

	GRAVESHAM BOROUGH COUNCIL HOUSING SERVICES	Version: 1
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1. Introduction

The council has responsibilities to ensure that accommodation in the private rented sector meets minimum housing management, health and safety standards and to deal with landlords and letting agents that fail to meet those standards

2. Purpose statement

This policy sets out the council's approach to enforcing relevant legislation relating to private rented sector accommodation within the borough of Gravesham.

3. Policy Aims

3.1 The council's aim in respect of the above functions is to:

- set out the legal requirements, policies, principles and priorities that the Private Housing Service will follow when enforcing legislation
- help provide safer and healthier private housing to protect and improve the quality of life for the residents of Gravesham
- increase public confidence in the quality and management of accommodation
- raise the profile and demonstrate the transparency of enforcement in the private rented sector
- improve the energy efficiency of private rented sector accommodation

3.2 This policy is designed to:

- ensure consistency of approach and enforcement
- enable officers to make reasoned decisions regarding enforcement
- inform the public of the principles by which enforcement action is determined and subsequently taken
- ensure that, as a signatory to the Government's Enforcement Concordat, the council has a relevant (and periodically reviewed) policy in place for the private housing function

4. Scope of the Policy

The Private Sector Housing Team has responsibilities that include:

- assessment of hazards in residential premises under the Housing Health and Safety Rating System (HHSRS)
- statutory nuisance affecting residential properties
- standards of repair, amenities and fire precautions, and management in Houses in Multiple Occupation including licensing of properties within the mandatory licensing scheme

5. Policy statement

Enforcement means an action carried out in exercise of or against the background of enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, and application for a rent repayment order or the issue of civil penalty notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.

- 5.2 The Government has introduced legislation that gives the council the option to impose a financial penalty of up to £30,000 as an alternative to prosecution for certain housing offences. These new powers were introduced to help local authorities take more enforcement action against rogue landlords. (See Appendix 1 – Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016)
- 5.3 Local authorities are entitled to retain any monies collected, provided they are used to fund private sector housing enforcement functions. However, before any financial penalties can be issued, statutory guidance requires the council to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty, and the level of financial penalty it should impose in each case.
- 5.4 The council can impose such penalties for offences that occur on or after 6 April 2017. The offences for which a financial penalty can be imposed are:
- Failing to comply with an Improvement Notice;
 - Failing to licence a house in multiple occupation (“HMO”);
 - Knowingly permitting the over-occupation of a licensed HMO;
 - Failing to comply with the condition of an HMO licence;
 - Failing to comply with an overcrowding notice in respect of a non-licensable HMO;
 - Failing to comply with HMO management regulations; and
 - Breaching a banning order.

6. Enforcement Objectives

The Private Housing Service primarily covers all privately owned residential accommodation and privately owned land. In normal circumstances enforcement action will be carried out with the objectives to ensure that:

- tenants of a private landlord or a Registered Provider of Social Housing (RP) live in homes free of actionable hazards which affect their health and safety
- privately rented houses, including Houses in Multiple Occupation (HMOs), are managed in accordance with any relevant statutory regulations or other legal requirements
- reasonable and practicable steps are taken to prevent or reduce any anti-social behaviour by the occupiers or visitors to privately rented properties
- all licensable rented properties are licensed and licence conditions are met
- owners or occupiers who are vulnerable and unable to support independent living, live in accommodation which is free of significant risks to their health and safety
- owners or occupiers of privately owned land or property do not cause a statutory nuisance to other land or property owners, or do not present an unacceptable risk to public health, safety or the environment

7. General Principles of Policy

- 7.1 The council seeks to avoid bureaucracy and unnecessary expense. However, the council recognises that it is a regulator and that it must act properly, promptly and

efficiently where there is a contravention of a statutory requirement – particularly when compliance cannot readily be achieved by means of informal action or advice.

- 7.2 When premises which are in poor condition are identified the council will normally consider the case for drawing this informally to the attention of the owner. This informal opinion will normally be provided in writing. Such written opinion would include an explanation of:
- the remedial action which in the council's opinion is needed and the timescale in which the council considers the action needs to be taken
 - why the council considers remedial action needs to be taken and the nature of the enforcement action the council might be required to take in the future if the advice is not followed
- 7.3 Enforcement officers will use their skill, knowledge, experience and judgement to decide how individual cases should be dealt with and whether a situation should be resolved by informal means or by formal proceedings. Those officers will take advice from colleagues and senior officers where appropriate and will have due regard to this policy.
- 7.4 The council exercises discretion in accordance with this policy in undertaking other actions. Enforcement will be carried out with due regard to the circumstances of the individual or business, and to ensure that the rights of individuals and organisations are safeguarded. Enforcement will be carried out without prejudice and human rights issues will be properly considered and enacted. There will be a consistency of approach towards enforcement.
- 7.5 The council's enforcement activity is predominantly focused on private rented properties; however there are circumstances when the council will intervene in owner occupied properties; such as when the property is having an adverse effect on neighbouring properties. As indicated above the council must take action where it is brought to its attention that a property contains a category 1 hazard or is causing a nuisance. A category 1 hazard may be dealt with by informal or formal means, and in the case of a statutory nuisance being determined the council must serve a notice on the responsible person. This will normally be as a result of information provided by a member of the public; however where a property is in very poor condition then a pro-active inspection visit may be made to the property.
- 7.6 The occupier's wishes will be taken into account when considering what action is taken about the property. For example a suspended notice can be served when it is not considered to be in the best interests of the occupier for works to be carried out, subject however to an overriding consideration of ensuring the health and safety both of the occupier and any neighbours.
- 7.7 In the case of Houses in Multiple Occupation which comprise a number of flats in a converted house any requirement by the council for the provision of fire precautions will necessitate works being carried out to owner occupied as well as rented flats.

8. Standards, procedures and penalties

- 8.1 The standards which landlords and owners of properties must reach in respect of their properties are laid down in legislation reinforced by decisions of the courts. The council will always be prepared to justify its decisions with regard to the appropriate legislation and case law and put such justification in writing.
- 8.2 Standards for all licensable Houses in Multiple Occupation are specified by the government. This standard as contained in the council's 'Guidance to HMO Amenity Standards' have been produced in partnership with other Kent local authorities and approved by council members. This standard is also applied to smaller Houses in Multiple Occupation which do not require licensing.
- 8.3 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:
- The Human Rights Act 1998
 - The Regulation of Investigatory Powers Act 2000
 - The Police and Criminal Evidence Act 1984- Codes of Practice
 - The Criminal Procedures and Investigations Act
 - The Code for Crown Prosecution
 - Legislation and Regulatory Reform Act 2008
 - Regulators' Compliance Code
 - Regulatory Enforcement and Sanctions Act 2008
- 8.4 The council will deal courteously and efficiently with all individuals, organisations and businesses that it comes into contact with. Staff will identify themselves by name, and contact numbers will be made available. Electronic means of communication (for example, by email) will be facilitated wherever possible. Information and advice will be provided in plain language, and details of charges etc. will be made readily available.
- 8.5 Transparency is important in maintaining public confidence in the council's regulatory capability. The council will help those being regulated and others to understand what they need to do and how it may be achieved. The council will also make its own role in the matter clear.
- 8.6 The council will explain carefully (and, if necessary, in writing) why the action is necessary, who must carry it out, and by what date it must be carried out. A clear distinction will be made between a legal requirement and a recommendation. The council will give every reasonable opportunity for discussion before formal enforcement action is taken, unless urgent action is necessary to protect health and/or safety, or to prevent the destruction of evidence that could compromise the council's case. In such circumstances, the council will give a written explanation of its reasons for taking immediate action and this will be done as soon as practicable after the event. The council will give written notice of any rights of appeal against enforcement action at the time that the action is taken.
- 8.7 Discretionary enforcement action taken by the council will be proportionate to the risks posed to the occupiers/public's health and safety. Enforcement action will

be proportional to the degree of harm / risk and to the particular circumstances of the case. The following issues will be considered;

- the physical condition of the premises (e.g. whether it is practicable to repair or whether the structure is completely outworn) and of any premises onto which they abut (e.g. within a terrace of houses or a block of flats)
- whether a defect comes within the landlords legal repairing obligations
- the life expectancy of the premises if repaired
- the need to take into account the relationship of the premises with neighbouring properties and the condition of those properties
- proposals for the future of the area in which the premises are situated
- how the condition of the property will affect the local environment and overall appearance of the locality:

8.8 The council will carry out enforcement in a fair, equitable, and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends. However, the council recognises that consistency does not mean uniformity and that officers of the council are required to take decisions that take account of a wide variety of situations and circumstances. Officers are expected to take account of local and national standards and guidance, and be aware of this policy. Any departures from the policy must be agreed by the Housing Needs & Improvements Manager or Assistant Director (Housing) and recorded in writing, including reasons for the departure.

8.9 The council and its officers must be able to justify their decisions and be subject to public scrutiny. All decisions will be within the framework of published strategy and policies. Any deviations from policy will be discussed with a senior officer and/or Housing Panel and documented with reasons. Any changes or revisions to policy will be subject to approval by Cabinet.

8.10 Enforcement effort will be targeted on a risk assessed basis so as to focus on problems. This will include proactive projects focused on identified high risk properties and topic areas, and reactive work which will be complaint and intelligence lead. Businesses and individuals who persistently break regulations will be dealt with using the full range of powers and sanctions available. These are some examples of how we may target action – this is not an exhaustive list:

- property type or occupation
- door to door surveys, Council Tax information
- landlords whose tenants receive Housing benefit/Universal Credit. These tenants tend to be more vulnerable and the standards in these properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers
- unlicensed properties
- poorly managed rental properties

8.11 The council can require any person with an interest in the property to produce relevant documents at a time and place specified. Documents will normally be required to be produced at the Civic Centre, Windmill Street

- 8.12 Council officers, who are authorised in writing, have formal powers of entry to residential premises at all reasonable times. Normally 24 hours' notice of the intention to enter must be given to all interested parties and occupants, however entry without notice is authorised for investigation of offences relating to Houses in Multiple Occupation. A warrant can be obtained from the local magistrates court authorising entry by force if need be and this may be authorised by the court without prior notice to the owner or occupiers where admission has been refused or the occupier is temporarily absent or an application for admission would defeat the purpose of entry (for example to investigate overcrowding). Where the council has reason to believe that a statutory nuisance exists similar powers of entry are available and a warrant can be authorised for entry by force.
- 8.13 While formal enforcement action is a necessary and important part of the enforcement process, it should generally be viewed as a last resort. The council will normally inform a landlord by telephone or letter about works needed to a property. This enables the council to reach sensible agreements with owners and landlords by giving them the right to make representations; and helps reduce the burden that can arise from having to take formal enforcement action. The council are not prevented from taking immediate enforcement action in any case where such action appears to them to be necessary. Such decisions will be taken by the council in the light of the circumstances of each case. While those circumstances will inevitably vary, examples where immediate action might be warranted include:
- where a council considers there is imminent risk to the health and safety of the occupants of the premises
 - where the council has followed pre-formal enforcement procedures with the owner of landlord on previous occasions and considers that to repeat this would amount to an unreasonable duplication of effort

In addition we provide guidance, advice and assistance in order to help landlords achieve compliance with legal requirements and to meet best practice within the private rented sector.

- 8.14 Gravesham's Better Homes Standard, is a voluntary landlord accreditation scheme to promote high standards of accommodation and management in the private rented sector. It is a set of standards relating to the management and physical condition of rented accommodation. Details of the scheme are published on the council's website <https://www.gravesham.gov.uk/home/housing/private-housing/private-landlords/overview>

The aims of the scheme are:

- to raise and maintain standards
- to promote good relations between landlord and tenant
- to give tenants the option to choose an accredited landlord
- to build on relationships between landlords and the council

8.15 The Housing Act 2004 provides a number of different enforcement actions as follows:

- service of a Hazard Awareness Notice – this notifies of the existence of a hazard but does not require remedial works
- service of an Improvement Notice - this requires work to be carried out to remedy a defect
- service of a Prohibition Order – this prohibits the use of the whole or part of a residential premises
- emergency Remedial Action – this enables the council to take immediate steps to remedy a serious health and safety risk
- emergency Prohibition Order – this prohibits the use of the whole or part of a premises with immediate effect
- make a Demolition Order – to demolish a property which contains serious health and safety hazards
- declare a Clearance Area – used where a number of properties are involved
- service of a civil penalty/fixed penalty notice

In addition an improvement notice and prohibition order may be suspended for a period until a specified condition occurs. The council is obliged to review any suspended action at least every 12 months.

8.16 A number of statutory enforcement procedures enable the Council to carry out 'Works in Default' following the expiry of the term stated in a Notice. The purpose of the Works in Default process is to enable the council to affect a remedy to the particular situation that has given rise to the service of a statutory Notice (generally prior to prosecution). Work may generally be carried out by the council, or at the council's instruction – the cost of such works (plus administrative charges) being recovered either as a civil debt or by virtue of a 'charge' being placed on a subject property. The council will use Works in Default where there is tangible risk to public health and/or safety or that of the occupier and where there is a reasonable chance of recovering the costs of the works. The council will generally advise the recipients of notices before Works in Default are carried out.

8.17 Where a category 1 hazard exists and that hazard involves a risk of serious harm the council may take steps to remove the hazard without prior notification to the landlord. A notice must be served within 7 days of taking the action and a right of appeal exists even though the work has already been carried out. The cost of carrying out these works will be recharged to the person responsible and the costs may become a charge on the property if not repaid.

8.18 A simple caution may be appropriate where someone has admitted to an offence, or where it is their first offence of this type or they have assisted officers in remedying the situation that led to the offence. For example applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences.

8.19 Prosecution is an important part of enforcement. However, the council recognises that the instigation of a prosecution is a serious matter and that it may be used in conjunction with other action to secure compliance. Decisions regarding prosecution will take account of the Code for Crown Prosecutors and the Police and Criminal Evidence Act. The decision to start prosecution proceedings in court will be taken following discussions with the Assistant Director (Housing) and with Legal Services. A prosecution will not be commenced or continued unless the council is:

- satisfied that it is in the interest of the public or the environment;
- that there is sufficient, admissible and reliable evidence that the offence has been committed, and
- there is a realistic prospect of a conviction.

In considering prosecution the council will consider:

- The nature of the offence
- The effect of the offence
- The foreseeability of the circumstances or the resultant offence
- The intent of the offender
- The history of offender
- The attitude of the offender
- The deterrent effect on the offender or on others

8.20 Under section 49 of the Housing Act 2004 the council will continue to make a reasonable charge as a means of recovering certain expenses incurred in serving an Improvement Notice, a Hazard Awareness Notice, a Prohibition Order or in taking Emergency Remedial Action. There is no maximum charge and the charge will be assessed by the amount of work carried out in preparing and serving each notice. Certain legislation enables the council to serve a Penalty Charge Notice. Failure to pay a civil penalty may result in the council bringing prosecution proceedings or in the recovery of the charge as a debt through court action.

8.21 The Private Housing team is responsible for enforcing the following requirements which can be subject to a civil penalty:

- failure to comply with a notice requiring the provision of a smoke or carbon monoxide detector (£5000 maximum)
- from 1 April 2018, failure to comply with new energy efficiency requirements for rented properties. (£5000 maximum)
- failure to display details of the Government approved redress scheme that businesses are a member of. (£5000 maximum)
- failure to be a member of a Government approved residential lettings or management redress scheme when required to do so. Government guidance states that the expectation is that for this contravention, a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the council is satisfied that there are extenuating circumstances. It will be up to the council to decide what such circumstances might be, taking

into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a penalty

Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served.

8.22 The Housing and Planning Act 2016 Act gives the council the power to issue Civil Penalty notices of up to £30,000 as an alternative to prosecution, where there is evidence beyond reasonable doubt of certain offences i.e. failure to:

- comply with an improvement notice
- license a property which requires a licence
- comply with licence conditions or occupancy requirements
- comply with an overcrowding notice
- comply with HMO management regulations requirements

8.23 Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case. The government have issued statutory guidance to councils on the use of Civil Penalty notices under the 2016 Act. The council has also published its own policy (*Appendix 1*) on how it will decide on the level of financial penalty which is in accordance with the government guidance.

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will be made on a case-by-case basis in line with this policy and current guidance.

8.24 The upper limit for fines in the magistrates' court has been removed; this means if found guilty of an offence, there is no maximum fine. In some cases the council can apply to court to recover rent from a landlord if a property has been let illegally. Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved

8.25 Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The council will decide whether to publicise sentences following prosecution on a case by case basis. Publicising guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders.

9. Mandatory HMO licensing

9.1 From 1 October 2018, a mandatory licence is required for HMOs with five or more occupiers living in two or more households sharing some facilities, regardless of the number of storeys in the property. Systematic surveys using available relevant information held by the Council will be carried out to identify unlicensed properties. If a landlord has approached the Council for a licence an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently duly made within 28 days. We will consider any

- representations regarding exceptional circumstances that may have resulted in the application not being made. In other circumstances the Council will carry out an investigation and if appropriate consider taking formal action. Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee within 28 days may also be investigated for failing to licence a licensable property.
- 9.2 Fines for failure to license a property are unlimited. Where landlords have been convicted of the offence of operating an unlicensed property the council may use Rent Repayment Orders to claim back any housing benefit or equivalent paid whilst the property was unlicensed. We may also provide tenants with information and advice on how and when they can apply to The First Tier Tribunal Service to claim back the rent they paid whilst the property was unlicensed. Under the 2016 Act the council can also serve a civil penalty notice of up to a maximum of £30,000 for failure to license a property.
- 9.3 HMO licences will normally be granted for the full five year period. We may reduce the length of the licence from five years to an appropriate lesser period:
- to remove any advantage over those licence holders who applied at the appropriate time; or
 - where a planning application relating to the premises has yet to be decided; or
 - where the property has not been satisfactorily managed; or
 - where we are concerned the proposed management arrangements may not be satisfactory and want to see evidence that they are before allowing a longer licence period to be granted.
- 9.4 In granting an HMO licence the council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. A person's fit and proper status may be reviewed at any time if circumstances change. A finding that the person does not satisfy this standard may result in refusal of an application or revocation of existing licence(s).
- 9.5 Licences issued for rented properties include requirements on the number of persons or households that are permitted to occupy a property as well as licence conditions. Licence conditions may require works with regard to the physical condition of the property or in relation to the management of the property. Knowingly permitting the over occupation of a licenced property or failing to meet licence condition(s) without reasonable excuse are a criminal offence(s). The 2016 Act introduced civil penalty notices of up to £30,000 which the council can serve on individuals as an alternative to prosecution.
- 9.6 Revoking a property licence under the Housing Act 2004 may be taken under the following circumstances:
- breach(es) of licence condition(s);
 - where the licence holder and/or manager are no longer considered to be Fit and Proper person(s).
 - by agreement.

- where there is a banning order on the licence holder.

9.7 Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months' rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:

- violence for securing entry
- illegal eviction or harassment of occupiers
- failure to comply with an improvement notice or prohibition order
- failure to license a property which requires a licence
- for breach of a banning order

Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct. When deciding whether or not to apply for an RRO the council's policy is to:

- treat each case on its own merits;
- ensure that applying for an RRO would meet the enforcement objectives in this policy;
- consider the impact of the breach on the occupier or others affected by the offence committed;
- consider the likelihood of the application being successful;
- consider the level of resources it will take to make a successful application and
- decide whether it is more appropriate for the tenant to apply for the order themselves.

The council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities.

9.7 Management Orders will be used as a last resort where other attempts have failed and where there is no reasonable prospect of a licence being granted. Management Orders may also be used where it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity or anti-social behaviour is affecting other occupiers, visitors or persons in the vicinity of the premises. Under the 2016 Act, where an agent or landlord is banned from operating in the private rented sector management orders may also be used.

10. **Overcrowding**

10.1 We will investigate complaints from private rented sector tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on a neighbour's health, safety

or welfare. We will liaise with the Council's Housing Options Team where we are taking enforcement action that is likely to lead to a family moving out of their accommodation. When deciding on the most appropriate course of action each case will be judged on its own merits.

10.2 We may advise persons living in overcrowded living conditions that their health is at risk but that the most appropriate action is not to require them to move out. We may serve overcrowding notices in relation to HMOs if having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the property. Under the 2016 Act the council can serve a civil penalty notice of up to £30,000 on a person failing to comply with an overcrowding notice.

11. Anti-social behaviour

Where we have legal powers to deal with anti-social behaviour of private rented sector tenants or visitors to a rented property, we will initially liaise with partners such as the Community Safety Team, police and with landlords including licence holders, to seek an informal resolution. Where this fails we will consider taking legal action against the person responsible if this is possible. This can include taking action under any licence conditions. Where complaints of anti-social behaviour are more appropriately dealt with by other Council services, such as the Community Safety Team, or the Police, these complaints will be referred to them.

12. Retaliatory Eviction

The Deregulation Act 2015 provides tenants protection from eviction in retaliation for making a complaint in relation to health and safety issues in their home. The protection applies where a relevant formal legal notice has been served under the Housing Act 2004. Following consultation with tenant, landlord and agent groups Private Housing will only serve the relevant formal legal notices in line with this policy.

13 Entry Clearance Inspections

In order for an Entry Clearance Inspection to take place, the following information must be provided:

- Name of person(s) seeking residency
- Date of Birth
- Address of homeland
- UK property address where they will be residing

This information will need to be provided by the Home Office letter or applicant's solicitor letter. The charge for this service will be assessed by the amount of work undertaken by the officer in the same way as the charge is calculated for charging for enforcement.

14. Working with other Regulators

Where the council and another enforcement agency (for example, the Health and Safety Executive and the Fire Authority) both have powers to take enforcement action, the council will liaise with that other body to ensure that:

- action is effectively co-ordinated
- that proceedings are for the appropriate offence
- inconsistencies are avoided

In respect of means of escape from fire in Houses in Multiple Occupation or buildings containing flats the council is obliged to consult with the Kent & Medway Fire and Rescue Authority in accordance with the agreed protocol "Working together in Partnership"

15. Service Review Procedure

The council will review this enforcement policy at least every three years or when changes in legislation or centrally issued guidance makes this necessary. The review will be carried out in consultation with the Gravesham Private Sector Landlords' Forum and other partners and stakeholders.

16. Complaints Procedure

The council has a formal complaints procedure, although many complaints can be dealt with directly by a senior manager within the relevant service department. Information regarding the formal complaints procedure may be obtained from Customer Services on tel: 01474 564422, or through the council's Internet web site: www.gravesham.gov.uk

In addition to the council's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government maladministration, and details of this service are also available from Customer Services.

Appendices

Appendix 1 – Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016

Appendix 2 - Statement of Principles for the determining of financial penalties – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Contributors – Development of this policy was assisted through information provided by Bristol City Council and Thanet District Council

Appendix 1

Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016

Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“the 2016 Act”) amended the Housing Act 2004 (“the 2004 Act”) to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences. Under section 249A of the 2004 Act, a local housing authority may now impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a “relevant housing offence”.

The relevant housing offences are offences under the 2004 Act, namely:

- Failing to comply with an Improvement Notice (section 30);
- Failing to licence a house in multiple occupation (“HMO”) under Part 2 (section 72(1));
- Knowingly permitting the over-occupation of an HMO licensed under Part 2 (section 72(2));
- Failing to comply with the condition of an HMO licence issued under Part 2 (section 72(3));
- Failing to licence a house subject to selective licensing under Part 3 (section 95(1));
- Failing to comply with the condition of a selective licence issued under Part 3 (section 95(2));
- Failing to comply with an overcrowding notice in respect of a non-licensable HMO (section 139(7)); and
- Failing to comply with HMO management regulations (section 234(3)).

A person who commits any of the above-mentioned offences without reasonable excuse is liable on summary conviction to a fine of any amount in the Magistrates’ Court. A financial penalty imposed by a local housing authority as an alternative must not exceed £30,000.

The 2016 Act also introduced banning orders under Chapter 2 of Part 2. A local housing authority may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a “banning order offence”. A banning order offence is an offence set out in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 Acts of Parliament are listed, including those listed above as relevant housing offences.

A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work.

A person who breaches a banning order commits an offence under section 21(1) of the 2016 Act and is liable on summary conviction to imprisonment, or to a fine, or to both.

However, a local housing authority may instead impose a financial penalty under section 23 of the 2016 Act of an amount not exceeding £30,000.

A local housing authority cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate. The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, a local housing authority must therefore be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the 2016 Act. In April 2018, the Ministry of Housing, Communities & Local Government issued: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*. The guidance requires local housing authorities to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty; and the level of financial penalty it should impose in each case.

The guidance states that local housing authorities should consider the following factors to help ensure that any financial penalty is set at an appropriate level:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant (actual and potential)
- Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact)
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

This policy sets out how Gravesham Borough Council ("the council") will impose financial penalties in accordance with relevant legislation and statutory guidance. Significantly, these new powers allow local housing authorities to retain the income received from financial penalties to fund private sector housing enforcement activities. This is clearly intended to help local housing authorities take more enforcement action. The council will use the new powers robustly whenever it is appropriate to do so.

Each offence will be assessed on a case-by-case basis. However, the starting position is that the council will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

The council may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If the council is of the opinion that an offence is of such serious nature that it warrants a more significant financial sanction than that which could be imposed by this policy, it will normally seek to prosecute the offender(s).

The breach of a banning order under the 2016 Act is a serious offence, and the council will give careful consideration to the option of prosecution in such cases, as the courts have the power to impose a prison sentence as a punishment.

Prosecution may also be an appropriate course of action when an offender has committed the same offence on more than one occasion in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.

Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by the council and local media. Such publicity in respect of an offender may be in the public interest in certain circumstances and helps to deter others from committing similar offences. If an offender is subject to a financial penalty, their personal information will not be available in the public domain.

There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, the council will carefully review the merits of prosecution for every offence before making a final decision as to an appropriate sanction.

A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.

Having due regard to the statutory guidance published by Government, the council has developed the Table of Financial Penalties set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following four factors:

Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:

- Very high - This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium
- High - This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take appropriate and/or timely action. This category is subject to a 80% culpability premium
- Medium - This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium
- Low - This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where

there was no warning of a potential offence. This category is subject to a 40% culpability premium.

Track Record: The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

The council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:

- Any previous convictions for housing related offence
- Whether previously subject to a financial penalty for a housing related contravention
- Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

Following the review, the offender's track record will be classed as one of the following three categories:

Significant- Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

Some -This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

None or negligible - This category will be used if, following a review of the council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales. The descriptor "Negligible" has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in Gravesham, this category will be used.

Portfolio size - The size of an offender's portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay. Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

There are four size categories which relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:

- One unit of accommodation
- 2 - 4 units of accommodation
- 5 - 19 units of accommodation
- 20 or more units of accommodation.

A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation ("HMO").

The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.

The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment. If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

Risk of Harm - The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence. The council will assess the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high. The offence will be placed into one of the following four categories:

Level 1 - This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories. Any offence associated with the operation of

an unlicensed premise under the HMO and selective licensing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

Level 2 -The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

Level 3 - The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

Level 4- The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out below. This table was developed by Thanet District Council and has been widely adopted throughout Kent to ensure consistency in application.

Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,500
		20 +	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20 +	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,500
		20 +	£12,500	£15,000	£17,500	£25,000
High (80% Premium)	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20 +	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20 +	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20 +	£10,000	£12,000	£14,000	£20,000
Medium (60% Premium)	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20 +	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20 +	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20 +	£7,500	£9,000	£10,500	£15,000
Low	Significant	1	£3,000	£4,000	£5,000	£8,000

(40% Premium)		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20 +	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20 +	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20 +	£5,000	£6,000	£7,000	£10,000

The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be considered when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant.

Hardship (Landlord) - If at this stage of the process, the council is aware of the offender's personal situation and financial position, and is of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

Hardship (tenant) - If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, the council may consider reducing the amount of financial penalty, but only in exceptional circumstances.

Previous Offences - While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences requires a more robust approach to punishment. For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a Significant track record category is already in use for a certain offender, repeated offences where the Culpability is very high would be restricted owing to the Risk of Harm categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, the council may consider increasing the amount of financial penalty.

Scale of exposure - The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons exposed is higher than average, the council may consider increasing the amount of financial penalty. A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm

was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

Actual harm - If actual harm has occurred, the council may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely the council will seek to review the financial penalty upwards.

The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500. The council will not, under any circumstances, vary the financial penalty by more than 50%, and is restricted by the statutory maximum of £30,000.

If the council decides to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, it will make a record of its decision and notify the offender of the reasons for that decision. To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager of the council. In the first instance, the variation will be proposed by the Senior EHO, Private Sector Housing Team. The proposal will be reviewed by the Assistant Director (Housing), or an officer of similar or higher seniority, and a final decision made by that senior manager.

Before imposing a financial penalty, the council must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a "Notice of Intent". The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased. For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, the council may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, the council will still have the option to serve a Notice of Intent, but if it chooses to do so, it must serve the Notice of Intent within six months of the date the valid licence application was made.

The Notice of Intent must set out:

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the financial penalty, and
- Information about the right to make representations.

Any person served with a Notice of Intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served. The offender may wish to submit information as to their financial position. If the council was aware of the financial position of the offender before serving the Notice of Intent, the council may

have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make the council aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty. It is important to note that any person who supplies information to the council that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates' Court to an unlimited fine.

The council will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but the council will seek to make a decision as to its proposed course of action as soon as possible. The council will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
- Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
- Impose the financial penalty proposed in the Notice of Intent; or
- Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.

If the council decides to withdraw the proposal to impose a financial penalty, it will confirm its decision in writing. If the council decides to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, it will serve a Final Notice. If the offender has provided written representations that increase the severity of the offence committed, the council may seek to impose a higher financial penalty. If the council decides to take that course of action, it will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

A reduction in the amount of financial penalty to be imposed may arise from the council altering the starting point on the Table of Financial Penalties. Whether the council decides to alter the starting point or not following any written representations, the council will not reduce the financial penalty by more than 50% of the finalised starting point. If the council decides not to alter the starting point after its review of any written representations received, and it has already used its discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager of the council. In the first instance, the imposition of a financial penalty will be proposed by the Senior EHO, Private Sector Housing Team, who will provide an assessment of any written representations received. The proposal will be reviewed by the Assistant Director (Housing), or an officer of similar or higher seniority, and a final decision made by that senior manager.

If the council decides to impose a financial penalty following its review of any written representations received, it will serve a "Final Notice" on the offender. The Final Notice will set out:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served. A person on whom a Final Notice has been served may appeal within 28 days of the date the Final Notice was served to the First-tier Tribunal against the decision to impose the financial penalty or the amount of the financial penalty.

Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn. The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.

As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money. An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 21 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable. A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.

If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal. If an offender makes an early payment at the reduced rate, but then decides to appeal at a later date, the council will seek the full finalised amount during the appeal proceedings.

The council will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served. An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to the 2004 Act (relevant housing offences) and Paragraph 11 of Schedule 1 to the 2016 Act (breaches of banning orders). In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

Court bailiffs - A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

Charging order /order of sale - The council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

Attachment to earnings order - If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, the council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

The council will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. The council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate. If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each offence. However, if the council considers the cumulative total to be unjust and disproportionate, it will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

The council may use its discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration. The council may use its discretion to not impose a financial penalty in respect of every offence under consideration. If the council decides to take this course of action, the offence or offences disregarded will usually be of a lower severity. In consideration of totality, the council will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

Appendix 2

Statement of Principles for the Issue of Civil Penalty Charges under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

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

Purpose of the Statement of Principles

The council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

When deciding on the amount for the penalty charge, the council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), which came into force on 1 October 2015.

The Regulations place a duty on landlords (which includes freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence, but excludes registered providers of social housing) to ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation and
- a carbon monoxide alarm is installed in any room of premises used as living accommodation which contains a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- checks are made by the landlord, or someone acting on his/her behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

Remedial Action taken in default of the landlord

Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

Where the council is satisfied that a landlord has not complied with a specification described in the remedial notice within the required timescale, the council will arrange for the works (remedial works) to be undertaken in accordance with the remedial notice, with the consent of the occupier. These remedial works will be undertaken within 28 days of the council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats,
- having an unsafe internal layout where fire escape routes pass through a living rooms or kitchens, or
- is 3 or more storeys high.

A risk assessment will subsequently be undertaken. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the council's Enforcement Policy.

If the landlord fails to take the remedial action specified in the notice within the specified timescale, the council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice if he/she can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

Gravesham Borough Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

The purpose of imposing a financial penalty

The purpose of the council exercising its regulatory powers is to protect the interests of the public.

The civil penalty scheme is designed to encourage landlords to comply with their duties under the legislation.

The aims of financial penalties on landlords are to:

- Lower the risk to tenants' health and safety
- Reimburse the costs incurred by the council in arranging remedial action in default of the remedial notice
- Change the behaviour of the landlord and to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to by service of a remedial notice

The civil penalties imposed are intended to be proportionate to the level of non-compliant behaviour and to the potential harm outcomes of non-compliance. The council will also consider relevant mitigating circumstances. The penalty will, therefore, be calculated on a sliding scale.

Criteria for the imposition of a financial penalty

Failure to comply with the requirements of a remedial notice allows the council to require payment of a penalty charge.

When considering imposing of a penalty, the authority will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant (or agent) that no remedial action has been undertaken.

For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records, or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have tested the alarms at the start of the tenancy. Examples of how this can be achieved are by tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

Criteria for determining the amount of a financial penalty

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

The Regulations state the amount of the penalty charge must not exceed £5,000.

A decision with respect to determining the liability and calculating the penalty amount will be based on the following Consideration Framework.

Stage 1: Determining the level of breach		
Breach	Is there a history of non-compliance within the last 5 years?	<p>No: Apply the Level 1 Civil Penalty Calculator</p> <p>Yes: Apply the Level 2 Civil Penalty Calculator</p>

Stage 2: Determining the level of Liability	
Aggravating Factors	
Aggravating factor 1	Seriousness of offence. The length of time the property has lacked working detectors Has the tenant asked the landlord for working detectors Has the landlord refused to co-operate
Aggravating factor 2	Is the property overcrowded Is it occupied by vulnerable persons Are there other fire hazards such as poor escape, height of premises above ground level or poor electrics
Aggravating factor 3	Gravesham Borough Council has to carry out works in default of the remedial notice
Mitigating Factors	
Mitigating factor 1	Is this the landlord's first offence
Mitigating factor 2	Does the landlord own only one property
Mitigating factor 3	Does the property have any other working alarms

Stage 3: Determining the Penalty Amount.

This is done using the civil penalty calculator below. This calculator sets out a sliding scale of penalty amounts for each incidence of non-compliance.

The actual penalty amount will depend on the aggravating and mitigating factors available for the council to consider. I.e. it will be subject to reductions should there be evidence of mitigating factors; it will also look at any aggravating factors that should justify a higher penalty. For example, if aggravating factors 1 and 2 apply the penalty charge will be increased by £500. If only aggravating factor 1 applies, then the penalty charge will be increased by £250.

Civil Penalty Calculator

The Civil Penalty Calculator comprises two levels:

- The Level 1 table will be used where there is no history of non-compliance during the last five years. The starting point for the calculation of the civil penalty is £2,000 before any additions are applied.

- The Level 2 table will be used where there is a history of non-compliance within the previous five years. The starting point for the calculation of the civil penalty is £4,000 before any additions are applied.

Where a civil penalty notice has been cancelled following a review or appeal, it shall not be taken into account when calculating any subsequent penalty.

Level 1

Level 1: First breach		
Starting penalty amount £2000		
Aggravating factor 1:	Aggravating factor 2:	Aggravating factor 3:
Penalty increased by £250	Penalty increased by £250	Penalty increased by £500
Mitigating factor 1:	Mitigating factor 2:	Mitigating factor 3:
Penalty reduced by £250	Penalty reduced by £250	Penalty reduced by £250

Level 2

Level 2: Second or subsequent breach		
Starting penalty amount £4000		
Aggravating factor 1:	Aggravating factor 2:	Aggravating factor 3:
Penalty increased by £250	Penalty increased by £250	Penalty increased by £500
Mitigating factor 1:	Mitigating factor 2:	Mitigating factor 3:
Penalty reduced by £250	Penalty reduced by £250	Penalty reduced by £250

Procedural matters for Penalty Charge Notices

The penalty charge is payable **within 29 days** beginning with the day on which the penalty charge notice is served.

The council has discretion to offer an early payment reduction if a landlord pays the penalty charge **within 14 days** beginning with the day the penalty charge notice is served. The council will reduce the penalty amount by 50 per cent if we receive payment in full within 14 days of the civil penalty notice being served. The reduced penalty amount and the final date by which the landlord must pay it will be clearly shown on the civil penalty notice.

When the council is satisfied that the landlord fails to comply with the requirements of the remedial notice, the penalty charge notice will be served within 6 weeks of the council determining that the notice has not been complied with.

Review of Penalty Charge Notice

The landlord may request the council to review the penalty charge notice. This request must be in writing and submitted within 29 days from when the penalty charge notice is served.

Where a review is requested, the council will consider any representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice. Any mitigation factors will be taken into account and the penalty charge notice may be reduced.

The review will be carried out by the Housing Needs & Improvements Manager and Assistant Director (Housing).

All representations are to be sent to the address at the bottom of this document. The council will notify the landlord of its decision by notice.

If a review is requested before the deadline specified in the civil penalty notice, the landlord will continue to be eligible for the early payment option. If the landlord is still required to pay a penalty following the review of the notice, he/she will be given a fresh notice which specifies a new date by which he/she may pay the penalty at the lower amount.

Appeal

A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the council's decision. Appeals should be made within 28 days from the notice served of the council's decision on review.

If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

All communications for representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be sent to:

Housing Needs & Improvements Manager
Gravesham Borough Council
Civic Centre
Windmill Street
Gravesend
Kent DA12 1AU

Or by email to: private.housing@gravesham.gov.uk