

APPENDIX B



Private Sector Housing Enforcement Policy

for the Regulation of Housing Standards

Updated 1 August 2017

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1. Introduction

- 1.1 Northampton Borough Council is committed to improving standards in private sector housing, bringing empty properties back into use and ensuring that all private rented accommodation is well managed, properly maintained and safe and habitable.
- 1.2 Although Northampton has some excellent landlords and letting agents, the Council has a vital role to play in tackling criminal, rogue and irresponsible landlords and preventing them from profiting from their non-compliance.
- 1.3 The Council has statutory powers and duties to regulate private sector housing and these are assisted by the Housing Health and Safety Rating System (HHSRS), the Mandatory Licensing of Houses in Multiple Occupation and, in designated parts of the borough, the Additional Licensing of Houses in Multiple Occupation.
- 1.4 In order to regulate private sector housing, the Council's Private Sector Housing Team will request information, carry out inspections, process licence applications, bring empty properties back into use, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.

2. Purpose of the Enforcement Policy

- 2.1 The purpose of the Private Sector Housing Enforcement Policy is to ensure that:
 - Tenants of private landlords and registered social landlords live in homes that are free of unacceptable hazards and risks to their health and safety;
 - All Houses in Multiple Occupation are safe and well managed and all relevant Management Regulations are adhered to;
 - All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met;
 - Private housing is not left empty for an unreasonable amount of time and/or becomes an eyesore and nuisance to neighbouring properties;
 - Privately owned property and land does not present a statutory nuisance to other land owners, and does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
 - The Council meets its statutory obligations in relation to private housing.
- 2.2 The Enforcement Policy provides an overview of the broad principles and processes with which the Council will seek to comply when taking action to ensure that all private sector housing in the borough is healthy, well managed and safe. It should be read in conjunction with other strategies and policies including, for example, the Private Sector Housing Fees & Charges Policy, the Private Sector Housing Civil Penalties Policy and the HHSRS Procedure, etc.

3. Principles of Good Enforcement

3.1 When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities

3.2 The Private Sector Housing Team will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers. In doing so, it will have regard to the local economy, the role of inspections, compliance visits and advice and guidance, and the principles underpinning enforcement activity.

Benefits to the Local Economy

3.3 Northampton Borough Council aims to create neighbourhoods of choice: areas where people want to live, bring up their children and work. Maintaining healthy housing and attractive neighbourhoods will benefit the local economy.

Property Inspections and Compliance Visits

3.4 The Private Sector Housing Team will undertake proactive property inspections, based on risk and intelligence, and ensure that its resources are targeted at the worst properties first including, for example, licensable Houses in Multiple Occupation that are avoiding Mandatory and Additional HMO licensing.

3.5 Officers will target 'eyesore' empty properties and land in order to end the blight, improve neighbourhoods and increase the supply of housing.

3.6 The Private Sector Housing Team will respond to residents' complaints about substandard, unsafe and problematic private housing and adopt an escalating regulatory approach to enforcement.

Advice and Guidance

3.7 The Council will provide general information, advice and guidance to make it easier for businesses to understand and meet their responsibilities. This will normally be done through the Council's website: www.northampton.gov.uk

Principles underpinning Enforcement Action

3.8 The Private Sector Housing Team's enforcement activity will be:

- **Targeted** – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.
- **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
- **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
- **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- **Consistent** – Enforcement action will be undertaken by well-trained investigators, and the Private Sector Housing Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.
- **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

4. Regulation of Private Sector Housing

Dealing with Complaints

4.1 The Private Sector Housing Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.

Housing, Health and Safety Rating System (HHSRS)

- 4.2 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). 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.
- 4.3 In most cases, the Council will follow a pre-formal process in which it will seek to work with landlords to reduce hazards. However, it will avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.
- 4.4 Charges will be made for any formal enforcement action that the Council takes (see separate Private Sector Housing Fees & Charges Policy for further information).

Houses in Multiple Occupation (HMOs)

- 4.5 In Northampton, there are many hundreds of Houses in Multiple Occupation: properties that are occupied by more than one household that share facilities.
- 4.6 As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. Some HMOs are subject to licensing:
- **Mandatory HMO Licensing** – An HMO licence is required for HMOs that have 3 or more storeys and are occupied by 5 or more persons who are sharing facilities and comprise 2 or more households.
 - **Additional HMO Licensing** – An HMO licence is required for HMOs that are situated in the Additional HMO area, have 2 storeys and are occupied by at least 3 persons who are sharing facilities and comprise 2 or more households.
- 4.7 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 4.8 It is a criminal offence if a person controlling or managing an HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.

- 4.9 The Council will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will prosecute them.
- 4.10 Where a non-licensable HMO is being badly managed and/or is in a poor state of repair, the Private Sector Housing Team will prioritise it for action, based on an assessment of risk.
- 4.11 Further details of the Council's approach are contained in the HMO Licensing Policy.

Overcrowding

- 4.12 Overcrowding is a difficult issue to deal with because, unlike other hazards, there is often very little that the landlord can do to resolve the problem unless the tenant has moved other people into the accommodation since the start of the tenancy.
- 4.13 In cases of severe overcrowding, the Council will explore the housing options available to the tenant, including a move to alternative accommodation.

Empty Properties

- 4.14 There is a high demand for accommodation in Northampton. As well as being a wasted source of housing, empty properties can be an eyesore, damage adjoining properties, blight neighbourhoods and attract anti-social behaviour.
- 4.15 The Council will identify, risk assess and prioritise long-term, problematic and nuisance empty properties, using the full range of informal and formal action (including enforced sales and compulsory purchase) to bring them back into use.

5. Options to Regulate and Ensure Compliance

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

ACTION	GENERAL CIRCUMSTANCES
No Action	<ul style="list-style-type: none"> Where formal action may not be appropriate. <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	<ul style="list-style-type: none"> Where it may be appropriate to deal with the issues through informal action and advice. <p>In such cases, the pre-formal stage of the HHSRS may be followed, with the Council working collaboratively with responsible landlords to address and resolve any problems.</p>

ACTION	GENERAL CIRCUMSTANCES (continued)
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 positive intelligence that the responsible individual or company will not respond to a pre-formal approach; • Where there is 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); • 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 of Entry (for more information, see Paragraphs 5.2 - 5.5 below)	<ul style="list-style-type: none"> • Where it is necessary to carry out a statutory duty or power; • Where it is necessary to investigate an offence; • Where it is necessary to prevent the obstruction of Officers; and/or • Where it is necessary to protect the health and safety of any person, or to protect the environment, without delay.
Powers to Require Information and/or Documents	<ul style="list-style-type: none"> • Where it is necessary for information to be provided to enable Officers to carry out their powers and duties; • Where it is necessary for documents to be provided to enable Officers to carry out their powers and duties under the Housing Act 2004; • Where it is necessary for electrical certificates, gas safety certificates and fire risk assessments to be provided in relation to HMOs; • Where it is necessary for insurance documents and energy performance certificates to be provided in relation to privately rented properties; and/or • Where it is necessary for any person with an interest in a property to provide details about its ownership and occupation, etc.

ACTION	EMERGENCY SITUATIONS
Emergency Remedial Action / Emergency Prohibition Order	<ul style="list-style-type: none"> 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
Works in Default for failing to comply with a Notice (for more information, see Paragraphs 5.6 - 5.9 below)	<ul style="list-style-type: none"> Where works are required – in accordance with a Notice – to address a serious hazard, but these are not carried out within the permitted time. <p>In such cases, these works may be carried out by the Council, as works in default, prior to any prosecution.</p>
Injunctive Action (for more information, see Paragraph 5.10 below)	<ul style="list-style-type: none"> Where the situation is dangerous and/or there is significant public detriment, and the offenders have repeatedly been found guilty of similar offences; and/or Where it is necessary to prevent further offences and/or the harassment of tenants, witnesses or other people.
ACTION	CONTRAVENTIONS
Revocation of HMO Licenses and Approvals	<ul style="list-style-type: none"> Where the Manager is not a “fit and proper person”; and/or Where there are serious breaches of the licensing conditions and/or serious management offences.
Civil Penalties (for more information, see paragraphs 5.11 – 5.15 below)	<ul style="list-style-type: none"> Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public; Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged; Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in relation to the carrying out of the requirements; Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate; Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

ACTION	CONTRAVENTIONS (continued)
<p>Simple Caution (for more information, see Paragraphs 5.16 - 5.18 below)</p>	<ul style="list-style-type: none"> • Where an offence is less serious and the person who has committed the offence has admitted their guilt. <p>In such cases, a Simple Caution may be offered (as an alternative to Court or Civil Penalty action, and on the understanding that the Council's costs will be paid by the offender) where it is likely that they will heed a warning about their behaviour and the legal consequences if they commit further offences.</p>
<p>Prosecution (for more information, see Paragraphs 5.19 – 5.22 below)</p>	<ul style="list-style-type: none"> • Where the offence is not covered by applying a Civil Penalty. • Where the case also involves offences applied by other agencies i.e. Trading Standards, Northampton Fire and Rescue Service etc. as well as Private Sector Housing Offences and the case is multi agency set of prosecutions heard on the same day. • Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public; • Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged; • Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in relation to the carrying out of the requirements; • Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate; • Where a simple caution is considered inappropriate or the defendant has refused to accept a simple caution; and/or • Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

Powers of Entry

- 5.2 In certain circumstances, Powers of Entry into a property are provided to authorised Officers in accordance with the legislation. In general, the powers will allow an Officer at any reasonable time to:
- Enter a property to carry out an inspection
 - Take any appropriate persons with them
 - Take equipment or materials with them
 - Take measurements, photographs or make recordings
 - Take samples of articles or substances
 - Sometimes carry out works
- 5.3 In most cases, prior notice will be given to owners and to occupiers. Although the notice will normally be given in writing or by e-mail, it may sometimes be given verbally, depending on the relevant statutory notice. The amount of notice given will depend on the legislation being enforced and can range from 24 hours to 7 days.
- 5.4 Powers of Entry can (and, in some circumstances, will) be enforced with a Warrant, obtained from a Magistrate. Police and/or other regulatory agencies – including Planning Enforcement, the Immigration Service, the Fire Service, the Gangmasters Licencing Authority and Trading Standards – may be in attendance, as necessary.
- 5.5 It is an offence to obstruct an Officer in the course of their duty. Officers exercising their Power of Entry will carry identification and details of their authorisation to carry out their action.

Carrying out Works in Default

- 5.6 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so.
- 5.7 In most circumstances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.
- 5.8 The full cost of the works will be recovered in accordance with the relevant statutory provisions. A Charge will be placed on the property and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt. (For further information, see the Private Sector Housing Fees & Charges Policy).

- 5.9 The Council is not obliged to carry out the works and reserves the right not to do so where the cost of the works is likely to be high or there may be difficulties recovering the costs. Works may be considered to remove serious hazards only.

Injunctive Actions

- 5.10 In certain circumstances injunctive actions may be used to deal with repeat offenders and dangerous situations, or to prevent harassment or illegal evictions.

Civil Penalties

- 5.11 When deciding to apply a Civil Penalty, the Council must be satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or individuals or company and that there would be a realistic prospect of conviction should the matter, for which a penalty is applied, be prosecuted in the courts.
- 5.12 Where the Council is satisfied 5.11 is met, Civil Penalties (where applicable) will be the primary consideration of the Council. Only in exceptional circumstances will a Simple Caution and/or Prosecution be the course of action taken rather than applying a Civil Penalty.
- 5.13 Any decision to apply a Civil Penalty will be fully considered at a case conference attended by the Officers and the Private Sector Housing Manager. If a Civil Penalty is deemed appropriate, then the Council will fully adhere to the process as set out in the Housing and Planning Act 2016, Part 2, Rogue Landlords and Property agents in England.
- 5.14 In deciding the level of Civil Penalty that will be applied the Council will have regard to the Private Sector Housing Civil Penalty Policy, using the Civil Penalty Matrices contained therein and making adjustments to the charge, where appropriate, by applying any reasonable aggravating or mitigating factors.
- 5.15 Above all, in determining the level of Civil Penalty, the Council will ensure that the Penalty removes any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle will be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Simple Cautions

- 5.16 Where someone has committed an offence or offences and fully accepts responsibility for the offence(s), Officers may offer a Simple Caution where the circumstances suit a Simple Caution rather than a Court case.

5.17 Simple Cautions will be considered where:

- The defendant has admitted their guilt;
- The defendant is aged 18 or over; and
- The defendant agrees to be given a Simple Caution
- Civil Penalties are not appropriate or cannot be applied

5.18 If the defendant agrees to receive a Simple Caution, the Council will seek to recover the costs of the investigation as part of the Simple Caution process. If they do not agree to receive a Simple Caution, they will be prosecuted.

Prosecution

5.19 When deciding to prosecute, the Council must be satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or individuals or company and that there is a realistic prospect of conviction.

5.20 A decision must also be made as to whether a prosecution would be in the public interest. Where there is evidence, Officers will consider prosecution and, as part of their investigation, they will take into account, amongst other things, the following:

- Any reasonable explanation provided by the individual or company
- Evidence that the individual or company intends to prevent any recurrence of the problem
- An individual's state of health
- The offender's attitude to the offence

5.21 Any decision to prosecute will initially be considered at a case conference attended by the Officers and the Private Sector Housing Manager. If a prosecution is deemed appropriate, then the case will be fully prepared to include an interview under caution of potential defendant(s) and referred to the Council's Legal Officers for processing.

5.22 Prosecutions will be brought without unavoidable delay and generally there is a requirement to lay information with the Courts within six months of the offence being committed. To ensure fair and consistent decisions in relation to prosecutions, any decision to prosecute must take into account the Code for Crown Prosecutors.

Special Interim Management Orders

- 5.23 Where the Council is satisfied that a significant and persistent problem of anti-social behaviour in an area is attributable, in full or in part, to the anti-social behaviour of an occupier of an HMO or other dwelling and that the landlord is failing to take action to combat the problem, it can make a Special Interim Management Order.
- 5.24 A Special Interim Management Order – which operates in the same way an Interim Management Order (see Paragraphs 6.3 – 6.5) – may also be applied where it is necessary for protecting the health and safety or welfare of persons occupying, visiting or otherwise engaging in lawful activities in the vicinity of the house.

6. Additional Enforcement Options for HMOs

- 6.1 In addition to the enforcement options described above, the Council has further powers to ensure that adequate standards are met and maintained in HMOs.
- 6.2 The additional enforcement powers available in relation to HMOs are:
- Interim Management Orders
 - Final Management Orders
 - HMO Management Regulations
 - Rent Repayment Orders

Interim Management Orders

- 6.3 If the Council is satisfied that there is no reasonable prospect of a licensable HMO being licensed (with appropriate conditions) in the near future, or if it is necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity, it must make an Interim Management Order in respect of the HMO.
- 6.4 Although the Council may delegate the management of the HMO to another agency or partner – and there are provisions to vary, revoke and appeal against an Interim Management Order – an Interim Management Order will be in force for 12 months or until an HMO licence is granted if this happens within 12 months.
- 6.5 An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect rent and to use that rent to pay for work to the property.

Final Management Orders

- 6.6 If the Council is satisfied (on the expiry of the Interim Management Order) that the HMO still requires a licence but it is still not able to grant the HMO a licence, it must make a Final Management Order.

6.7 A Final Management Order is similar to an Interim Management Order in that there are provisions to vary, revoke and appeal against a Final Management Order, the Council may delegate the Management of the HMO to another agency or partner, and the Council continues to manage the property with many of the rights of the landlord. However, it must review the arrangements from time to time.

Rent Repayment Orders

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

6.9 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs.

6.10 Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below.

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (due to be enacted in November 2017);
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

6.11 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

6.12 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.

6.13 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.

6.14 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.

7. Guidance

7.1 A wide range of guidance on enforcement has been issued by the Government and other agencies, and the Council will continue to have regard to all relevant guidance when formulating its policies and procedures. Enforcement Officers will follow these policies and procedures, will be highly trained investigators and will approach enforcement in a professional and competent manner.