as owner-occupiers. They are reliant on landlords or their agent to adequately maintain their homes in accordance with legal requirements. The Council will take enforcement action where required against landlords or agents who are putting the health and safety of their tenants at risk, or in circumstances where conditions are causing serious issues to neighbouring property.

Owner-occupiers

Owner-occupiers are usually in a position to make informed decisions about maintenance or safety issues in their own homes. Formal enforcement action therefore against this tenure group is intended be limited, unless there is an apparent risk of harm or a threat where life is endangered. Officers would always aim to provide owner-occupiers with appropriate advice and recommendations as to how they can mitigate any hazards identified. In cases, however, where there is a severe risk to the health and safety of occupiers, or where there are conditions that have the potential to cause significant issues to neighbouring property, the Council may take formal action against owner-occupiers.

Registered Providers (RPs)

These are usually housing associations, being a private, non-profit making organisation that provides low-cost social housing for people in need. The standards to which these organisations adhere is the Decent Homes Standard, which has been present since the early 200s and which was reviewed in 2021. Their performance is scrutinised by the Homes and Communities Agency and by the Housing Ombudsman. RP's have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure. Consequently, Environmental Health will not normally take enforcement action against an RP, unless the problem in question has been properly reported to the RP who has then failed to take the appropriate action. The Council will consider enforcement action against an RP where there are significant risks to health and safety of tenants and/or the wider public.

Shared enforcement and primary authority

Officers may work with other services within the authority, such as: Planning and Building Control Services; Welfare and Benefits Service (particularly Council Tax); Housing Options; Public Health, locality and anti-social behaviour teams, as well as other enforcing authorities who also have powers to take enforcement action. These other regulatory authorities may include:

- Other local authorities
- The Health and Safety Executive
- The Home Office
- UK Visas and Immigration
- West Yorkshire Fire and Rescue Service
- West Yorkshire Joint Services
- West Yorkshire Police

In circumstances where shared enforcement or joint working is required, Officers will ensure that investigations are undertaken by the most appropriate enforcing authority.

Enforcement action is undertaken in accordance with agreed protocols and will involve the relevant authority or service in the investigation information gathering and sharing to ensure that it is carried out effectively.

Officers will have regard to the Data Protection Act 1998 (the DPA) and the principles of the General Data Protection Regulation (GDPR) when handling all manual and computerised personal data. Any access to information from the Council can be requested in accordance with the Freedom of Information Act 2000 and the DPA.

Where a business has registered with a Primary Authority under the Regulatory and Enforcement Sanctions Act 2008 for legislation which this service is enforcing, the Council will comply with these Primary Authority requirements.

Reactive inspections

The main source of work that is investigated by this Service comprises Officers undertaking reactive inspections following receipt of a complaint or referral from a partner or enforcement agency concerning unsatisfactory housing or overcrowded conditions. Complainants may be owner-occupiers, tenants, Social Workers, Police Officers, Firefighters, neighbours etc... These will typically be in circumstances where initial communications between Environmental Health and the landlord, agent or owner have not successfully resolved the issues for the complainant.

There will be circumstances where an inspection may be undertaken in the first instance, for example where:

- there appear to be significant risks to the health and safety of occupiers and visitors.
- the tenant or prospective occupier is vulnerable.
- the issues are complex or involve one or more neighbouring properties.
- there is a poor history of compliance with legal requirements for housing conditions and/or management practices.

- the property is empty.
- a financial application is involved.
- the property is recommended for use by homeless persons or refugees.

Where an inspection is undertaken, Officers will assess compliance with all enforceable legal requirements, including a risk assessment under the Housing Health and Safety Rating System (HHSRS) and also licence conditions where relevant. This may involve referrals to other agencies or other Council departments.

The HHSRS identifies 29 hazards within dwellings which range in likelihood and may cause potential harm outcomes. Each hazard identifies the vulnerable group which may succumb to a harm outcome, as outlined in Figure 1 below. Environmental Health will have regard to these vulnerabilities when undertaking an HHSRS assessment within a dwelling.

It is the Council's aim to action requests for service and investigate complaints within appropriate timescales. Complaints or requests for service can be received from:

- tenants or occupiers.
- the general public.
- property letting and managing agents.
- referrals from other Council services.
- referrals from other agencies.

Environmental Health may be able to act on anonymous complaints, but not as rigorously as perhaps would occur if the complainant were able to identify themselves. However, officers have a commitment to investigate complaints which comprise elements of vulnerabilities or issues which have any safeguarding concerns, even if the complaint is anonymous. Additionally, for lower priority matters, relevant information from anonymous sources will be recorded in case of receipt of any future complaints.

Figure 1: Vulnerable groups identified for some of the 29 Hazards under the provisions of the HHSRS.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years

Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Proactive inspections

Inspections will be carried out by Officers on a pro-active basis in private rented accommodation that is subject to HMO licensing requirements under Part 2 of the Housing Act 2004, for assessing compliance with:

- Licence conditions and licensing evasion.
- Legislation relating to housing conditions, including for example, the HHSRS, drainage and refuse.
- Legislation relating to property management.
- The Council's adopted standards.

For landlords and agents with large property portfolios, only a proportion of properties within their ownership or under their control will initially be inspected. Further inspections will be carried out should areas of non-compliance be found.

When repeated hazards and issues are identified, we will undertake:

- Inspection of all homes within a defined geographical area, including properties owned by RPs, for which all owners will be notified in advance at the start of the initiative. Through a combination of property inspections, liaison with owner-occupiers and working with partners, this proactive approach aims to improve housing and the standard of housing management. This initiative aims to bring empty homes back into use as well as making social, financial, and environmental improvements to areas whilst creating stronger and more stable communities.
- Inspections of property owned or managed by landlords or agents who have a poor history of compliance with legal requirements for housing conditions and/or management practices. This may include identifying those with a previous history of enforcement action, lack of engagement with the authority or where there is intelligence about breaches in legal requirements from other partner agencies. The aim of this proactive intervention is to target resources for improvements to housing conditions and tenancy management, as well as creating more sustainable tenancies, particularly for vulnerable tenants.
- Inspections in areas to identify licensable properties, empty homes, poor housing conditions and environmental matters that are detrimental to a neighbourhood or locality.
- Inspections according to property type, mode of occupation, low energy efficiency rating as stated in an Energy Performance Certificate; overcrowded

conditions and also properties occupied by low-income tenants in receipt of certain benefits, including Universal Credit or Local Housing Allowance.

- Investigations to establish whether or not a letting agent or property manager has joined one of the two Government-approved Property Redress Schemes.

Licensing

Mandatory Licensing of Houses in Multiple Occupation

Mandatory requirements for licensing only apply to buildings, generally houses or blocks of flats, that are in multiple occupation (i.e., the building or part of the building is a house in multiple occupation (HMO)). Under current legislation, a landlord or agent must apply to the Council for a license for each residential property which has:

- Five or more occupiers living in two or more households.
- Two or more households share one or more amenities, such as kitchen, living room or bathroom or toilet facilities.

This enforcement policy will also apply to any properties which become HMO properties as a result of any future legislative changes.

Where the Council becomes aware of a licensable property operating without a licence, there will be a presumption to take formal action, such as the issue of a Civil Penalty Notice, or instigation of legal proceedings for a prosecution. Officers will start with a position of zero tolerance for serious offences or clear contraventions or breaches of legislation, and each case will be considered on its own merits. In these circumstances, the Council will remove entitlements to any fee discounts under the CPN regime.

Where landlords have been prosecuted for operating an unlicensed property, the Council will consider the use of Rent Repayment Orders and/or a Banning Order. Rent Repayment Orders can be used to claim back any local housing allowance paid whilst the property was unlicensed, up to a maximum of 12 months' rent.

Tenants can also be provided with information and advice on how they can apply to the First-tier Tribunal (Property Chamber – Residential Property) to claim back the rent they had already paid, for the duration that the property was unlicensed, up to a maximum of 12 months.

Duration of HMO licences

Licences will normally be granted for a full five-year period for mandatory licensing schemes. However, for landlords who are late in making a licence application or who are found operating a licensable property without a licence, these will be issued a reduced-term licence, or will be considered for prosecution. Additionally, where a landlord has applied for an HMO licence but the property does not have the benefit of

having planning approval, then a reduced-term licence for a period of 12 months may be issued to allow planning approval to be obtained.

Where a mandatory HMO license is issued, the Council will publish the details of the license holder (name, address) and the property details (property address, number of occupants and units allowed) on a register which is accessible to the public. A fee will be imposed on anyone who wishes to be provided with a copy of the Register.

The Council may refuse to issue a licence to the applicant or proposed manager of a residential premises. An example of this can be where the manager or applicant is deemed to not be a fit and proper person. Also, a licence will be refused in circumstances where the accommodation is not capable of being operated as a licensable HMO.

The Council may vary a licence, either by agreement with the licence holder or on its own decision, where it considers that there has been a change of circumstances since the licence was granted.

A licence will be revoked following a change in ownership, death of the licence holder, or by agreement with the licence holder if the property is no longer licensable. Additionally, the Council may revoke a licence if the licence holder or manager is no longer deemed to be a fit and proper person.

Conditions listed on a licence cover the provision of amenities and property management standards and include specific timescales for compliance. They also include the number of persons or households that are permitted to occupy a property.

Formal action will be taken where there are serious contraventions of licence requirements.

The Council will consider serving a Management Order in respect of residential premises where there is no reasonable prospect of an owner or landlord being identified as being responsible for controlling or managing the property. This action is available for both licensable and non-licensable residential premises.

A Management Order can be used in very serious circumstances, where it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity, or where there is anti-social behaviour that is affecting the neighbourhood.

Fire Safety Protocol

The Community Protection Team engages in partnership working with a range of agencies under a variety of circumstances. This Service's primary aim is that we intend to ensure that occupants of dwellings are safe within their home.

Calderdale Council's Environmental Health Services, Building Control Services and West Yorkshire Fire and Rescue Authority have partnership responsibility for fire regulation in buildings within the borough. The Housing Act 2004 is enforced by Environmental Health. Building Control Services regulate municipal buildings and

sports grounds etc. using the Building Regulations 2000 (as amended), and West Yorkshire Fire and Rescue Authority regulate the provisions of the Regulatory Reform (Fire Safety) Order 2005 and the Fire Safety Act 2021, amongst other legislative provisions.

This Service has responsibility for regulation of fire safety hazards and elements in dwellings (domestic properties), including houses in multiple occupation, as defined within the Housing Act 2004. West Yorkshire Fire and Rescue Authority have regulatory responsibility in complex (multi-occupied) residential buildings, workplace and non-domestic premises, and higher-risk workplace buildings.

Whenever any enforcement action is considered by this Service, Officers will consult West Yorkshire Fire and Rescue Authority where there are elements of overlap of enforcement responsibility.

Enforcement

Delegated Authority

Officers carrying out enforcement functions have been authorised by the Council in accordance with the Director of Public Services sub-delegation scheme. Each officer within the Community Protection Team will carry identification and be in possession of the legal Authorisation to undertake all duties specified in this policy.

Any revisions of this Policy are to be undertaken by the Principal Environmental Health Officer or the Community Safety Partnership Manager, and any suggested changes will then be offered for comment through consultation before final approval from the Director of Public Services.

Enforcement Actions

The Housing element of Environmental Health offers an opportunity to work informally with landlords, agents, owners, and service users by providing a range of information and guidance. In cases where there has been a complaint about a private rented property or empty home, and where it is the first contact about property standards, the service will normally notify responsible parties and/or will provide an inspection report outlining breaches in legal requirements.

The purpose of these contacts is to enable responsible landlords, agents, and owners to comply with regulatory requirements and agree to undertake the works required by the authority in a short timescale.

The Service aims to establish good management practices from the outset that ensure compliance with regulatory requirements for property standards, and that this approach continues throughout each subsequent tenancy.

All powers available to the Service will be used in order to meet the enforcement objectives set out in this policy. Enforcement action can be separated into three levels, as outlined below. Decisions will be made by competent and authorised officers in accordance with guidance as to the most appropriate course of action to be taken.

Different types of enforcement action may be undertaken in relation to any given case depending on legislation used. In some instances, multiple actions may be taken as the case progresses through the different stages of the regulatory process.

For situations where landlords, licensees or owner-occupiers are broadly compliant, enforcement action will be limited, remaining within the “Level 1” category, and may include but not be limited to the sending of advice letters, provision of copies of reports and assessments, or the service of Hazard Awareness Notices. Where there is non-compliance with legal requirements after an informal approach has been made, formal action will be taken as described in levels two and three. Where there are serious breaches in legal requirements, the Council will take a more formal approach in the first instance and may move immediately to level two or three when appropriate and it is proportionate to do so.

To safeguard the health and safety interests for occupiers, visitors and members of the public, formal action will also be considered in the first instance where:

- the property is located in a targeted priority area or is a specific house type.
- the landlord or owner has previous history of non-compliance with legal requirements.
- the landlord, agent or owner has previously been made aware of their legal responsibilities through letters and reports for other properties.

In a small number of cases, there may be circumstances where a decision is made to not take formal action. For example, this can happen:

- where there are low risks to the health and safety of occupiers, visitors or members of the public.
- where there are special circumstances regarding the person against whom the action would be taken.
- where legal action would be disproportionate or inappropriate, taking into account the circumstances of the case.
- where the tenant does not want action to be taken and a decision is taken that it is not appropriate to take any further action at that time, given the circumstances present.

Harassment, Illegal Eviction, and Retaliatory Eviction

Where the Service becomes aware of allegations or offences about illegal eviction or harassment that threatens the tenant’s rights in their tenancy, a referral will be made to Calderdale’s Housing Options Team, and the tenant would be asked to consider also seeking independent legal advice.

The landlord or agent will be investigated and where appropriate, enforcement action, including potential prosecution, will be considered.

Examples of circumstances that would merit investigation include examples of where the landlord or agent:

- entered the property without the appropriate prior notice.
- disconnected the property's utility supplies.
- changed locks to the premises.
- attempted to terminate a tenancy without serving the appropriate legal notice.
- attempted to terminate a tenancy as a result of retaliatory eviction, when a tenant has made a complaint of poor property conditions to their landlord, which is then substantiated by Environmental Health and an Improvement Notice is served or Emergency Remedial Action is taken.
- illegally evict the tenant(s) from the property without having a possession order from the courts and when court-appointed bailiffs are not involved.
- any other breach of the Protection from Eviction Act 1977.

Enforcement Levels

This Service will escalate interventions according to seriousness and the likely harm impacts of a landlord's, owner's, letting agent's (etc.) activities upon a complainants' situation. In the first instance, the tenant and the landlord are encouraged to resolve the differences themselves without any intervention by the Council. Different types of intervention comprise provision of advice, sending initial letters, or the service of notices.

Level 1 – informal enforcement action, which comprises providing advice and information, education, and informal action, and occurs through the exchange of correspondence with landlords, owners, agents and tenants in a range of situations. It can also include production of inspection 'advisory letter' prior to a full housing inspection being undertaken.

Level 2 – formal enforcement action issued by the local authority, which is when either formal notices will be served, or a form of action will be taken in situations where:

- the Council has a duty to serve a notice or take a specified action.
- statutory requirements have been breached.
- remedial action needs to be taken quickly.
- an owner, landlord or agent has a history of non-compliance.
- a property has actionable hazards that create risks to an occupier's or visitor's health and safety.
- there is a long-term empty property.

In cases where an officer decides it is more appropriate to take formal enforcement action without first giving an opportunity to resolve the issue informally, the officer will explain to the person(s) concerned the reasons for this decision.

Where notices and orders are served, the Council will provide copies to other interested parties, such as the occupier, mortgagee, freeholder, leaseholder, or agent in accordance with the specific legislative requirements.

Certain notices, orders and charges are required to be registered as a local land charge and whilst the matter is outstanding, these will be disclosed to any prospective purchaser making a local land search.

There are a number of different types of formal notices, licenses, warnings, and charges that can be issued by the Council:

- A formal notice, order or licence could be served to require works or actions to be undertaken in accordance with specified legislative requirements and timescales.
- Notices to recover costs and expenses incurred by the Council in taking enforcement action will be served in connection with Housing Act 2004 notices served for the recovery of costs and expenses.
- Power of entry notices will be served when access is required to residential premises at a specified date and time.
- Notices requiring information or documents will be served to require prescribed documents of information to be supplied.
- An Emergency Prohibition Order (EPO) will be served under the provisions of the Housing Act 2004 to immediately prohibit use or occupation of premises or part of a premises where there is a serious or imminent health and safety risk. Where an EPO is served, the Service will work with partner agencies and colleagues to place vulnerable tenants into alternative temporary accommodation, whilst supporting them to find their next secure, safe home. Sanctions will be imposed upon the landlord where such action is taken.
- An Emergency Remedial Action Notice will be served where serious, urgent emergency works are required to be undertaken immediately by the Council via works in default. Costs incurred by the Council in taking this action will be recovered from the recipient of the Notice after time has elapsed after the works have been completed.
- Revocation or variation of an improvement notice, prohibition order or emergency prohibition order will be served to vary or revoke the terms of a previously served enforcement notice or order.
- Revocation, variation, or license refusal notices will be served where revocation, variation, or refusal to licence a premises is necessary to protect or safeguard occupants.

Notices will be served by the Service to impose either a civil or monetary financial penalty to require payment in situations where there are breaches of legal requirements or where offences have been committed.

Works in default may be undertaken by the Service in certain circumstances, primarily to protect the occupant(s) health, safety, or wellbeing, and to ensure compliance with legal requirements. Costs incurred by the Service in taking this action will be recovered. Additionally, the Service will impose an administrative charge for any formal Notice served where applicable.

Failure to comply with legal requirements, such as a formal notice, will likely result in a Level Three intervention. Before considering an intervention at this level, the investigating officer will consider the appropriate actions available for the relevant legislation.

Level Three – this category comprises formal enforcement action which may require the involvement of courts or tribunals, or for offences or hazards serious enough to endanger life or cause significant harm and would merit consideration to issue a Civil Penalty Notice as an alternative to a prosecution, a prosecution could be sought.

A Simple Caution could be issued by the Council where offences have been committed, considering the circumstances of the case. Mitigating factors may be presented which influences the discretionary choice to issue a Simple Caution as an alternative to prosecution. The Simple Caution carries no financial penalty and may be offered to offenders for their first offence, for example.

A Compulsory Purchase Order and enforced sale could be used by the Council to resolve the issue of a long-term empty property where it is causing blight and statutory nuisance in an area. It is used only where there is a proven demand for the house type in a particular area. A sale of the property can then be imposed to recover unpaid debts incurred by the Council for undertaking essential repair works in default.

Management Orders and Empty Dwelling Management Orders may be served by the Council where no responsible person can be identified to manage a privately rented or empty home.

Criminal prosecution in either the Magistrates' court or Crown Courts may occur where there is a flagrant breach of the law, non-compliance with a legal notice or legal requirements, or where there is a history of non-compliance and for serious offences where there is a community benefit.

Warrants to enter premises may be sought from the Magistrates Court for officers to enter premises by force, in a range of situations, if required.

A Rent Repayment Order may be sought from the First Tier Tribunal for the repayment of rents received where there has been an offence or breach of legislative requirements.

Proceeds of crime actions may be sought from the courts for confiscation of items from an offender. Civil recovery of proceeds from criminal acts may also occur.

An injunction may be sought from the courts to prevent certain actions, activities or threats being carried out by a specific person.

Criminal Behaviour Orders could also be issued by the courts to take specific actions where harassment, alarm or distress is proved.

A Banning Order could be sought. A Banning Order is an order issued by the First-tier Tribunal following application from a local authority that bans a landlord or his/her associates from participating in a wide range of housing responsibilities, depending on a particular set of circumstances.

Housing Enforcement Activities

Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require landlords to have the fixed electrical installation within rented properties inspected at least every five years.

Typically, initial contact with the landlord will be made to ascertain if the relevant inspection and testing has occurred and seek evidence of this. A letter, requiring this information within 7 days will usually be sent.

Where this is not forthcoming, leaves doubt or it is believed a breach has occurred, then the Council will consider the most appropriate course of action, which may include any or all of the following options:

- Serve a Remedial Notice – requiring the landlord to undertake remedial action to remedy hazards, which may involve electrical testing, and obtaining and supplying a certificate to the Council.
- Carry out Remedial Action or Urgent Remedial Action, with consent from the tenant, and recover costs from the landlord. Remedial Action may only be carried out if the landlord fails to comply with the Remedial Notice.
- Issue a Civil Penalty.

The Private Rented Sector (England) Regulations 2020 also allow the costs incurred by the Council in carrying out Remedial Action or Urgent Remedial Action to be recovered. The costs incurred will include the cost of any contractor's labour, parts, and the officers' time taken to take this action.

A landlord may only appeal against the recovery of costs on the grounds that they had taken all reasonable steps to comply, or reasonable progress had been made towards compliance when the notice of intention to enter and take remedial action was served. An appeal must be lodged with the First Tier (Property Chamber) Tribunal within 21 days of the demand for recovery of costs being served. Landlords are therefore encouraged to keep records of what steps they have taken to secure compliance so that they are able to share this with the Council prior to considering recovery of costs or taking enforcement action.

Part 1 of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) is also relevant to electrical safety standards. Enforcement action under this Act may include serving a notice requiring the landlord to undertake remedial action to remedy hazards, which may involve electrical testing, and obtaining and supplying a certificate to the Council. Where a breach or offence is open to a penalty under the 2004 Act and the electrical regulations, then the most appropriate legislation will be used.

Empty Homes

It is a key priority for the Council to reduce the number of empty homes in Calderdale, particularly those that are long-term empty. Empty homes present a wasted resource, particularly with the shortfall in housing supply, as well as creating barriers for sustainable communities where deteriorating property conditions can attract anti-social behaviour.

The Community Protection Team will assist the Empty Homes Officer in encouragement to owners of private sector empty homes to bring their properties back into occupation through letters, advice, and financial assistance. This includes referrals to third sector partners to assist in bringing the property back into use.

Where informal action is unsuccessful, the Service will consider using a range of enforcement measures described in Levels 2 and 3 of the Enforcement Action which can include:

- The service of a statutory notice.
- Arrangement for works to be carried out in default.
- Service of an Empty Dwelling Management Order (under the provisions of Part 4 of the Housing Act 2004).

We will assist the Empty Homes Officer, where required, to undertake

- Enforced sale (under the provisions of the Law of Property Act 1925) or a
- Compulsory Purchase Order action (under Part 2 of the Housing Act 1985).

Energy Efficiency

The Domestic Minimum Energy Efficiency Standards (MEES) Regulations set a minimum energy efficiency level for domestic private rented properties. The Regulations apply to all domestic private rented properties that are both let on specific types of tenancy agreement (namely, either an assured tenancy, a regulated tenancy or a domestic agricultural tenancy), and which are legally required to have an Energy Performance Certificate (EPC).

Since April 2020, a prohibition on letting properties includes all properties which are subject to a specified tenancy and which have an energy performance certificate that is either F or G rated, unless specific exemptions apply.

Non-compliance with the Regulations includes both letting property in breach of the Regulations, and/or if any false or misleading information has been registered on the PRS Exemptions Register.

If the property is compliant, no further action will be taken.

If a landlord is believed to have breached the Regulations, a compliance notice will be served, within 12 months of the suspected breach, requesting information from the landlord.

A compliance notice may request information on any of the following:

- The EPC that was valid for the time when the property was let.
- The tenancy agreement used for letting the property
- Information on energy efficiency improvements made
- Any Energy Advice Report in relation to the property
- Any other relevant document

Calderdale Council will check to see if a property is in breach of the Regulations where it is privately let or the landlord registered an exemption and provided false or misleading information. If an officer is able to confirm that a property is or has been let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months.

The maximum penalties amounts apply per property and per breach of the Electrical Safety Regulations. For Calderdale Council, these amounts are:

- Up to £2000 penalty and/or publication for renting out a non-compliant property for less than three months
- Up to £4000 penalty and/or publication for renting out a non-compliant property for three months or more
- Up to £1000 penalty and/or publication for providing false or misleading information on the PRS Exemptions Register
- Up to £2000 penalty and/or publication for failing to comply with a compliance notice.

The maximum amount that can be imposed per property is £5000 in total.

Right of Review and Appeal

Where a penalty notice is served, if a landlord does not agree with receipt of it, Calderdale Council can be asked to review the decision. If satisfied that the landlord is in breach of the Regulations, Calderdale Council may serve a penalty notice on the landlord and publish details of the breach:

Following any review, one of two possible outcomes will be determined:

The penalty will be withdrawn if the review decides in the landlord's favour or
The penalty notice will be upheld.

The penalty notice will be withdrawn if:

- New evidence shows that a breach had not occurred
- A breach had occurred, but evidence is provided which shows that the landlord took all reasonable steps to avoid the breach
- The circumstances of the case determine that it was not appropriate to issue a penalty.

If the penalty notice is upheld, a landlord may appeal to the First-tier Tribunal if they think that:

- The penalty notice was based on an error or an error of law
- The penalty notice does not comply with a requirement imposed by the Regulations
- It was inappropriate to serve a penalty notice because of particular circumstances.

Either the Tribunal will find in the landlord's favour and the penalty will be withdrawn, or the Tribunal reject the appeal and the penalty is upheld.

If the penalty is upheld, the landlord may then choose to pay the penalty, at which point no further action is taken, unless further breaches occur, or they may choose to not pay the penalty, in which case Calderdale Council will take debt recovery action.

Filthy or verminous properties

There are three ways in which Environmental Health are contacted by complainants or agencies which helps to identify a filthy and verminous dwelling:

- Strong odours, visible pests, flies or maggots, or mouldy curtains or dirty net curtains in the windows of a dwelling
- An enquiry or contact from a caring neighbour, friend, or family member about the way that an occupant of an affected property presents themselves when in public.
- Contact from someone who has cause to assist the occupant, be they a Social Worker, health care professional, engineer from a utility company, etc. – basically, anyone who crosses the threshold of the front door of a dwelling and has a cause to be inside.

The use of the term “filthy or verminous” is described but not defined within the Public Health Act 1936. However, “filthy” is regarded to mean that the premises or articles within it are soiled with faecal material, (animal or human is not specified), and “verminous” means that the property is infested with vermin.

Environmental Health will support the clearance and cleansing of a filthy or verminous property via works in default, after serving notice on the owner and occupier of the affected property. Rodent treatment will also be applied to free the property from pests. The costs associated with the service of the noticed and the consequential works in default will be recovered from the recipients of the Notice. Where a person or persons is/are living in filthy or verminous dwellings, all remedial options to improve the dwelling to a reasonable standard will be considered, including relocation of the

occupant(s) on either a temporary or permanent basis, with the support of other services.

Prosecution of the occupant and/or owner is legally possible, but this is not done for three reasons. Firstly, the Council is inclined to help anyone in that situation and will seek to ensure that the individual has further support for any mental or physical health needs. Secondly, it is not in the public interest to prosecute someone in those circumstances. Finally, the level of fine that can be imposed upon affected individuals is insignificant so that to pursue a prosecution is not cost effective.

Hoarding

According to the National Health Service, hoarding is now regarded as a disorder in the UK and occurs where someone acquires an excessive number of items, which can be of little or no monetary value, and stores them in a chaotic manner, usually resulting in unmanageable amounts of clutter.

Hoarding is considered a significant problem if the amount of clutter interferes with everyday living, for example, the person is unable to use their kitchen or bathroom and cannot access rooms, either easily or at all.

Additionally, it can be so significant that the clutter is causing significant distress and is affecting their quality of life, or people who live with or surround them. The individual with hoarding tendencies may become upset if someone tries to clear the clutter and the relationship between the individuals suffers.

The clutter can pose a health risk to the person and anyone who lives with them or visits their house. Hoarding can occur in any type of tenure, and frequently occurs in owner-occupied properties.

For example, it can make cleaning very difficult, leading to unhygienic conditions and may encourage rodent or insect infestations. Piles of materials can pose a fire risk, in the sense that the hoarded materials may not only be flammable, but also prevent ease of access or exit or means of escape in the event of a fire. Additionally, piles of hoarded materials may cause trips and falls, and restrict mobility through a dwelling. Finally, if the piles of materials are so significant, and heavy in weight, they can either collapse on people, or cause structural failures in dwellings with floors which may not be strong enough to take the weight, particularly if the property has not been maintained. Maintenance of significantly hoarded properties is extremely difficult because it may be impossible to physically check the condition of the structure (walls, floors ceilings etc) or the services or utilities within the dwelling (gas, water, electric).

There is a multi-agency approach to involvement in a hoarded property may be to use the tools available within the Housing Act 2004, the Public Health Act 1936, and the Prevention of Damage by Pests Act 1949 to seek clearance of the property via works in default after the service of Notices under the aforementioned legislation. Similar to other enforcement scenarios, the Council will seek to recover costs incurred for undertaking works in default, which sometimes can be significant. Where an individual is unable to pay for the works, the Council will seek to secure a charge upon the property which can be recovered at a later date.

The issue is complex, but once a property has been cleared of the hoarded materials, the next stage is to clean the property and undertake any rodent treatments that may be required, and then assess the property using the HHSRS with a view to serve further notices to then repair any defects within the dwelling such that the hazards are reduced to an acceptable level or eliminated.

In addition to taking physical action to clear, clean and fix a dwelling or buildings or structures associated with the property, Environmental Health Officers subsequently work with various partner agencies both within and outside of the Council to ensure that affected individuals obtain the support that they need, and hopefully prevent recurrence. Examples include mental health services, West Yorkshire Fire and Rescue Service, Social Services, amongst several others.

Overcrowding in Single and Multiple Occupancy Dwellings

Environmental Health will investigate complaints about overcrowded conditions from:

- private rented sector tenants complaining about their own property.
- other parties where they are concerned about children or vulnerable adults.
- other parties where there are significant conditions that are genuinely impacting on a neighbour's health, safety, or welfare.

In certain circumstances, advice may be given to the occupiers that their health and safety is at risk from the overcrowded conditions, but no enforcement action will be taken against the landlord.

Where enforcement action is taken that requires tenants to move out of a property, Environmental Health will liaise with the Council's Housing Options Team who will be able to give advice and, in some circumstances, assistance on their options for alternative accommodation available. There is also an option to suspend certain enforcement notices for a period of time depending on the circumstances.

Property Redress Scheme

All letting agents or property management businesses are legally required to be a member of one of the two government-approved property redress schemes.

Where a letting agent or property manager is identified as not being registered with one of the schemes, then a monetary penalty will be imposed by the Council. The charges are described in the Environmental Health fee structure.

Notices will be served on an organisation prior to a monetary penalty being issued.

The agent or manager has the right of appeal to the First Tier (Property Chamber) Tribunal.

There is no limit to the number of fines that can be levied on a single letting agent or property manager if they continue to fail to be a member of a scheme.

Recovery of Costs as a result of Enforcement Action

The Council will make a reasonable charge to recover administrative and other expenses incurred when taking enforcement action under the Housing Act 2004 (the 2004 Act) or other relevant legislation. We will aim to publish details of the relevant fees and charges on the Council's website. This will include when specified notices are served, or actions taken which includes:

- serving an Improvement Notice under section 11 and/or 12 of the 2004 Act;
- making a Prohibition Order under section 20 or 21 of the 2004 Act;
- taking Emergency Remedial Action under section 40 of the 2004 Act;
- making an Emergency Prohibition Order under section 43 of the 2004 Act;
- making a Demolition Order under section 265 of the Housing Act 1985;
- taking Remedial Action or Emergency Remedial Action under Regulation 6 or Regulation 10 of the Electrical Safety Standards in the Private Rented Sector Regulations 2020.

Any charges made for taking enforcement action will be detailed in a "Demand for Payment" notice which will accompany the enforcement notice(s) and could be sent to multiple owners or occupiers of properties which have been subject to enforcement action. The charge(s) will be recovered through the Council's Financial Services.

Charges made under the Housing Act 2004 are registerable as a local land charge and land charge on the Land Charges Register and with the Land Registry.

Work in Default

The Council may under certain circumstances undertake work in default where there has been non-compliance with a statutory notice. Any action taken would be in accordance with legislative requirements and may be taken either with or without the consent of the responsible person.

The Council will recover the actual capital costs for the work and an administrative charge to recover costs incurred in arranging for a contractor, supervising the works and all associated administrative procedures.

Where applicable, the Council will register costs incurred in undertaking default works as a local land charge against the premises. These administrative charges are described in the Environmental Health fees and charges webpage.

Normally, the responsible person will be given notice of the Council's intention to carry out works in default, although in emergency situations the relevant legislation provides that no prior notice is required before undertaking works in default.

The Council will consider taking enforcement action in cases where Officers or contractors are obstructed in undertaking their duties or from carrying out works in default. The same obstruction offences still apply once emergency procedures have commenced.

Works in default may be undertaken in addition to instigation of legal proceedings.

Additionally, where any monies owed to the Council arising from any intervention from the Council exceeds £500, due to administration costs for serving a notice, for having to undertake works in default, or for non-payment of fines or fixed penalties, the Service will seek recovery of the monies and reserves the right to take appropriate steps to do so.

Simple Caution

A Simple Caution may be issued where there is enough (i.e., the same amount of) evidence that would be needed for a prosecution because should a person choose not to accept a Simple Caution, prosecution will be the alternative. Simple Cautions will be issued where there is sufficient evidence, but the offender has provided some mitigating factors which allow flexibility in the decision, or for circumstances where the public interest test has perhaps not been met.

Any decisions to give a simple caution will be made in accordance with guidance issued by the Ministry of Justice – Simple Cautions for Adult Offenders (2015).

Civil Penalty Charges

Civil Penalty charges may be imposed by the Council as an alternative to prosecution in respect of specified offences under the Housing Act 2004 and breaches of duty under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Before deciding to impose a Civil Penalty, the Council must be satisfied beyond all reasonable doubt (i.e., the criminal standard of proof) that the offence or breach of duty has been committed by the identified individual or company.

The decision about whether to impose a Civil Penalty or to bring a prosecution for a particular offence will be determined on the merits of each individual case and will be fully authorised by a senior manager. Any Civil Penalty applied will be in full compliance with the Civil Penalty Policy and applied according to Environmental Health's fee structure.

Where a Civil Penalty is not paid within the prescribed period, legal proceedings will be implemented.

Civil Penalty Notices

Civil Penalty Notices, as introduced by the Housing and Planning Act 2016, require particular consideration because of the sum of fine that can be imposed which is determined by the seriousness of any offence or offences committed. Officers shall have regard to statutory guidance issued under the provisions of section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016 when exercising their functions in respect of civil penalties. A Civil Penalty Notice can only be issued where both the evidential and public interest tests are met.

Civil Penalty Notices may be issued where:

- There has been failure to comply with an Improvement Notice served under the provision of section 30 of the Housing Act 2004;
- There has been a breach of section 72 of the 2004 Housing Act causing HMO licensing offences;
- Offences in relation to licensing of houses under section 95 of the Housing Act 2004) have been committed;
- There has been a contravention of an overcrowding notice, as defined by section 139 of the Housing Act 2004;
- There has been a failure to comply with management regulations in respect of Houses in Multiple Occupation under the provisions of section 234 of the Housing Act 2004;
- There has been a breach of a Banning Order as described within section 21 of the Housing and Planning Act 2016.

Any action is taken on a case-by-case basis, having regard to this Housing Enforcement Policy, and with consideration of relevant guidance from the Department for Communities and Local Government.

Where a civil penalty is proposed, the penalty sum (to a maximum of £30,000 per offence) shall be determined in accordance with this Policy, statutory guidance, and proceeds derived from the issuance of civil penalties can be used to carry out further housing enforcement.

Deciding on the level of civil penalty.

Civil penalties can comprise sums of up to £30,000 per offence, with this maximum penalty being reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence as well as consider the landlord's previous record of offending. Additionally, the factors that Officers will consider when deciding on the appropriate level of civil penalty intended to be imposed include:

- **Severity of the offence** – the more serious the offence, the higher the penalty will be.

- **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 obligations, and/or their actions were deliberate, and/or they knew or ought to know that they were in breach of their legal responsibilities.
- **The harm caused to the tenant** – the greater the harm or the potential for harm, the higher the amount will be when imposing a civil penalty. The harm caused, and the vulnerability of the individual, are important factors in determining the level of civil penalty.
- **Punishment of the offender** – a civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at high enough a level to ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence** – the ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in the future. The level of the penalty should therefore be set at high enough level such that it is likely to deter the offender from repeating the offence.
- **Deter others from committing similar offences** – while the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the locality will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that a) the Council is proactive in levying civil penalties where the need to do so exists, and b) that the civil penalty will be set at high enough level to both punish the offender and deter repeat offending.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence** – the guiding principle here should be to ensure that the offender does not benefit as a result of committing the offence, i.e., it should not be cheaper to offend than to ensure that a property is well-maintained and properly managed.

Fig. 1 Determination of starting point of level of Civil Penalty

Level of Culpability	Level of Harm			Minimum Fine Level (£) (inclusive of mitigating factors)
	High	Medium	Low	
High	£25,000	£15,000	£7500	£6000
Medium	£15,000	£10,000	£5000	£4000

Low	£7500	£5000	£2500	£2000
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Adjustments to the starting point of the Penalty due to Aggravating and Mitigating Factors

In order to determine the final penalty, both aggravating and mitigating factors in each case will be considered as a means of adjusting the starting penalty. The list of factors to be considered as part of the determination, include one or more items in the lists below.

Aggravating factors:

- Previous relevant convictions and time elapsed since those convictions
- Motivation of financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of non-compliances – the greater the number, the greater the aggravation
- Record of letting substandard accommodation
- Record of poor management or inadequate management provision
- Lack of a tenancy agreement/rent paid in case.

Mitigating Factors

- Co-operation with the investigation
- Voluntary steps taken to address issues (such as the submission of a licence application)
- Acceptance of responsibility or guilty plea at earliest opportunity
- Willingness to undertake training
- Willingness to join a recognised landlord accreditation scheme
- Health reasons preventing reasonable compliance (e.g., mental health impairments, unforeseen health issues, emergency health concerns)
- No previous convictions or formal interventions
- Vulnerability that is linked to the commission of the offence
- Good character and/or exemplary conduct.

These lists are not exhaustive, and other factors may be considered depending on the circumstances of each case.

For each aggravating or mitigating factor, the level of fine may be adjusted by 5% of the starting fine point, up to the maximum £30,000 or to the minimum fine for each determined level of culpability and harm as illustrated in Fig. 1 above. The only exception to this principle will be if the number of non-compliances exceeds five, in which case the adjustment will be a 10% alteration for each factor over and above five offences.

Totality Principle

If a civil penalty is issued for more than one offence, or for cases where the offender has already been issued with a financial penalty, consideration will be given regarding whether the total penalties are proportionate to the offending behaviour. Where the offender is issued with more than one civil penalty, the following principle will apply.

The financial penalty for each individual offence will be determined based on the seriousness of the offence and considering the circumstances of the case including the financial status of the offender so far as they are known or appear to the Council.

Officers will add up the financial penalties and identify if they are just and proportionate. If they are not, a number of ways will be considered which will allow just and proportionate penalties to be imposed. When determining if a civil penalty is just and proportionate, the following will be considered:

- Impact of the civil penalty on the offender's subsequent ability to comply with the law
- Impact of the civil penalty on a third party – e.g., employment of staff etc..
- Impact on the offender – is it proportionate to their means, will they lose their home, etc.

If a landlord has a portfolio of properties and indicates that they are unable to pay a civil penalty or demonstrate only a minor income, consideration of other properties they own which can be sold or refinanced will be given.

Additionally, the amount of the civil penalty imposed must never be less than what it would have cost the landlord to comply with the legislation in the first place. So, when determining any gain as a result of the landlord committing the offence, the Council will consider the following:

- Cost of the works required to achieve compliance with the relevant legislation
- Any licence fee payments that have been avoided
- Property rental income that has been received by the landlord during the period of non-compliance
- Any other factors resulting in a financial benefit – e.g., the potential costs to the Council for the rehousing of any tenants.
- As a deterrent, the costs incurred by the Council during the course of the investigation.

Representations and appeals are built into the legal process, and these will be highlighted in any relevant correspondence and notices.

All decisions regarding how the civil penalty was determined, including application of adjustments because of aggravating and mitigating factors will be included within any calculation to identify the civil penalty final notice sum.

Banning Orders

The Housing and Planning Act 2016 provided powers which permit local authorities to seek banning orders, which came into force on 6th April 2018, where landlords or property agents have been convicted of a banning order offence.

Banning orders are aimed at “rogue landlords” who flout their legal obligations and rent out accommodation which is substandard. Banning orders will be sought and used for the most serious offenders. Where the Council becomes aware that a landlord has committed a relevant offence, the investigating officer will apply to the First-tier Tribunal for a banning order.

A breach of a banning order is a criminal offence.

Banning order offences are listed in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 and comprise a multitude of offences under the provisions of one or more sections of the following Acts and Order:

- Protection From Eviction Act 1977
- Criminal Law Act 1977
- Housing Act 2004
- Regulatory Reform (Fire Safety) Order 2005
- Health and Safety at Work etc. Act 1974
- Immigration Act 2014
- Fraud Act 2006
- Criminal Justice Act 2003
- Misuse of Drugs Act 1971
- Proceeds of Crime Act 2002
- Protection from Harassment Act 1997
- Anti-social behaviour, Crime and Policing Act 2014
- Criminal Damage Act 1971
- Theft Act 1968.

Having a spent conviction (under the provisions of the Rehabilitation of Offenders Act 1974) or being in receipt of an absolute or conditional discharge for a relevant housing offence cannot be regarded as preliminary requirements to a banning order offence.

If a person has committed a serious criminal offence, they must have been sentenced in the Crown Court in order for that offence to be regarded as a banning order offence. Additionally, certain offences are only banning order offences where the offence can be linked to the tenant or other occupier, or the property owned or rented out by the landlord.

A banning order is an order imposed by the First-tier Tribunal and bans a landlord or corporate body, for a minimum of 12 months, from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work or
- Doing two or more of these things.

A landlord subject to a banning order is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order. The landlord is also prevented from transferring the property to any of the following persons whilst the banning order is in force:

- A person associated with the landlord (including family members, spouses and civil partners)
- A business partner of the landlord
- A person associated with the business partner of the landlord
- A business partner of a person associated with the landlord
- A body corporate of which the landlord or a person mentioned above is an officer
- A body corporate in which the landlord has a shareholding or other financial interest or
- In the case where a landlord is a body corporate, any body corporate that has an officer in common with the landlord.

Where a landlord disposes of a property to a prohibited person without the consent of the First-tier Tribunal, that disposal will be regarded as void.

What happens to tenancies following a banning order?

A banning order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the banning order was made. This is to ensure that an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

There may be circumstances where, following a banning order, the management of the property is taken over by the local housing authority and in such circumstances, the tenant(s) would pay their rent to the local housing authority,

Considerations

The factors that Calderdale Council will consider when deciding whether to seek a banning order include:

The seriousness of the offence. All banning order offences are serious. When considering whether to apply for a banning order, the Council will consider the sentence imposed by the Court in respect of the banning order itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made.

Previous convictions/rogue landlord database entry. The Council will check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords that are running a business should be aware of their legal obligations. For

example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance could also be considered.

The Council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors include:

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 for example.

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 them 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 the future. The length of the ban should therefore be set at long enough a period whereby it will likely deter the offender from repeating the offence.

Deter others from committing similar offences. An important part of deterrence is the realisation that the Council 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 high enough a level to both punish the offender and deter repeat offending.

Rent Repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent, formed under the provisions of Chapter 4 Part 2 of the Housing and Planning Act 2016. The maximum amount of rent that can be repaid is capped at 12 months' worth. The rent is repaid to either a tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was partially paid by the tenant with the remainder from either Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid accordingly. The amount to be repaid to the local housing authority will be determined in accordance with section 45 of the Housing and Planning Act 2016.

The Service will apply for a Rent Repayment Order where there has been

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004

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

A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences outlined above. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application has been made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

Where a conviction under a relevant offence has occurred the First-tier Tribunal must order that a full 12 months' worth of rent must be repaid. Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:

Punishment of the offender. Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that this Service will consider include the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has been convicted of previous similar offences.

Deter the offender from repeating the offence. The level of penalty should be set high enough such that it is likely to deter the offender from repeating the offence.

Dissuade others from committing similar offences. Rent repayment orders are imposed by the First-tier Tribunal and the fact that someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

Remove any financial benefit the offender may have obtained as a result of committing the offence. This is an important element of rent repayment orders. The landlord is forced to repay rent, and thereby loses much, if not all, of the benefit accrued by them in not complying with their responsibilities.

Where appropriate, this Service will give consideration to either imposing a civil penalty or seeking a prosecution, and to an application for a rent repayment order for the relevant offences, which also includes offences in relation to the licensing of HMOs under section 72(1) of the 2004 Act, and to offences in relation to licensing of houses under Part 3 (section 95(1)) of the same Act.

Rent repayment orders can only be applied for against the person who is paid the rent in responsibility for the tenancy. A rent repayment order cannot be sought against a managing agent or “head tenant” unless they are the landlord of the property and entitled to keep the rent.

The amount of rent to be repaid can never be more than the amount of rent that was actually paid over the previous 12 months. This applies regardless of whether rent was paid from the tenant’s own resources or through Housing Benefit or Universal Credit.

If a landlord is dissatisfied, they may appeal the decision of the First-tier Tribunal to the Upper Tribunal provided that permission to appeal has been granted by either Tribunal.

If a landlord refuses to pay a rent repayment order, this Service will refer the case to the County Court for an Order of that Court. If necessary, this Service may use county court bailiffs to enforce the order and recover the debt.

Any income received from a rent repayment order will be retained by this Service and be used to further the Service’s statutory functions in relation to the enforcement activities covering the private rented sector, as specified in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

Prosecutions

Cases will only be recommended for a prosecution once the Council has:

- confirmed the appropriateness of the cases for legal proceedings and that there is sufficient, admissible and reliable evidence that an offence has been committed by one or more identifiable individuals or a company and that there is a realistic prospect of conviction, based on the evidential and public interest tests.
- confirmed compliance with the Regulators Code.
- determined that prosecution is the preferred course of action rather than a Civil Penalty based on the merits of the individual case.
- considered specific legislative requirements, enforcement procedures and this enforcement policy.

Regard will be made to the evidence and statutory defences available and the public interest tests as to whether the case should be pursued further, as described in the Code for Crown Prosecutors. Cases are usually heard in the Magistrates Courts.

A final assessment is carried out before a case is referred to the Council’s Legal Services, with the final decision being taken by the Service following advice from Legal Services.

Fines, recovery of costs and proceeds of crime

In prosecution cases where the defendant is found guilty by the courts, unlimited fines can now be imposed. In addition, the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file, attendance at court, and Legal Services' costs for preparing and presenting the case.

In cases where a property has been let illegally, or where there has been a breach of legal requirements, the Council will consider applying to the First Tier (Property Chamber) Tribunal to recover rent from a landlord through a Rent Repayment Order if the rent was paid for through Housing Benefit. Environmental Health will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

Where there is substantial financial gain for a landlord or owner through non-compliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the provisions of the Proceeds of Crime Act 2002.

Publicising outcomes

Verdicts and sentences in criminal cases are given out in open court and are a matter of public record. Evidence suggests that the public want to know about the outcomes of local court cases. This information is also a legitimate way of engaging communities and making criminal justice services more transparent and accountable.

The Council will publicise the outcomes of criminal cases and basic personal information about the convicted offender, in accordance with guidance issues by the Criminal Justice System (Publicising Sentencing Outcome, (CJS 2001). The reasons are to:

- reassure the public;
- increase trust and confidence in the criminal justice system;
- improve the effectiveness of the criminal justice system;
- discourage offending and/or reoffending.

Formal appeals

Where a statutory notice or order is served, or a licensing decision is made, the method of appealing the decision will be included within the documentation provided. This will include the full postal address and contact information for the relevant appeal body and the relevant time period to submit an appeal.

To reduce the potential for unnecessary appeals, clear reasons will be given, wherever possible, to a person against whom enforcement action will be taken. On request, these reasons will be confirmed in writing at the earliest opportunity and will include information about any relevant complaint or appeals procedure.

All formal appeals made will be responded to in accordance with statutory time limits and with advice from the Council's Legal Services.

Compliments and complaints policy

The Council recognises the need to provide an excellent public service which is responsive to the views of both residents and businesses. We are therefore committed to continually improve the private rented sector and other housing stock in Calderdale and want service users to provide feedback which may be used to improve our services further.

As required by the Regulators Code, the Council has a compliments and complaints procedure which allows all service users to give a compliment, give feedback or make a formal complaint. This can be accessed by completion of a Feedback Form accessible through the Council's website, which must be sent to the Complaints and Compliments Team, or by telephoning Customer First on (01422) 288001.

Through the complaints and compliments procedure, it is the aim that complaints are resolved speedily, effectively, and fairly. The tone of our contact is open, responsive and avoids unnecessary formality. Our written correspondence uses plain English and where appropriate, will be backed up with action to resolve such complaints.

If a complainant is not satisfied at the end of the complaints process, the matter can be raised with the relevant ombudsman service.

Appendix 1: List of Consultees

This policy was made available for consultation with the following agencies:

Internal:

- Adults Services and Well-being
- Building Control Services
- Executive Members for Housing
- Housing Services
- Legal Services
- Planning Services
- Public Health
- Welfare and Benefits Service

External:

- Calderdale Landlords Association
- National Landlord Association
- Residential Landlord Association
- The Community Safety Partnership
- West Yorkshire Combined Authority
- West Yorkshire Fire and Rescue Authority
- West Yorkshire Joint Services
- West Yorkshire Police

Appendix 2: Legislation described or considered within this enforcement policy:

- Anti-social behaviour Crime and Policing Act 2014
- Building Act 1984
- Deregulation Act 2015
- Energy Act 2013
- Enterprise and Regulatory Reform Act 2013
- Environmental Protection Act 1990
- Highways Act 1980
- Home Energy Conservation Act 1995
- Homes (Fitness for Human Habitation) Act 2018
- Housing Acts 1985, 1996 and 2004
- Housing and Planning Act 2016
- Housing Grants, Construction and Regeneration Act 1996
- Landlord and Tenant Acts 1985 and 1987
- Legislative and Regulatory Reform Act 2006
- Local Government and Housing Act 1989
- Local Government (Miscellaneous Provisions) Acts 1976 and 1982
- Local Government Act 2003
- Noise Act 1996
- Prevention of Damage by Pests Act 1949
- Protection from Eviction Act 1977
- Public Health Acts 1936 and 1961
- Regulatory and Enforcement Sanctions Act 2008
- Sustainable Energy Act 2003
- Town and Country Planning Act 1990

including any Regulations and/or Orders made under these Acts.

Appendix 3: Guidance (statutory and non-statutory) described within this Enforcement Policy.

Department for Business, Energy & Industrial Strategy (2020). The Domestic Private Rented Property Minimum Standard. Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*, as amended.