

Scrutiny Inquiry Panel - How do we get a better deal for private sector renters in Southampton?

Thursday, 15th February, 2024
at 5.30 pm

PLEASE NOTE TIME OF MEETING

Conference Room 3 and 4 - Civic Centre

This meeting is open to the public

Members

Councillor McEwing
Councillor Every
Councillor Powell-Vaughan
Councillor Windle
Councillor Blackman

Independent Members

Head of Services:-

Richard Ivory
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PUBLIC INFORMATION

Role of the Standards and Governance (Local Determinations Hearings Panel)

The Panel has responsibility to hear and determine written allegations that a member or co-opted member (or former member or co-opted member) of the Council has failed to comply with the Council's Code of Conduct for Members in accordance with the provisions of the local Government Act 2000 or any amendment or re-enacted thereof.

The Panel is chaired by an Independent Member (with voting rights, who is not a Councillor or an Officer of the Council) and includes three Councillor members.

Public Representations

Save where an Item has been resolved to be confidential in accordance with the Council's Constitution, at the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Southampton City Council's Six Priorities

- Providing good value, high quality services
- Getting the City working
- Investing in education and training
- Keeping people safe
- Keeping the City clean and green
- Looking after people

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Smoking policy – the Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – please turn off your mobile telephone whilst in the meeting.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Access – access is available for the disabled. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2011/12

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

Terms of Reference

The terms of reference of the Committee are contained in the Council's Constitution.

Business to be discussed

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 3 (including 1 Independent Member).

Disclosure of Interests

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "personal" or "prejudicial" interests they may have in relation to matters for consideration on this Agenda.

Personal Interests

A Member must regard himself or herself as having a personal interest in any matter

- (i) if the matter relates to an interest in the Member's register of interests; or
- (ii) if a decision upon a matter might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers and inhabitants of the District, the wellbeing or financial position of himself or herself, a relative or a friend or:-
 - (a) any employment or business carried on by such person;
 - (b) any person who employs or has appointed such a person, any firm in which such a person is a partner, or any company of which such a person is a director;
 - (c) any corporate body in which such a person has a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in Article 14(a) to (e) in which such a person holds a position of general control or management.

A Member must disclose a personal interest.

Continued/.....

Prejudicial Interests

Having identified a personal interest, a Member must consider whether a member of the public with knowledge of the relevant facts would reasonably think that the interest was so significant and particular that it could prejudice that Member's judgement of the public interest. If that is the case, the interest must be regarded as "prejudicial" and the Member must disclose the interest and withdraw from the meeting room during discussion on the item.

It should be noted that a prejudicial interest may apply to part or the whole of an item.

Where there are a series of inter-related financial or resource matters, with a limited resource available, under consideration a prejudicial interest in one matter relating to that resource may lead to a member being excluded from considering the other matters relating to that same limited resource.

There are some limited exceptions.

Note: Members are encouraged to seek advice from the Monitoring Officer or his staff in Democratic Services if they have any problems or concerns in relation to the above.

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are now available online at
www.southampton.gov.uk/council/meeting-papers

1 APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Democratic Support Officer.

3 DECLARATIONS OF SCRUTINY INTEREST

Members are invited to declare any prior participation in any decision taken by a Committee, Sub-Committee, or Panel of the Council on the agenda and being scrutinised at this meeting.

4 DECLARATION OF PARTY POLITICAL WHIP

Members are invited to declare the application of any party political whip on any matter on the agenda and being scrutinised at this meeting.

5 STATEMENT FROM THE CHAIR

6 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

(Pages 1 - 6)

To approve and sign as a correct record the minutes of the meeting held on 18th January 2024 and to deal with any matters arising, attached.

7 SOUTHAMPTON CITY COUNCIL'S APPROACH TO ENFORCEMENT IN THE PRIVATE RENTED SECTOR

(Pages 7 - 38)

Report of the Scrutiny Manager recommending that the Panel consider the comments made by the invited guests and use the information provided as evidence in the review.

SCRUTINY INQUIRY PANEL - HOW DO WE GET A BETTER DEAL FOR PRIVATE SECTOR RENTERS IN SOUTHAMPTON?

MINUTES OF THE MEETING HELD ON 18 JANUARY 2024

Present: Councillors McEwing, Evemy, Powell-Vaughan, Windle and Blackman

Apologies: None

8. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 21 December 2023 be approved and signed as a correct record.

9. **THE CONDITION OF PRIVATE RENTED HOUSING**

The Panel considered the report of the Scrutiny Manager concerning the condition of private sector rented housing in Southampton.

The Panel received the following representations:

Councillor Shaban Mohammed, Cabinet Member for Housing Management and Modernisation; Housing Needs, Homelessness and the Private Rented Sector, and Helen Masterson, Head of Private Sector Housing Standards, London Borough of Newham, outlined Newham's selective licensing scheme. Key points raised in the presentation included the following:

- 38.5% of households in Newham were in the Private Rented Sector. Research indicated that 52-54% of Newham's residents were renting privately.
- Property Licensing Schemes in Newham started in 2013. It was the first large-scale property licensing scheme in England.
- In 2018 a second scheme was introduced, providing selective and additional licensing for 19 out of 20 wards and 42,000 licenses.
- An unprecedented third Licensing Scheme was confirmed by the Secretary of State, Department for Levelling Up, Housing and Communities (DLUHC) in December 2022.
- Objectives included improvements to the quality, safety and choice of residents across Newham and to raise the housing standards across Newham by penalising landlords who failed to provide homes of suitable quality and requiring remedial action where necessary.
- Financial incentives were offered to accredited landlords and those with properties that had an energy efficiency rating of A to C.
- There were a total of 66 officers in Newham's Private Sector Housing Standards Team, funded from license fees.
- Newham's PSH Compliance Team undertake 800 inspections per month and refer about 100 per month to the enforcement referrals process.
- In the period 2018-2022 Newham banned 84 landlords from running licensed properties, launched almost 2,000 'breach of licence' investigations, issued 342 financial penalty final notices, issued 6,447 enforcement letters to landlords, had 26,000 licence holders and had 93 evictions avoided through Tenancy Liaison.

- The Letting Agents Project ensured compliance with consumer protection law and 79 Letting Agents were served with final Fixed Penalty Notices in the period 2022-2023.
- To improve information, advice and guidance, Newham had produced a landlords pack, a tenants pack, ran landlord forums in conjunction with NRLA twice a year, had an e-bulletin for landlords which 18,000 out of 26,000 landlords signed up to, and had relevant information on its website.
- The property licensing schemes enabled proactive inspections and had improved housing conditions and ensured healthy housing for occupants by driving up standards and stamping out poor and illegal practices for the benefit of tenants and responsible landlords.
- The scheme collected and collated data which informed how resources are used to target enforcement action and supported applications for future licensing designations.
- The scheme helped Newham to prepare for compliance with new duties under the Renters (Reform) Bill and demonstrated the local housing authority's ability to keep housing conditions in the area under review (Housing Act 2004).

Adam Goulden, Chief Executive, the Environment Centre (tEC), summarised the initiatives delivered by tEC in Southampton to improve the energy efficiency of properties in the private rented sector. Key points raised in the presentation included the following:

- tEC referenced the large number of poor quality private rented sector homes in Southampton. Draughts caused much higher heat loss than in owner occupied properties. They were often damp and mouldy. There was heavy reliance upon on-peak heaters.
- Now in its 12th year, the Southampton Healthy Homes Scheme had supported thousands of Southampton residents to access grant funding for heating upgrades, insulation, renewable technologies, help with energy bills and support for those who were vulnerable or on low incomes.
- Between April and December 2023 tEC helped 1,688 residents, approximately 14% of whom were in the private rented sector. Total gains or savings achieved for these Southampton households was valued at £862,710.
- tEC offered free and impartial advice for landlords and tenants, provided support for tenants to liaise with landlords (as often tenants are concerned about talking to landlords), and helped to facilitate access to national and local funding for energy efficiency improvements.
- Southampton City Council provides discretionary funding, topped up with at least 20% contribution required from landlords. Not many other local authorities are offering this resource.
- tEC worked closely with the Council's Private Sector Housing Team and advice partners, particularly Citizens Advice, who tEC referred clients through to regularly.
- There was little incentive for landlords to invest in energy efficiency initiatives, beyond the legal minimum. Most of the landlords tEC deal with were unconcerned (even with significant resource) and often begrudged spending 20% of the shortfall.
- The Home Upgrade Grant (HUG2) funding required a 1/3 contribution from landlords. No landlords wanted to pay this and ECO4 grants were quite restricted for private rented sector properties.

- Limited work would happen under the Southampton Healthy Homes Service 2024-2029 without support and access to top up funding from the Council.
- The landlords' approach could change if there were a limited number of prosecutions for non-compliance of minimum energy efficiency standards by the Council.

Chloe Braddock and Phil Tyler, Directors, Southampton Tenants Union, provided the tenants' perspective on housing conditions in rented accommodation. Key points raised in the presentation included the following:

- Southampton Tenants Union had conducted a survey to gather feedback about housing conditions. Chloe Braddock outlined the key findings as follows:
 - The self-selecting snap survey received a number of responses commenting on the poor standard of accommodation despite the high rental costs, lack of repairs and unwillingness of tenants to complain for fear of eviction.
 - Complaints about damp and mould were common. Tenants were often told to ventilate rooms better, including keeping windows open in the winter.
 - There are limited incentives for landlords to address repairs and conditions.
 - Tenants should be empowered to speak with their landlords without fear of eviction or bad references, and to withhold rent until repairs are undertaken.
 - Southampton Tenants Union would welcome enforcement of letting agents, similar to Newham's approach and for selective and additional licensing schemes to be introduced in Southampton.

Samantha Watkin, Senior Policy Officer and Liz Mackenzie, Regional Representative, National Residential Landlords Association (NRLA) summarised landlords' perspectives. Key points raised in the presentation included:

- NRLA had made a freedom of information request. Based on the responses involving a private rented sector stock of 25,000 (DLUHC submission), Southampton would have received a total of 837 private rental sector complaints over the two years 2021-2022 and 2022-2023. Over the same period 131 Housing Health and Safety Rating Standard (HHSRS) inspections were carried out on private rental sector properties, and 15 Improvement Notices (a mixture of category one and category two hazards) were served on private rental sector properties in Southampton, and 0.2% of private rental sector properties in Southampton were estimated to have category one damp and mould hazards.
- The Council had taken formal and informal enforcement action on damp and mould hazards 18 times in 2019/2020, 3 times in 2020/2021 and 3 times in 2021/2022.
- There has been no use by the Council of Civil Penalties.
- NRLA were not opposed to selective licensing schemes if it was targeted effectively.

Rogel Bell, South Hampshire Chair and Phil Watmough, Committee Member, iHOWZ Landlord Association delivered a presentation providing landlords' perspectives on housing conditions in the private rented sector. Key points raised in the presentation included:

- All Private Rented Residential Property must meet HHSRS standards and have in place prior to renting a gas certificate from a GasSafe Engineer (CP12), an electric

certificate from a qualified electrician, an Energy Performance Certificate, and a risk assessment. A “Right To Rent” must have been served prior to the start of the tenancy. The landlords address must be available to the renter.

- iHOWZ Landlord Association made documentation available for members and included a checklist of what was required. Checks, including property conditions, were advised and IHOWZ ran training and accreditation courses and encouraged councils to become involved.
- There was recognition that it was not only homes in the private rented sector that failed the decent homes standard. Southampton was the second worst council in England for 'non-decent homes' for social housing (Daily Echo headline in November 2023).
- Tenants needed to be aware that they had a legal obligation to act in a tenant like manner and report problems to the landlord.
- They must do minor 'maintenance' around the property or notify their landlord if they were unable or unwilling to do so.
- Tenants must apply the necessary amount of heat to keep undue condensation at bay, thus avoiding damp and mould.
- Landlords must respond to tenants' complaints. Good communication was key and landlords should maintain property at their own expense promptly, rectify all HHSRS problems promptly and provide the tenants with an emergency number available all day every day.
- The Council must be firmer towards bad landlords, ensure prosecutions get press coverage and encourage tenants to complain to the Council.
- Raising Standards was vital for the private rented sector.

Ros Lyon, Head of Occupancy and Residential Customer Services, Dan Cole, Associate Director of Facilities and Kate Fay, Public Affairs Manager (Estates), University of Southampton, summarised the University's expansion proposals and Southampton Accreditation Scheme for Student Housing (SASSH). The key points raised in the presentation were as follows:

- The University was planning to increase student numbers from 25,000 to more than 30,000 by 2033.
- £1 billion was to be invested in its physical and digital estate.
- With an increase in students, the University would need more accommodation. The Southampton Local Plan required that academic floor space built was matched by bedspaces built.
- The University estimated that by 2027, there will be a need for an additional 3,800 bedspaces in the City and to meet their existing accommodation guarantee they would need approximately 2000 additional rooms, which could be either owned, leased or nominated.
- It was expected that 3,000 additional bed spaces will be required in the private rented sector by 2027.
- Southampton Accreditation Scheme for Student Housing (SASSH) is a web platform that lets agents and landlords upload adverts for their properties. The day-to-day administration is undertaken by the University and Solent University, and the Council is involved in the setting of the standards for each year.
- To be published on the platform, the advert must meet all statutory minimum requirements for letting. Certificates are checked by either the University or Solent University accommodation team.

- The number of properties registered had plateaued since 2020. From 2015 to 2020, 130-160 properties were added each year, and since 2020 it had been around 35.
- Supply was not keeping pace with demand, and the scheme was not growing.
- The University and Solent University were keen to reinvigorate SASSH with a new user interface, property reviews, and information on living in the city safely and respectfully.
- The University was planning to re-start property inspections and review standards. Homes should be more than the current 'bare minimum' standards.
- The University was keen to encourage more landlords to join the scheme and was keen to work with landlords who were willing to provide accessible accommodation.
- A full-time City Housing Relationship Manager at the University complemented Solent University's full-time Housing Officer.
- The University would welcome additional Purpose Built Student Accommodation in the city centre of Southampton, especially cluster flats, and were supportive of HMO licensing schemes.

Professor Helen Carr and Dr Mark Jordan, University of Southampton, delivered a presentation outlining the regulation relating to housing conditions in rented accommodation. Key issues raised included the following:

- The HHSRS was a risk-based assessment tool to triage local authority enforcement consisting of 29 hazards which could be assessed at either Category 1 or Category 2.
- Actions included improvement notices, prohibition orders, and emergency remedial action. It was a valuable tool which could be used more extensively and creatively.
- Tenants had little say in the system but can claim Rent Repayment Orders for breach of improvement notices and prohibition orders.
- Simplification and production of base line standards was planned.
- Landlord's repairing obligations were included in s11 Landlord and Tenant Act 1985 (to keep in repair structure and exterior and installations) and the Homes (Fitness for Human Habitation) Act 2018 (homes must be fit for human habitation at the commencement and throughout the tenancy).
- The Renters (Reform) Bill includes an extension of the Decent Homes Standard to the private rental sector, enforced through civil penalties and rent repayment orders and imposes a duty on local authorities to ensure housing meets the standard.
- To meet the Decent Homes Standard a property has to meet the current statutory minimum standard for housing (free of category 1 hazards from the HHSRS), be in a reasonable state of repair, have reasonable facilities and services, and provide a reasonable degree of thermal comfort (EPC band E).
- The Decent Homes Standard is not an exacting standard but a lot of private rental sector properties would still fail it, particularly the older dwellings and overcrowded housing that will not have adequate space or facilities.
- Despite widespread licencing schemes, the private rental sector had the worst conditions. The English Housing Survey (2021) showed that nationally 14% of private rental sector homes have a category 1 hazard (by extrapolation that would be 3,900 homes in Southampton) 23% of private rental sector homes do not meet the Decent Homes Standard (by extrapolation that would be 6,400 homes in Southampton). The extrapolations for Southampton are likely to be a conservative estimate given the profile of housing in Southampton and the results of the 2008

stock condition survey. The Renters (Reform) Bill promises to double the scope of enforcement.

- The Renters Reform Bill is likely to have significant regulatory and resource implications for councils. The limits of complaint driven reactive enforcement are clear. Adopting a more proactive and responsive regulatory approach can demonstrate compliance, develop novel data led enforcement practices by combining data sources such as NHS hospital admissions data, and Indices of Multiple Deprivation data can be mapped onto housing conditions survey to target enforcement.
- Success would depend upon regular housing stock condition surveys.
- In conclusion houses in England, and therefore Southampton, are in very poor condition. This has health and financial consequences. A fairly extensive legal framework has not eliminated poor standards in the private rented sector. Landlords need to understand that the maintenance of property requires regular investment, local authorities need to be more pro-active on housing standards, and tenants need to feel free to exercise their rights and use rent repayment orders and the courts as appropriate.

Agenda Item 7

DECISION-MAKER:	SCRUTINY INQUIRY PANEL
SUBJECT:	SOUTHAMPTON CITY COUNCIL'S APPROACH TO ENFORCEMENT OF THE PRIVATE RENTED SECTOR
DATE OF DECISION:	15 FEBRUARY 2024
REPORT OF:	SCRUTINY MANAGER

<u>CONTACT DETAILS</u>			
Executive Director	Title	Executive Director – Corporate Services	
	Name	Mel Creighton	Tel: 023 8083 3528
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

In accordance with the Inquiry Plan, at the fourth meeting of the inquiry the Panel will be considering Southampton City Council's approach to enforcement of the private rented sector in the city.

RECOMMENDATIONS:

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| | (i) | The Panel is recommended to consider the comments made by the invited guests and use the information provided as evidence in the review. |
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REASONS FOR REPORT RECOMMENDATIONS

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| 1. | To enable the Panel to compile a file of evidence in order to formulate findings and recommendations at the end of the review process. |
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ALTERNATIVE OPTIONS CONSIDERED AND REJECTED


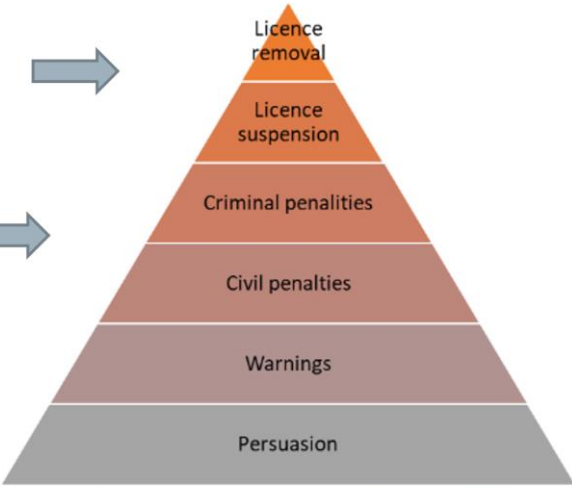
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| 2. | None. |
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DETAIL (Including consultation carried out)

- | | |
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| 3. | At the 18 January 2024 meeting, when considering housing conditions within the private rented sector, the Inquiry Panel discussed local authority enforcement powers and examples of good practice. |
| 4. | At the 15 February meeting the Panel will be seeking to understand Southampton City Council's approach to enforcement of the private rented sector, any future plans to enhance enforcement, and to compare the Council's approach with identified best practice. |

Enforcement

- | | |
|----|---|
| 5. | The Department for Levelling Up, Housing and Communities (DLUHC) sets the overall policy for the private rented sector and oversees the regulatory framework. |
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6.	Local councils are responsible for regulating the private rented sector in their area and enforcing landlords legal obligations. Councils choose how they regulate based on local priorities and have a range of investigative and enforcement tools available.
7.	Legislation requires local authorities to: <ul style="list-style-type: none"> • keep housing conditions (incl. overcrowding) under review • take enforcement action where a Category 1 hazard is identified.
8.	To fulfil legal duties, local authority have wide enforcement powers including: <ul style="list-style-type: none"> • formal “deterrence-focused” regulation i.e. statutory notices, civil penalty notices (up to £30K fines), banning orders, criminal penalties, and rent repayment orders. • other approaches i.e. surveys, licencing, informal actions. <p>Details of the enforcement powers available to local authorities can be accessed at paragraph 2.2 of the report published for the 16 November meeting of the Inquiry Panel - Appendix 2 - Briefing paper on local authority regulation of PRS.docx.pdf (southampton.gov.uk).</p>
9.	<p>In their presentation to the Inquiry Panel at the 16 November 2023 meeting, Expert Advisers to the Panel, Professor Helen Carr and Dr Mark Jordan, outlined what good local authority enforcement of the private rented sector looked like. This is represented in the graphic below.</p> <div style="text-align: right; margin-bottom: 10px;">  </div> <h3 style="text-align: center;">What does good enforcement look like?</h3> <div style="display: flex; align-items: center; justify-content: space-around;"> <div style="width: 40%;"> <p>Full use of licencing & enforcement powers</p> <p>Following lack of compliance, response should escalate to formal action</p> <p>Advice, support as strategies of first choice</p> </div> <div style="width: 10%; text-align: center;"> <p>→</p> <p>→</p> <p>→</p> </div> <div style="width: 40%; text-align: center;">  <p><i>Pyramid of responsive regulation – Harris et al (2020)</i> 19</p> </div> </div>
10.	A study commissioned by DLUHC in 2021 to explore local authority enforcement in the private rented sector ¹ , found that the powers and enforcement measures available to local authorities are valuable tools for tackling poor conditions in the private rented sector. However, the findings also identified that local authorities

¹ [Local authority enforcement in the private rented sector: headline report - GOV.UK \(www.gov.uk\)](#)

	face significant barriers to tackling poor conditions, resulting in an uneven picture of enforcement.
	<u>Barriers to effective enforcement</u>
11.	The study commissioned for DLUHC identified a number of barriers to good enforcement by local authorities. These are summarised below.
	Lack of meaningful data about private renting
12.	Few local authorities participating in the study had sufficient, comprehensive knowledge of the local private rented stock to inform strategic decision making. Local authorities have a duty under Part 1 of the Housing Act 2004 to keep housing conditions under review and identify action needed, but local authorities were not always well informed about the private rented sector stock and only a small number carried out regular reviews of the stock.
	Capacity of local enforcement teams
13.	In the study there was a clear correlation between those working proactively, making use of the range enforcement tools and powers, and those with larger teams. The four most enforcement-led local authorities in the case study sample map directly onto the four local authorities with the largest teams.
14.	Enforcement teams are reliant on officers in other departments to progress certain aspects of their work (for example legal departments, revenue and benefits to pursue RROs, housing departments for management orders) and limited capacity in these teams was also found to limit what enforcement officers were able to do.
	The experience and expertise of enforcement teams
15.	The survey showed that local authorities that were most proactive in enforcement had teams comprised of highly experienced and qualified staff. These teams were also multi-disciplinary, including staff from other departments (trading standards, tenancy relations, legal) thereby enhancing the technical expertise overall.
	Political will, strategic commitment and related support of legal teams
16.	There was a clear correlation between local authorities with strategic or political commitment to improving private rented sector conditions through enforcement action, and those more operationally proactive in their efforts to do so. The support of senior managers and legal departments was found to be crucial to officers' ability to proactively enforce. These local authorities had explicit strategic commitment to tackling problems in the private rented sector, for example in their corporate strategy, and the link between strategic commitment and operational capacity was explicitly acknowledged
	Issues relating to the legal framework
17.	Various aspects of the legal framework were found to present challenges to local authorities in their efforts to enforce against poor standards. These include: <ul style="list-style-type: none"> • The number and range of laws that officers have to understand and navigate. • 'Alignment' issues between legislation in different disciplines of relevance to enforcement.

	<ul style="list-style-type: none"> • Lack of clarity in some legislation about which local authority department has responsibility to take action. • Questions about whether the HHSRS was the most effective way of assessing and tackling poor standards. • Not having the right legislative tools for tenancy relations offences.
18.	The study concluded that, with some notable exceptions and pockets of good practice, the barriers identified above, and other challenges, appear to leave many enforcement teams operating a reactive, rather than proactive service that is focused on fulfilling statutory duties and targeting only the worst standard properties. Addressing these barriers is likely to result in increased and more effective action to improve conditions and standards in the private rented sector.
	Renters (Reform) Bill
19.	The Renters (Reform) Bill is currently working its way through Parliament ² and will legislate for reforms set out in the private rented sector white paper published in June 2022.
20.	Local authorities will be given new enforcement powers to require landlords to make properties decent, with fines up to £30,000 or a banning order in the worse cases. Tenants will also be able to claim up to 24 months rent back through rent repayment orders up from 12 previously.
21.	Councils will also be given stronger powers to investigate landlords who rent substandard homes, providing them with tools to identify and take enforcement action against the criminal minority.
22.	However, with additional powers, and the removal of some of the identified barriers, the Government expects councils to prioritise private rented sector enforcement and the Renters (Reform) Bill includes a duty that local housing authorities shall ‘enforce the landlord legislation in its area’. National oversight of local councils enforcement is expected to be bolstered, including by exploring requirements for councils to report on their housing enforcement activity.
23.	Analysis provided by the Panel’s Expert Advisers, Professor Carr and Dr Jordan, at the 18 January 2024 meeting of the inquiry ³ , identified that the Renters Reform Bill is likely to have significant regulatory and resource implications for local authorities.
24.	<p>The recommendation from Professor Carr and Dr Jordan was that local authorities needed to adopt a more proactive and responsive regulatory approach which can:</p> <ul style="list-style-type: none"> • Demonstrate compliance • Develop novel data led enforcement practices - Eg NHS hospital admissions data and Indices of Multiple Deprivation data can be mapped onto housing conditions survey to target enforcement. <p>Regular housing stock condition surveys were also recognised as integral to a successful approach to enforcement.</p>

² [Renters \(Reform\) Bill - Parliamentary Bills - UK Parliament](#)

³ [Regulation of housing conditions in PRS - Prof Carr and Dr Jordan \(slide 9\)](#)

	<u>Good enforcement practice – Local authorities</u>
25.	At the 18 January 2024 meeting the Panel were appraised of a number of different approaches employed by local authorities that had been identified as good practice as it relates to enforcement of the private rented housing sector. These included the following:
	The Leeds Rental Standard
26.	The Leeds Rental Standard is a badge developed by Leeds City Council that: <ul style="list-style-type: none"> • Establishes an overarching minimum standard for privately rented accommodation across the city • Aims to bring unity to accreditation • Raises the standards in professional and student lets in the city.
27.	The Leeds Rental Standard operates under the following existing schemes: <ul style="list-style-type: none"> • National Residential Landlords Association Accreditation Scheme • Unipol Code (unipol.org.uk) • ANUK / Unipol National Code (for larger student developments)
28.	Leeds City Council supports and partly funds the Leeds Rental Standard scheme in partnership with the other accrediting organisations - Unipol Student Homes and the National Residential Landlords Association.
29.	Leeds City Council want the Leeds Rental Standard to result in lighter touch regulation allowing the local authority to concentrate their regulatory resources on those that showed no sign of meeting standards voluntarily.
	The Good Landlord Charter – Greater Manchester Combined Authority
30.	Greater Manchester Combined Authority’s proposed Good Landlord Charter ⁴ is a voluntary scheme for landlords who want to commit to higher standards than they are currently required to by law. The scheme represents an instance of good practice in how it was designed with effective participation of landlords associations, tenant unions ie Greater Manchester Tenants Union (GMTU) and other stakeholders which acted as members of the coordinating group.
31.	To become a member of the Charter, landlords are required to demonstrate they meet twenty member criteria, which are specific commitments to going beyond the minimum required by law and include the following examples: <ul style="list-style-type: none"> • Affordable – e.g. a tenant should understand how their rent and other charges are set and should not be ripped-off. • Inclusive – e.g. make or facilitate reasonable adaptations to properties, where needed • Private and secure – e.g. tenants able to make reasonable changes to their home • Responsive – e.g. published, timely target response times • Safe and decent – e.g. a tenant should be able to live free from physical or psychological discomfort in their home, any work/repairs are done by a

⁴ <https://www.greatermanchester-ca.gov.uk/what-we-do/planning-and-housing/good-landlord-charter>

	<p>qualified or competent tradesperson, properties meet EPC C as a minimum</p> <ul style="list-style-type: none"> • Supportive – e.g. a commitment to refer tenants at risk of homelessness to council • Well managed – e.g. landlord must be able to demonstrate accreditation or training.⁵
	Selective Licensing in the London Borough of Newham
32.	<p>Cllr Shaban Mohammed and Helen Masterson, Head of Private Sector Housing Standards at the London Borough of Newham, delivered a presentation at the 18 January Inquiry Panel meeting on Newham’s selective licensing scheme.</p> <p>LB Newham - Selective licensing</p>
	Selective Licensing in Nottingham⁶
33.	<p>Nottingham City Council’s Selective Licensing scheme began in August 2018 and is aimed at tackling poor property conditions, high levels of antisocial behaviour, crime, and deprivation. To date, the Council’s team of 75 officers has received over 29,000 applications. The provision of advice to licence holders and compliance inspections led to approximately 25% of properties being improved.</p>
34.	<p>The Council has also had success in finding unlicensed properties and taking enforcement action against owners who don’t comply. They have issued 47 Civil Penalty Notices and 13 landlords have been prosecuted for 49 offences at 30 properties, 27 of these relate to Selective Licensing. This has helped the team to secure 1,305 licence applications from previously unlicensed properties. The scheme also led to a reduction in the proportion of privately rented homes with EPC energy rating below ‘D’ from 25.9% to 15.6%.</p>
35.	<p>To support landlords, the Council also offers a lower Selective Licence fee for accredited landlords through partners Decent and Safe Homes (DASH) and Unipol. This has seen the number of accredited landlords rise from 650 to 1,715 (January 2022). Approximately a third of all individually licensed properties are now accredited, with these landlords letting over 8,300 properties (January 2022), up from 3,917 in 2018.</p>
36.	<p>Results from the survey commissioned by DLUHC in 2021⁷ suggested that selective licensing is not widespread, with 88% of survey respondents reporting no selective licensing areas. Selective licensing was reported by case study local authorities to be essential to efforts to tackle poor standards, with one authority going as far as to suggest that ‘I don’t think we have the tools without licensing’. Selecting licensing is not appropriate for local authorities where problems are not concentrated, but a sizeable minority of case study local authorities reported that selective licensing would help them tackle poor standards but had not been pursued.</p>
	Information, advice and guidance – Exeter City Council
37.	<p>The Pyramid of responsive regulation, shown in paragraph 9, has advice and support as the strategies of first choice. Information, advice and guidance is key</p>

⁵ <https://www.greatermanchester-ca.gov.uk/media/9125/good-landlord-charter-consultation.pdf>

⁶ Case study included in [A fairer private rented sector print.pdf \(publishing.service.gov.uk\)](#) – p51

⁷ [Local authority enforcement in the private rented sector: headline report - GOV.UK \(www.gov.uk\)](#)

	to increasing landlords and tenants understanding of their rights, responsibilities, and to identify and promote good practice.
38.	The approach followed by Exeter City Council to educate and inform both landlords and tenants via checklists and training modules is both comprehensive and clear and can be accessed via the links below: Private Tenants' Checklist - Exeter City Council Landlord Checklist - Exeter City Council Landlord training modules - Exeter City Council
	<u>Enforcement in Southampton</u>
39.	Southampton City Council's Private Rented Sector Enforcement Policy is attached as Appendix 1.
	HMO Licensing and Additional Licensing Scheme
40.	At the 16 November meeting of the Inquiry Panel, Southampton City Council's Private Sector Housing Manager referred to the Council's HMO Licensing and Additional Licensing Scheme.
41.	There are approximately 6,000-7,000 HMOs in the city. The Council has a statutory duty to licence all HMOs occupied by five or more persons in two or more separate households.
42.	In the city we have approximately 2,500 of these Mandatory HMOs, which require licensing every five years. All licensed HMOs must meet certain conditions concerning safety and amenities and be properly managed so as to ensure that they do not impact negatively on the local neighbourhood. Failure to licence and failure to comply with conditions are offences which can result in enforcement.
43.	Southampton City Council has also operated additional HMO licensing schemes in certain wards within the city. Additional licensing schemes allow SCC to licence smaller HMOs, and 'cluster flats within purpose-built student blocks not captured by the Mandatory scheme.
44.	Schemes have covered the four central wards of Bevois, Bargate, Portswood and Swaythling and also the western wards of Shirley, Freemantle, Bassett and Millbrook.
45.	Additional licensing schemes have captured another 2,500 HMOs across the city. These schemes can only run for five years and run on a 'cost recovery' basis. The most recent scheme covering the central wards ended on September 30 th 2023.
	Context – Conditions in the private rented sector in Southampton
46.	The details below about housing conditions within Southampton's private rented sector provides some context to the discussion about the Council's approach to enforcement in the private rented sector.
47.	The most reliable source of data on housing conditions is the local authority housing stock condition survey. This is vitally important in developing a scientific basis for understanding housing conditions and targeting enforcement action in a proactive and structured fashion. The most recent Southampton Council housing stock condition survey (2008) found that 38% of all private homes

	(owned and rented) in Southampton did not meet the Decent Homes Standard while 25% of private rented dwellings had a hazard that is likely to result in harm that needs medical treatment. ⁸																														
48.	Analysis of Southampton’s Tenants Survey ⁹ , conducted in October 2023, identified that over half (59%) of respondents said that they had experienced issues with repairs or maintenance with their landlord.																														
49.	<p>Respondents were also asked if they have ever reported problems about the condition of their home to their landlord. The response is identified below:</p> <table border="1"> <thead> <tr> <th>Issue</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Damp/mould</td> <td>48%</td> </tr> <tr> <td>Plumbing issues</td> <td>43%</td> </tr> <tr> <td>General/continuous state of disrepair</td> <td>37%</td> </tr> <tr> <td>Broken boiler</td> <td>30%</td> </tr> <tr> <td>Poor insulation (e.g. windows, walls)</td> <td>25%</td> </tr> <tr> <td>Broken windows (e.g. broken glass, closing mechanism)</td> <td>23%</td> </tr> <tr> <td>Roof issues (e.g. leaks)</td> <td>21%</td> </tr> <tr> <td>Poor ventilation</td> <td>20%</td> </tr> <tr> <td>Poor quality heating (e.g. old storage heaters)</td> <td>19%</td> </tr> <tr> <td>Not reported any of these</td> <td>17%</td> </tr> <tr> <td>Insect infestation</td> <td>12%</td> </tr> <tr> <td>Unsafe/exposed wiring</td> <td>10%</td> </tr> <tr> <td>Leaking radiators</td> <td>7%</td> </tr> <tr> <td>Other</td> <td>7%</td> </tr> </tbody> </table> <p>Key findings</p> <ul style="list-style-type: none"> Just under half (48%) of respondents have reported issues with damp or mould to their landlord 17% of respondents did not report any of the listed issues to their landlord <p>Source – Southampton Private Rented Sector Survey</p>	Issue	Percentage	Damp/mould	48%	Plumbing issues	43%	General/continuous state of disrepair	37%	Broken boiler	30%	Poor insulation (e.g. windows, walls)	25%	Broken windows (e.g. broken glass, closing mechanism)	23%	Roof issues (e.g. leaks)	21%	Poor ventilation	20%	Poor quality heating (e.g. old storage heaters)	19%	Not reported any of these	17%	Insect infestation	12%	Unsafe/exposed wiring	10%	Leaking radiators	7%	Other	7%
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50.	Of those who reported, 83% have reported issues about the condition of the property to their landlord. Damp or mould (48%), plumbing issues (43%) and general state of disrepair (37%) were the 3 most commonly reported problems.																														
	Invited Guests																														
51.	<p>To provide context to the information above, the key presenter at the 4th meeting of the Inquiry Panel will be:</p> <ul style="list-style-type: none"> Steven Hayes-Arter - Service Manager for Private Sector Housing & Port Health at Southampton City Council <p>Steven has been asked to:</p> <ul style="list-style-type: none"> Outline the Council’s approach to enforcement of Southampton’s private rented sector. Summarise the HMO Licensing Scheme and Additional Licensing Schemes employed in Southampton and the effectiveness of the schemes. 																														

⁸ Southampton City Council, Housing and Health in Southampton Report available at <https://www.southampton.gov.uk/moderngov/documents/s26558/Appendix.pdf> p 38. Also see [https://www.seeda.co.uk/publications/Addressing Poor Housing Conditions in the Private Sector in the South East 2006 1 2006.pdf](https://www.seeda.co.uk/publications/Addressing_Poor_Housing_Conditions_in_the_Private_Sector_in_the_South_East_2006_1_2006.pdf)

⁹ [Southampton Private Rented Sector Tenants Survey](#)

	<ul style="list-style-type: none"> Identify opportunities to improve the approach employed by the Council to enforcement of the private rented sector. <p>In addition, Southampton Tenants Union and representatives from Landlord Organisations have been invited to provide a perspective on the Council's approach to enforcement in the private rented sector.</p>
52.	<p>The invited guests will take questions from the Panel relating to the evidence provided. Copies of any presentations will be made available to the Panel and will be published on the Inquiry Panel's pages on the Council website:</p> <p>Browse meetings - Scrutiny Inquiry Panel - How do we get a better deal for private sector renters in Southampton? Southampton City Council.</p>
RESOURCE IMPLICATIONS	
<u>Capital/Revenue/Property/Other</u>	
53.	Resources to support the scrutiny review will come from existing budgets.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
54.	The duty to undertake overview and scrutiny is set out in Part 1A Section 9 of the Local Government Act 2000.
<u>Other Legal Implications:</u>	
55.	None
RISK MANAGEMENT IMPLICATIONS	
56.	None
POLICY FRAMEWORK IMPLICATIONS	
57.	None
KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	None
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Southampton City Council's Private Rented Sector Enforcement Policy
Documents In Members' Rooms	
1.	None
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out?	No
Data Protection Impact Assessment	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out?	No
Other Background Documents	
Other Background documents available for inspection at:	

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential
1.	None

Southampton City Council Enforcement Private Rented Sector



Southampton City Council Enforcement Private Rented Sector



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Enforcement Private Rented Sector			
Version	1.0	Approved by	Cabinet
Date last amended	01/08/2019	Approval date	20/08/2019
Lead officer	Rosie Zambra	Review date	20/08/2020
Contact	Rosie.Zambra@southampton.gov.uk	Effective date	27/08/2019

1. Scope and Definitions

- 1.1 The Southampton City Council Enforcement Private Rented Sector Policy is intended to provide guidance for officers, businesses and members of the public on the principle and processes which will apply when enforcement action is considered or taken. The Southampton City Council Enforcement Private Rented Sector Policy should be read in conjunction with The Southampton City Council Enforcement Policy.
- 1.2 The Southampton City Council Enforcement Policy is a general policy which outlines the principles of enforcement that the council will follow and apply.
- 1.3 This policy indicates the different enforcement options that the council may follow and apply in the private rented sector, and how decisions are made on enforcement; it also explains the role and authorisation of officers who have enforcement responsibilities.
- 1.4 This policy sets out high level principles of enforcement procedures in private rented sector and, where applicable, is supported by The Southampton City Council Enforcement Policy.
- 1.5 Southampton City Council is committed to carrying out its duties in a fair and consistent manner and ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements.

2. Legislative Context and Other Related Documents

- 2.1 This policy is linked to a number of a different pieces of legislation and guidance. The council will adhere to all relevant legislation and guidance including:
 - Human Rights Act 1998
 - Data Protection Act 2018
 - Legislative and Regulatory Reform Act 2006
 - Equality Act 2010
 - Code for Crown Prosecutors 2013
 - The Anti-social Behavior, Crime and Policing Act 2014
 - Regulators' Code 2014
 - Housing Act 2004
 - Building Act 1984
 - Caravan Sites and Control of Development Act 1960
 - Caravan Sites Act 1968
 - Energy Act 2013
 - Enterprise and Regulatory Reform Act 2013
 - Environmental Protection Act 1990
 - Housing Act 1985,

- 1996 and 2004
- Housing and Planning Act 2016
- Local Government (Miscellaneous Provisions) Act 1982
- Leicestershire Act 1985
- Mobile Homes Act 1983 and 2013
- Prevention of Damage by Pests Act 1949
- Public Health Acts 1875 – 1932, 1936, 1961, 1984

3. Our Objectives

- To strive to ensure that tenants of a private landlord or a Registered Social Landlord (RSL) live in homes free of significant risks to their health and safety.
- To strive to ensure that all Houses in Multiple Occupation (HMO's) and Selective Licensed properties are safe, licensed where required and all licensing conditions are met.
- To work with owners of Empty Homes to ensure they are not left empty where there is blight and a need for housing.
- To work with owners and occupiers of privately owned property and land so that it does not present a statutory nuisance to other land owners, or does not directly or indirectly present an unacceptable risk to public health, safety or the environment.
- We meet our statutory duties as a local housing authority.

4. Decision Making

- 4.1 Enforcement action will be based on risk and we must also have full regard to any statutory duty.
- 4.2 Assessment of risk will be based on current legislation and specific guidance.
- 4.3 Enforcement Officers are required to make judgments and will decide on appropriate action after considering the criteria within this Policy and relevant written procedures.
- 4.4 A Senior Officer will give prior approval to all formal action falling outside the scope of this policy.
- 4.5 Where the investigating enforcement officer believes that legal action maybe required, evidence will be collected and the case will be reviewed by the service manager before it proceeds.

5. Enforcement Principles

5.1 The council's enforcement policies will have regard to the Regulators' Code (2014). Enforcement activity undertaken by Southampton City Council should be:

- **Proportionate** – our enforcement activities should reflect the level of risk to the public and enforcement action taken should correspond to the seriousness of the offence.
- **Accountable** – our activities should be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- **Consistent** – our advice to those we regulate should be reliable and we will respect advice provided by other regulators. The council should seek to ensure fair and level enforcement, however the council recognises that consistency is not the same as uniformity. Officers should exercise their professional judgment and discretion according to the circumstances of each individual case.
- **Transparent** – those we regulate should be able to understand what is expected of them and what they can anticipate in return; regulations and enforcement procedures should be as clear and simple as possible.

6. Enforcement Procedure

6.1 The decision to pursue enforcement action will depend on the severity of the noncompliance. Factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals;
- Evidence that suggests that there was pre-meditation in the commission of an offence;
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, order or policy;
- There is a recorded history of previous warnings or the commission of similar offences; and
- Aggravated circumstances such as obstruction of an officer or aggressive/violent behaviour.

7. Housing, Health and Safety Rating System (HHSRS)

7.1 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s).

7.2 There are two categories of possible hazards:

- **Category 1 Hazards** represent a serious danger to health and the council has a duty to take appropriate action to deal with these.

- **Category 2 Hazards** represent a lesser danger and, although it has no duty to take action, the council will exercise its power to reduce category 2 hazards through appropriate action.

7.3 A range of enforcement powers is available under the Act to remove or reduce any hazards identified to an acceptable level.

8. Powers of Entry

8.1 Where appropriate and proportionate authorised officers can use the powers of entry set out in part 1 of the Housing Act 2004 and other relevant legislation for example where they have reasonable belief an offence has been committed and they need to gather evidence.

8.2 In general the powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection and gather evidence
- Take someone with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Leave recording equipment for later collection
- Take samples of articles or substances; and in some cases to carry out works.

8.3 In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days.

8.4 Notice that that powers of entry need to be carried out will normally be in writing but can in some circumstances be given verbally, depending on the relevant statutory provision.

8.5 The powers of entry can be enforced with a warrant. The Police may if necessary accompany officers where that is appropriate.

8.6 It is an offence to obstruct an officer in the course of their duty if they are attempting to gain entry whilst executing a warrant.

8.7 Officers exercising their power of entry will carry identification and details of their authorisation to carry out their action.

9. Enforcement Options

9.1 The council seek to comply with regulatory legislation through the use of the following courses of action:

- Use of informal action, written guidance, advice and notices
- By refusal, revocation or the attachment of conditions to a licence
- By issuing fixed penalty notices
- By using civil legislation where appropriate
- By the use of various management orders

- By the use of statutory notices and orders
- By issuing simple cautions
- By carrying out work in default
- By prosecution
- By the use of civil penalties
- By using anti-social behaviour powers
- By compulsory purchase or enforced sale

9.2 The council in deciding upon enforcement options will also have due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

10. Enforcement Decision Table

10.1 The following table contains some examples of situations where different types of action may be taken. Decisions are made on a case by case basis.

Action	GENERAL CIRCUMSTANCES
No Action	<p>Where formal action may not be appropriate.</p> <p>Where the individual/organisation is likely to comply</p> <p>In such cases, customers may be directed to other sources of advice and support.</p>
Informal Action and Advice includes verbal advice and advisory letters	<p>Where it may be appropriate to deal with the issues through informal action and advice and the individual/organisation is likely to comply</p> <p>In such cases, the Council will work collaboratively with responsible landlords to address and resolve any problems.</p>
Service of Notice requiring repairs or specific legal requirements	<ul style="list-style-type: none"> • Where a person refuses or fails to carry out works through the pre-formal HHSRS process; • Where there is a lack of confidence or there is a positive intelligence that the responsible individual or company will not respond to a pre-formal approach; • Where there is a risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc.);

	<ul style="list-style-type: none"> • Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; • Where the person has a history of non-compliance with the Council and/or other relevant regulators; • Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management); • Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or • Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.
Powers to require information and/or documents	<p>Where it is necessary for documents and information to be provided to enable officers to carry out their powers and duties.</p> <p>We there is reasonable belief that an offence has been committed and it is believed that the documents are required in order to gather evidence of the offence.</p>
Emergency Remedial Action / Emergency Prohibition Order	Where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises.
Revocation of HMO Licenses and Approvals	<p>Where the Manager is not a "fit and proper person"; and/or</p> <p>Where there are serious breaches of the licensing conditions and/or serious management offences.</p>
Simple Caution	<p>Where an offence is less serious and the person who has committed the offence has admitted their guilt & agreed to accept a caution.</p> <p>In such cases, a Simple Caution may be offered in line with home office guidance.</p>
Prosecution	Where the authority consider the offence is not suitable to be dealt with by with by way

	of a Civil Penalty or a Civil Penalty is not available for the type of offence.
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11. Informal Action

11.1 Informal action includes:

- Offering advice
- Giving verbal and written warnings
- Negotiating agreements between complaints and other residents or businesses
- The negotiation of specific conditions with licences, and
- The use of informal notices

11.2 It is generally considered appropriate to take informal action in one or more of the following circumstances:

- The act omission is not serious enough to warrant formal action.
- From the business'/member of public's past history it can be reasonably expected that informal action will achieve compliance with the law.
- The consequence of non-compliance will not pose a significant risk.

12. Civil Penalty Notices

12.1 Under the Housing and Planning Act 2016 a local authority has the power to impose a civil penalty of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004.

12.2 The following offences under the Housing Act 2004 can be considered for a civil penalty;

- Failure to comply with an Improvement Notice (Section 30).
- Offences relating to Licensing of HMOs (Section 72).
 - Section 72 (1) being in control or managing an HMO which is required to be licensed but is not so licensed.
 - Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence.
 - Section 72 (3) being a licence holder who fails to comply with any condition of a licence.
- Offences in relation to licensing under Part 3 of the Housing Act 2004 (Section 95).
 - Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed.
 - Section 95 (2) being a licence holder who fails to comply with any condition of a licence.

- Offence of contravention of an overcrowding notice (Section 139).
 - Failure to comply with management regulations in respect of an HMO (Section 234).
- 12.3 Each local Authority must implement its own civil penalties scheme and determine its own level of civil penalties. Please see appendix 1 for the Civil penalties charges.
- 12.4 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
- 12.4 The Council will, where it deems necessary and proportionate make use of the powers to issue civil penalty notices for applicable offences .
- 12.5 The procedure for issuing civil penalties is prescribed by schedule 13A of the Housing Act 2004 and schedule 1 of the Housing and Planning Act 2016.
- 12.6 The decision to issue a civil penalty notice will made by the service manager for HMO licensing after consultation with legal services on a case by case basis..
- 12.7 A local housing authority is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the local housing authority.
At the end of this period, should the local housing authority still propose to issue the financial penalty, they must serve a 'final notice' imposing the penalty.
On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

13. Civil Legislation

- 13.1 Where appropriate, the Southampton City Council will use civil legislation in the fulfilment of its duties. For example, an injunction may be sought to prevent a business from continuing to breach the law and it is felt the criminal sanctions will not prevent further breaches.

14. Management Orders

- 14.1 The Council will consider applying for an Interim Management Order /Special Interim Management Order and final Management Order on a case by case basis and in compliance with part 4 of the Housing Act 2004.

15. Statutory Notices

- 15.1 Statutory notices/orders legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety.
- 15.2 Notices and Orders will normally be served where:

- Informal action has not achieved the desired effect,
- There is a lack of confidence that the individual/company will respond to an informal approach,
- There is a history of non-compliance with informal action,
- Standards are generally poor with little management awareness of statutory requirements,
- The consequences of non-compliance could be potentially serious to the health and safety of the public.
- Where the breach of legislation is so serious, deterrence and punishment may be required to prevent future occurrences.

15.3 Time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served.

15.4 In some circumstances, requests for extension of time can be made. These should be in writing, prior to the expiry date, explaining the reason for the request.

15.5 Statutory notices may also be served in conjunction with prosecutions.

15.6 Having regard to statutory powers, and where the law allows, a charge will apply to statutory notices and orders.

15.7 Where a notice is not complied with by the expiry date, a prosecution or further enforcement action may be considered appropriate.

15.8 Statutory notices and orders are important legal documents. Once served, failure to take follow-up enforcement action has serious implications having regard to the contents of this Policy. Failure to comply with a statutory notice or order will normally result in seeking authority to either issue a civil penalty or to prosecute, and/or the carrying out of works in default

16. Simple Cautions

16.1 Where there is evidence of a criminal offence but the public interest does not require a prosecution, a simple caution can be used.

16.2 Simple cautions are mainly used for cases involving first time, low-level offences where a simple caution can meet the public interest.

16.3 Decisions to issue simple cautions will be made in accordance with the Director of Public Prosecutions' Guidance on Charging issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984 and following "The simple cautions for Adult Offenders Guidance" issued on 13th April 2015.

16.3 Before a simple caution can be given, it is important to try to establish:

- The views of the victim about the offence,

- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances,
- Whether the offender has made any form of reparation or paid compensation.

16.4 A simple caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy will be held by the council as the official record.

16.5 Failure to accept a simple caution leaves the authority with an option to instigate legal proceedings instead.

16.6 Simple caution can be cited in court if the same person or organisation, commits further housing act offences within three years of the original offence.

16.7 Simple Cautions will not be used as a substitute for prosecutions which would otherwise be defective.

17. Work In Default

17.1 Failure to comply with a notice may result in the council arranging for the necessary works to comply with the notice to be carried out, this is known as work in default.

17.2 The costs to the owner will usually be more than if the owner carries out the works themselves as they will be charged for the council's time, carrying out schedules of work and any other reasonable costs incurred by the council.

17.3 The council will actively pursue debts incurred.

17.4 Enforced sale of empty properties will be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the owners default and in compliance with the Council's Enforced Sale Procedure.

17.5 Until cleared all debts will be registered with the local Land Charges Registry as a financial charge.

17.6 Once registered the charge will accrue compound interest.

17.7 It should be noted that, in the case of action under section 76 of the Building Act 1984, and emergency remedial action under Section 40 of the Housing Act 2004, there is no power of prosecution, and the Council is only able to arrange for the required works to be carried out.

18. Prosecutions

18.1 Prosecution will normally occur where one or more of the following circumstances apply:

- It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence.
- There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm.
- There has been failure to comply with a legal notice or repetition of a breach that was subject to a formal caution, or failure to pay a fixed penalty notice with the permitted payment period;
- There is a blatant disregard for the law;
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- Officers have been intentionally obstructed in the lawful course of their duties.
- Where council staff are assaulted we will seek prosecution of the offenders.

18.2 In all cases, alleged offenders will be invited to send written comments or explanations for consideration.

19. Rent Repayment Orders

19.1 This is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

19.2 The Housing Act 2004 allows for rent repayment orders to be issued where landlord of a property had failed to obtain a licence for a property that was required to be licensed.

19.3 The Housing and Planning Act 2016 extended rent repayment orders to cover the below:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (section 1 of the Protection from Eviction Act 1977)

19.4 Rent repayment orders can be granted to either the tenant or the council.

19.5 If the tenant paid the rent themselves, then the rent must be repaid to the tenant. If the 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.

- 19.6 If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.
- 19.7 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 19.8 The council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 19.9 The council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves taking into account and DPA/GDPR implications

20. Licensing of Properties

- 20.1 Please see the SCC Policy The licensing of Houses in Multiple Occupation (HMOs).

21. Enforced Sales

- 21.1 The council approved the Enforced Sale Procedure (ESP) in August 2005. The Council will use the ESP where appropriate and proportionate, primarily to deal with problematic empty properties, where despite the Council's reasonable efforts to engage with the owner of the property the hazards and poor state and condition of the property remain.
- 21.2 The council will consider invoking the ESP on a case by case basis. Generally the ESP would not be used unless there is a relevant debt of over £1,000

Upon disposal of the property the council will recover all of its debts, fees and costs from the sale proceeds. Any balance from the proceeds of sale will be paid to the owner (where there whereabouts are known).

22. Empty Dwelling Management Orders

- 22.1 In respect of a wholly unoccupied property and in accordance with the Housing Act 2004, the council may make an interim empty dwelling management order (IEDMO).
- 22.2 The council must make the application for the IEDMO to the First-tier property tribunal.

- 22.3 Once an IEDMO is in force the council must take such steps as they consider appropriate for the purpose of securing that the dwelling becomes and continues to be occupied.
- 22.4 If after serving an interim empty dwelling management order the council considers that there are no steps it can appropriately take under the order to ensure that the property becomes occupied, it will either make a final empty property management order, or revoke the order without taking any further action.
- 22.5 In making the decision to issue a final EDMO the council must take into account the interests of the community and the effects on the proprietor and any other interested parties. The council may also pay compensation to any affected third party.
- 22.6 Once the EDMO is in force the council will take appropriate steps for securing that the dwelling is occupied and that the property is managed in accordance with the scheme contained within the order.
- 22.7 The council will revoke the EDMO if it determines that there are no steps it can take or it determines that keeping the order in force is unnecessary.

23. Banning Orders

- 23.1 In the case of the most serious offenders or rogue landlords, the council can in accordance with the powers contained within the Housing and Planning Act 2016 apply to the first-tier tribunal for a banning order.
- 23.2 A banning order can be issued by the first-tier tribunal that prevents a landlord from the following;
- Letting housing in England
 - Engaging in English letting agency work
 - Engaging in English property management work or
 - Holding a HMO licence
- 23.3 The offences for which a banning order can be applied are listed in the Housing and Planning Act 2016 (Banning Order Offences) Regulations (2017) see-
<http://www.legislation.gov.uk/ukdsi/2017/9780111162224/contents>
- 23.4 The council will consider applying for a banning order for the most serious offenders and in doing so will consider the following;
- The seriousness of the offence
 - Any previous convictions or listing on the national rogue landlord database
 - The harm to the tenant caused by the offence
 - The punishment is proportionate to the offence
 - That it provides a sufficient deterrent to prevent a repeat of the offence and
 - Deters others from committing similar offences.
- 23.5 The length of any banning order will be determined by the first-tier tribunal with a minimum of 12 months being imposed. There is no statutory maximum limit. The

Council can provide recommendations for the length of the banning order on application but must detail their reasons for the recommendation.

23.6 The procedure for issuing a banning order is prescribed within the Housing and Planning Act 2016. See –

<http://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2/enacted>

23.7 It is a criminal offence to breach a banning order and the council will take appropriate action to secure any convictions for breaches of any orders imposed.

24. The Rogue Landlords Database

24.1 The Secretary of State has established a national database of rogue landlords and property agents.

24.2 The council has authority to maintain and update the content.

24.3 The council will make an entry on the database in respect of a person in the following circumstances;

- A banning order has been made against them
- They have received two or more financial penalties in respect of banning order offences within the last twelve months.

24.4 The council will issue the person with a decision notice before any entry is made.

24.5 The person has a right of appeal to the First-tier tribunal.

24.6 The following information in respect of the person will be recorded on the database;

- The name and address of the person
- The period for which the entry is to be maintained
- The details of their property ownership and property management
- Details of any convictions for banning order offences
- Any Banning Orders still in force
- Any financial penalties received

24.7 The entry on the database will be removed in the case of any conviction being overturned.

24.8 The person has a right to request their removal from the database. This must be in writing to the Council. The council will consider such requests on a case by case basis.

24.9 Where the council refuses the request to remove the person from the database the person has a right of appeal to the First-tier tribunal.

25. Publicity and Sharing of Evidence

25.1 The council will endeavour to secure media representation at hearings in the Courts when we are seeking prosecution of offenders with the aim of drawing their attention to the court case.

25.2 The council will publicise any conviction, which could serve to draw attention to the need to comply with the law or, deter anyone tempted to act in a similar manner.

25.3 Details of such cases will also be published on our website.

25.4 The council will share intelligence and evidence, secured in the ordinary course of our business, with other statutory enforcement bodies and relevant partners in accordance with our duties under Crime and Disorder Act 1988, section 17.

26. Governance

26.1 Authorisation of Officers

26.1.1 Officers are only authorised to enforce regulations in accordance with the council's Scheme of Delegation.

26.1.2 Officers must be competent by appropriate training, qualification and/or experience will be authorised to take enforcement action relevant to that training, qualification and/or experience. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties.

26.2 Appeals and Complaints

26.2.1 Appeals in relation to enforcement action should be via the statutory process outlined in the relevant legislation.

26.2.2 Complaints about the conduct of officers should be made via the council's corporate complaints procedure.

26.3 Policy Review Process

26.3.1 This policy will be reviewed when there is any significant change in legislation or other circumstances that affect its effectiveness and validity.

Appendix 1 - Civil penalties – determining fee levels

A civil penalty is a financial penalty imposed by a local authority on an individual or organisation. The power to impose a civil penalty of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 and Banning Order offences has been introduced by the Housing and Planning Act 2016.

The maximum penalty is £30,000, however each local authority must implement its own policy and fee level in accordance with the guidance issued by the Ministry of Housing, Communities & Local Government, see -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

In accordance with this guidance the Council has devised its own fee levels and incorporated the use of civil penalties within the Private Sector Enforcement Policy 2019. In setting fee levels the Council has considered the following;

- 1. The Severity of the offence.**
- 2. The Culpability and track record of the offender.**
- 3. The harm caused to the tenant.**
- 4. The appropriate punishment of the offender.**
- 5. To deter the offender from repeating the offence & deter others from committing similar offences.**
- 6. To remove any financial benefit the offender may have obtained as a result of committing the offence.**

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

Determining the civil penalty fees

The Council has developed a matrix to calculate the level of fine imposed. The fees are based on;

1. The culpability of the offender &
2. The potential level of harm posed by the offence

The Council has set 12 penalty bands which cover fine levels from a minimum of £25 to a maximum of £30,000.

Step 1

This step assesses the landlord's culpability as well as the potential harm the offence could have caused to tenants or visitors to the property. There are four levels of culpability to consider and each one has an associated set of characteristics which can be used to determine the most appropriate level. Table 1 below sets out the criteria for assessing the culpability of the landlord:

Table 1 – Level of culpability

Very high (deliberate)	<ul style="list-style-type: none"> • Flagrant disregard for the law or deliberate breach • Has large rented property portfolio and knew their actions were unlawful <p><i>Example offences: Failure to comply with emergency remedial notice or prohibition order</i></p>
High (reckless)	<ul style="list-style-type: none"> • Offender failed to put in place measures that are recognised legal requirements. • Offender ignored warnings from the Council or tenants. • Offender failed to improve conditions even after being alerted to the risks. • Offender allowed the breaches to continue over a long period of time. • Serious and/or systemic failure to address risks. <p><i>Example offence: Failure to comply with HMO Management Regulations.</i></p>
Medium (negligent)	<ul style="list-style-type: none"> • Systems put in place to manage risk but not sufficiently adhered to or implemented <p><i>Example offence: Partial compliance with an Improvement Notice</i></p>
Low (little or no fault)	<ul style="list-style-type: none"> • Failings were minor & non-compliance was an isolated incident • Significant attempts taken to comply but not sufficient on this occasion • There was no warning/circumstance indicating a risk <p><i>Example offence: Overcrowding or breach resulting from behaviour of occupants</i></p>

The seriousness of the harm the offence had caused, or could foreseeably cause, by the offence(s) must be assessed. When deciding the level of harm whether, actual or potential, resulting from the commission of the offence the Council will have regard to Table 2 below.

Table 2 – Level of Harm

Level 1 – High risk	<ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Level 2 – Medium risk	<ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Level 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect • The Council and/or legitimate landlords or agents substantially undermined by offender’s activities • The Council’s work as a regulator to address risks to health is inhibited • Consumer/tenant misled
Level 3 – Low risk	<ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled but little or no risk of actual adverse effect on individual(s)

Step 2 – Determining the starting point and category range

Once the levels of culpability and harm have been assessed the matrix set out in Table 3 will be used to assess the correct penalty level followed by Table 4 to provide the banding for the penalty category. In order to determine an appropriate level of civil penalty within the category range a starting point is listed. Further adjustment within the category range will then be considered for aggravating and/or mitigating factors.

Table 3—Penalty levels

		Culpability			
		V High	High	Medium	Low
Harm	Level 1	12	9	6	3
	Level 2	11	8	5	2
	Level 3	10	7	4	1

Table 4 – Penalty bands

Category	Civil Penalty Range (£)	Starting point (£)
1	25 - 175	50
2	50 - 350	125
3	125 - 750	300
4	175 - 750	350
5	350 - 2000	1000
6	750 - 4500	2500
7	500 - 2250	1000
8	1000 - 5500	3000
9	2500 - 12500	6250
10	1250 - 4500	2500
11	2500 - 12500	6250
12	6250 - 30000	15000

Example – High level of culpability but low level of harm would score 7 with a penalty range of £500-£2250 and a starting point of £1000. Mitigating and aggravating factors will then be considered to determine if the amount should be lower or higher than £1000.

Step 3

The Council will consider mitigating and aggravating factors when determining the fine within the penalty range. Table 5 below lists examples.

Table 5 – Aggravating and mitigating factors

Mitigating Factors
<ul style="list-style-type: none"> • No history of previous offences • Steps taken to voluntarily remedy problem e.g. submits a licence application • High level of co-operation with the investigation e.g. turns up for the PACE interview • Good record of maintaining property

<ul style="list-style-type: none"> • Acceptance of responsibility e.g. accepts guilt for the offence(s) at an early stage in the investigation • Health reasons preventing reasonable compliance i.e. mental health, unforeseen health issues, emergency health concerns & serious medical conditions requiring urgent, intensive or long term treatment • Sole or primary carer for dependant relative that prevented reasonable compliance • Willingness to undertake training and monitoring • Willingness to join recognised landlord accreditation scheme • Vulnerable individual(s) where their vulnerability is linked to the commission of the offence • Good character and/or exemplary conduct
<p>Aggravating Factors</p>
<ul style="list-style-type: none"> • Previous relevant convictions, having regard to the nature of the offence and relevance to the current offence and the time that has elapsed since the conviction • Motivated by financial gain i.e. cost cutting at the expense of safety • Deliberate concealment of illegal nature of activity • Poor history of compliance • Falsification of documentation or licenses • Deliberate failure to obtain or comply with relevant licensing requirements to avoid scrutiny by enforcing authorities • Targeting vulnerable victims • Obstruction of the investigation • Number of items of non-compliance i.e. the greater the number the greater the potential aggravating factor • Systemic management failure e.g. Lack of tenancy agreement/rent paid in cash • Record of letting substandard accommodation • Record of poor management/inadequate management provision

Step 5 – Recording the decision

The decision to issue a civil penalty will be made by the Service Manager for HMO Licensing. The decision will be recorded giving reasons for determining the amount of financial penalty that will be imposed.