

# **USE OF CIVIL PENALTIES TO FUND THE EXPANSION OF THE HOUSING ENFORCEMENT TEAM**

## **BUSINESS CASE**

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**Phil Harris (Head of Housing & Wellbeing)**  
**Debi Waite (Private Sector Housing Manager)**

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## 1. INTRODUCTION

- 1.1 In Northampton, the private rented sector has doubled in size during the past ten years and now amounts to around 16,000 (18%) of the homes in the borough. For the first time in decades, there are now more people living in Northampton's private rented sector than are living in social rented housing.
- 1.2 With a growing student population, the creation of extra jobs by the Northampton Alive projects and Enterprise Zone and the difficulties that many people are now having in buying a home of their own, the borough has a very high demand for private rented accommodation, especially in the town.
- 1.3 Although Northampton has some excellent landlords and managing agents, it also has a large number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard or unsafe.
- 1.4 In November 2014, the Council introduced an Additional HMO Licensing Scheme and issued an Article 4 Direction (removing permitted development rights) in parts of the town and, in February 2016 (when it became clear that hundreds of licensable HMOs were still operating without a licence, it introduced a new Housing Enforcement Policy and Fees & Charges Policy.
- 1.5 The new Housing Enforcement Policy and Fees & Charges Policy marked a fresh approach to housing enforcement in Northampton and were based on the principle that it should be the offender (rather than good landlords or local council tax payers) who pays for enforcement and no-one who breaks the law should gain a financial advantage over someone who complies with the law.
- 1.6 This approach enjoys widespread support from local landlords who want the Council to create a level playing field for landlords by making effective use of its powers and dealing robustly with offenders. It also supports the Council's efforts to deliver high quality, value for money services that improve people's lives, keep people safe and encourage positive behaviour change.

### Housing and Planning Act 2016

- 1.7 The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:
  - **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences;
  - **Extension of rent repayment orders** to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
  - **Database of rogue landlords and property agents** who have been convicted of certain offences or have received multiple civil penalties; and
  - **Banning orders** for the most serious and prolific offenders.

- 1.8 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:
- **Section 30** – Failure to comply with an Improvement Notice
  - **Section 72** – Offences in relation to licensing of Houses in Multiple Occupation
  - **Section 95** – Offences in relation to licensing of houses under Part 3 of the Act
  - **Section 139** – Offences of contravention of an overcrowding notice
  - **Section 234** – Failure to comply with management regulations in respect of Houses in Multiple Occupation
- 1.9 Rent repayment orders – made by the First Tier Tribunal and requiring a landlord to repay up to 12 months’ rent – were introduced under the Housing Act 2004 to cover situations where the landlord had failed to obtain a licence for a property that was required to be licensed. They were extended (under the Housing & Planning Act 2016) to include the following offences:
- 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)
- 1.10 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid the rent themselves, the rent must be repaid to the tenant. If rent was paid through Housing Benefit or the housing element of Universal Credit, it must be repaid to the local housing authority.
- 1.11 In addition to the offences listed in Paragraph 1.9, a rent repayment order can also be made against a landlord who has received a civil penalty.
- 1.12 Under the Housing & Planning Act 2016, local housing authorities are permitted to retain the income they receive from civil penalties and rent repayment orders, and to spend it on private sector housing enforcement and/or providing support for the private rented sector (through a social lettings agency or dedicated tenancy relations service, for example).

## Private Sector Housing Civil Penalties Policy

- 1.13 On 19 July 2017, Cabinet approved changes to the Housing Enforcement Policy and Fees & Charges Policy. It also approved a Private Sector Housing Civil Penalties Policy that contains information about civil penalties and rent repayment orders, and how the Council is planning to use them.
- 1.14 Northampton's Civil Penalties Policy takes into account the statutory guidance that has been issued by the Government under Schedule 9 of the Housing and Planning Act 2016 and confirms that the following factors will be considered when determining the level of civil penalty that is imposed:
- The severity of the offence
  - The culpability and track record of the offender
  - The harm caused to the tenant
  - The punishment of the offender
  - Whether it will deter the offender from repeating the offence
  - Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence
- 1.15 In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords or local council tax payers), the costs associated with investigating, determining and applying a civil penalty will be reflected in the size of civil penalty imposed.

## **2. PURPOSE OF THE BUSINESS CASE**

- 2.1 The Housing Enforcement Team's primary role is to improve standards in the private rented sector and ensure that all private rented housing is safe, is in a good state of repair, is well managed and is not overcrowded and that, if the property is a house in multiple occupation (HMO), it has a valid HMO licence (if it requires one) and complies with the HMO Management Regulations.
- 2.2 Although local housing authorities are permitted to retain all of the income that they receive from civil penalties and rent repayment orders, they must pay to the Government any of the income that they fail to spend on private sector housing enforcement or supporting the private rented sector.
- 2.3 The purpose of this Business Case is to explain how the Housing Enforcement Team operates at the moment, why it needs to concentrate on the properties that pose the greatest risk and are owned or managed by the worst offenders, and how the income from civil penalties and rent repayment orders can be used to fund the expansion of the Housing Enforcement Team, the appointment of a Tenancy Relations Officer and, perhaps, some of the operating costs of the social lettings agency, Guildhall Residential Lettings.
- 2.4 As well as describing the benefits of increasing the size and capacity of the Housing Enforcement Team – in terms of improving standards in the private rented sector, dramatically reducing the number of licensable HMOs that are operating without a licence, and minimising the net cost of providing the housing enforcement service and social lettings agency – this Business Case will also consider the uncertainties and risks associated with this approach.

## **Improving standards in the private rented sector**

- 2.5 The Council is committed to dealing robustly with criminal, rogue and irresponsible landlords – including the owners and managers of unlicensed HMOs – and to making full and effective use of its enforcement powers and the provisions of the Housing & Planning Act 2016.
- 2.6 Northampton’s intelligence-led, risk-based, ‘offender pays’ approach is set out in its Private Sector Housing Enforcement Policy and Fees & Charges Policy which encourage and reward good and responsible behaviour and impose penalties and sanctions for bad and irresponsible behaviour.
- 2.7 In summary, the Council’s objective is to ensure that:
- All 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 licensable houses in multiple occupation are licensed and all licensing conditions are met
  - All houses in multiple occupation are safe, well managed and comply with all relevant HMO Management Regulations
  - No privately owned property or land becomes a statutory nuisance to other land owners, or causes (directly or indirectly) an unacceptable risk to public health, safety or the environment.
- 2.8 To help achieve this objective, the Council has introduced a Fees & Charges Policy that is based on the following principles:
- The Council will enforce the law without imposing unnecessary burdens on responsible owners, landlords and occupiers
  - All fees and charges are based on what it costs the Council to license HMOs, take enforcement action and do works in default
  - The Council will charge a reduced HMO licence fee (by awarding an ‘early bird discount’) when the owner or landlord applies for, or renews, an HMO licence on time
  - Owners and landlords who fail to license their HMOs on time will be required to pay more for their HMO licence and, where they submit their application very late and/or the Council has reason to believe that its Officers will need to spend a lot of time monitoring and enforcing standards in that HMO, they will normally be issued with a shorter licence that lasts 3 or 4 years less than the usual 5 year HMO licence
  - Owners and landlords who are served with formal Notice(s) by the Council will be required to bear the full cost of enforcement

- 2.9 The Housing & Planning Act 2016 strengthens local authority powers to tackle criminal, rogue and irresponsible landlords with the introduction of Banning Orders, a tougher 'fit and proper person' test and civil penalties of up to £30,000, together with changes to rent repayment orders.
- 2.10 The introduction of civil penalties (which can be imposed as an alternative to prosecution) and the extension of rent repayment orders (to cover a range of offences, not just licensing) are extremely important because they afford the Council the opportunity to extend its reach over the private rented sector.
- 2.11 Guildhall Residential Lettings (the Council's social lettings agency) is expected to play a pivotal role in improving standards in the private rented sector, bringing empty homes back into use, improving people's access to private rented accommodation and preventing homelessness.
- 2.12 As the introduction of Banning Orders and a tougher 'fit and proper person' test is likely to increase the number of licensable HMOs that are not licensed and have no reasonable prospect of being licensed in the near future, the social lettings agency will help the Council exercise its power (under Part 4 of the Housing Act 2004) to take over control and management of the properties.
- 2.13 Where a landlord is unable to manage their property themselves, the social lettings agency will offer them a solution. Better outcomes will be achieved, of course, if the social lettings agency takes on the management of such properties, especially if there are tenants in occupation.

**Ensuring that all homes are free of unacceptable hazards and risks to the occupants' health and safety (HHSRS)**

- 2.14 The Housing, Health and Safety Rating System (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.
- 2.15 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 in situations where it may be difficult for the Council to recover its costs) and it will charge for any formal enforcement it takes in line with its Fees & Charges Policy.
- 2.16 An Improvement Notice may be served, requiring the landlord to carry out work to deal with any Category 1 or 2 hazards. The Notice will state what the

hazards are, what is causing them, what the landlord needs to do, the date when work should start and the when the work must be completed by.

2.17 A civil penalty can be imposed if an Improvement Notice is not complied with.

### **Ensuring that all licensable HMOs have a valid licence**

2.18 In Northampton, there are many hundreds of Houses in Multiple Occupation: properties that are occupied by more than one household that share facilities.

2.19 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 (irrespective of where the HMO is situated in the borough) 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. (In November 2014, an Additional HMO Licensing Scheme was introduced for an area that includes the wards of Abington, Briar Hill, Castle, Kingsley, Kingsthorpe, Obelisk, Phippsville, Semilong, Spring Park, St David's, Sunnyside and Trinity).

2.20 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 (including prosecution and the imposition of civil penalties) when dealing with unlicensed HMOs and breaches of the licence conditions.

2.21 Although there are currently 883 licensed HMOs in Northampton, the Housing Enforcement Team has identified another 492 properties that it suspects or knows are licensable HMOs and operating without an HMO licence:

**Number of licensable HMOs that are believed to be operating in Northampton without an HMO licence**

**MANDATORY HMOs**

At present, Northampton has **382** licensed Mandatory HMOs.

Based on all of the intelligence it has gathered, the Housing Enforcement Team has identified another **108** properties that it suspects or knows are licensable Mandatory HMOs and operating without an HMO licence:

- 23 are known Mandatory HMOs operating without a licence
- 85 are suspected Mandatory HMOs operating without a licence

**ADDITIONAL HMOs**

At present, Northampton has **501** licensed Additional HMOs.

Based on all of the intelligence it has gathered, the Housing Enforcement Team has identified another **384** properties that it suspects or knows are licensable Additional HMOs and operating without an HMO licence:

- 36 are known Additional HMOs operating without a licence
- 348 are suspected Additional HMOs operating without a licence

- 2.22 In addition to the 1,375 HMOs described in Paragraph 2.21, the owners and landlords of another **174** HMOs have provided the Housing Enforcement Team with declarations that, although their property is an HMO and occupied by people who do not form a single household, there are fewer occupants in it than are required for them to need an HMO licence.
- 2.23 It is reasonable to assume that at least some of these 174 declarations will be false or no longer reflect the true number of people living in the properties. This will add to the number of licensable HMOs operating without a licence.
- 2.24 On 6 April 2018, the **definition of Mandatory HMO** will be extended to include all HMOs that are occupied by at least 5 persons who do not form a single household, irrespective of the number of storeys in the HMO.
- 2.25 As hundreds of 2 storey HMOs – including a large number of HMOs that are located outside of the area covered by Northampton’s Additional HMO Licensing Scheme – will be affected by the new definition, the change will result in a significant increase in the number of unlicensed HMOs that will need to be licensed, as a Mandatory HMO, after 6 April 2018. The Council will be able to take enforcement action against anyone who fails to license, by the deadline of 6 October 2018, an HMO that is covered by the new definition.



**Ensuring that all HMOs are safe, well managed and comply with all relevant HMO Management Regulations**

- 2.26 All HMOs (irrespective of whether or not they are licensable) need to be safe, well managed and comply with all relevant HMO Management Regulations.
- 2.27 Where an HMO is being badly managed and/or is in a poor state of repair, the Housing Enforcement Team will undertake a HHSRS assessment (see Paragraph 2.14) to assess how likely it is that the condition of the property will cause an unacceptable hazard to the health of the occupant(s). If appropriate, an Improvement Notice will be served.
- 2.28 The HMO Management Regulations require the manager of the HMO to:
- Provide information to the occupier
  - Take safety measures
  - Maintain the water supply and drainage
  - Maintain the gas and electricity
  - Maintain the common parts, fixture, fittings and appliances
  - Maintain the living accommodation
  - Provide waste disposal facilities
- 2.29 A civil penalty can be imposed if an Improvement Notice is not complied with and/or there is a breach of the HMO Management Regulations.

**Estimate of the number of HMOs (licensable and non-licensable) in Northampton that must be maintained in a good state of repair and comply with the law, including the HMO Management Regulations**

	<b>382</b>	(Licensed Mandatory HMOs)
+	<b>501</b>	(Licensed Additional HMOs)
+	<b>108</b>	(Unlicensed Mandatory HMOs – Suspected / Known)
+	<b>384</b>	(Unlicensed Additional HMOs – Suspected / Known)
+	<b>174</b>	(Known, non-licensable HMOs)
	<b><u>1,549</u></b>	

Civil penalties may be imposed on the owners / landlords of any of these HMOs that are overcrowded, unlicensed, in a poor state of repair and/or do not comply with the HMO Management Regulations.

The extension of the definition of Mandatory HMO (to include HMOs that have less than 3 storeys) is expected to result in the Housing Enforcement Team being notified of even more HMOs in the borough.

### **3. PROJECT DESCRIPTION**

#### **Business need**

- 3.1 Northampton's private rented sector is thriving and, more than ever before, the demand for private rented accommodation is outstripping supply.
- 3.2 This high demand, together with the considerable profits that can be made from houses in multiple occupation, has encouraged criminal, rogue and irresponsible landlords to flout the law and knowingly rent out accommodation that is overcrowded, in a poor state of repair, unsafe and/or unlicensed.
- 3.3 In common with other parts of the country, Northampton's private rented sector is being used to support criminal activity – such as money laundering, people trafficking, sexual exploitation and modern slavery – and the response from the Council, the Police, the Immigration Service and the other enforcement agencies needs to be intelligence-led, co-ordinated and robust.
- 3.4 There has also been a noticeable increase in the number of family homes that are being let to tenants who then sub-let them (with or without the knowledge of their landlord or managing agent) to large numbers of individuals.
- 3.5 As explained in Section 2 of this Business Case, the Council's collection and analysis of intelligence has highlighted the extent to which landlords and managing agents are failing to license their HMOs.
- 3.6 HMO licensing places an obligation on the owner or manager to notify the Council of the existence of a licensable HMO and affords the Council the opportunity to ensure that the HMO is managed by a 'fit and proper person', is not overcrowded and its amenities are adequate for the number of occupants.
- 3.7 Licensing also provides the Council with the opportunity to impose conditions on the owner or manager of the HMO in relation to the way in which it is managed, so as to avoid any nuisance or anti social behaviour. It also helps the Council to identify the density of HMOs in particular streets and areas.
- 3.8 The Housing Enforcement Team's priorities are:
  - To tackle criminal, rogue and irresponsible landlords and ensure that offenders (rather than good landlords or local council tax payers) pay for the cost of housing enforcement
  - To ensure that no-one who breaks the law gains a financial advantage over someone who complies with the law
  - To make best use of the income received from civil penalties, rent repayment orders and HMO licensing to fund the delivery of high quality, value for money services that improve people's lives, keep people safe, encourage positive behaviour change and cost little or nothing to the public purse.
  - To ensure that as many licensable HMOs as possible are licensed and comply with the HMO Management Regulations

## 4. GOALS AND SCOPE

- 4.1 The introduction of civil penalties (which can be imposed as an alternative to prosecution) and the extension of rent repayment orders (to cover a range of offences, not just licensing) are extremely important because they provide the Council with the opportunity to invest in private sector housing enforcement and support for the private rented sector.
- 4.2 As well as funding the expansion of the Housing Enforcement Team, the extra income generated by civil penalties and rent repayment orders could be used to fund other private sector housing services, such as a Tenancy Relations Officer, the operating costs of the social lettings agency and the cost of introducing an Additional HMO Licensing Scheme in Far Cotton and Delapre.

### An intelligence-led approach to housing enforcement

- 4.3 Northampton's intelligence-led approach to tackling criminal, rogue and irresponsible landlords and managing agents – underpinned by a suite of policies relating to Private Sector Housing – has attracted a lot of interest from the DCLG, Home Office, CIH, CIEH, Tribunals Service and other councils.
- 4.4 The Housing Enforcement Team gathers, records, stores and analyses data and information relating to the ownership, management, control and use of privately owned sites and buildings in order to support housing enforcement activity, identify licensable HMOs that are operating without a licence and improve housing standards and community safety.
- 4.5 Strong and effective working relationships with a wide range of intelligence sources and enforcement agencies – including the Police, Immigration, Trading Standards, the Northamptonshire Fire & Rescue Service and the Gangmasters Licensing Authority – has helped the Housing Enforcement Team to build up an accurate and comprehensive intelligence picture that identifies potential suspects and criminality.
- 4.6 This approach ensures that Management is provided with all the information it needs to determine which cases should be authorised for investigation, and the Housing Enforcement Team is able to take appropriate, targeted action.

### Same criminal standard of proof

- 4.7 The same criminal standard of proof is required for a civil penalty as is required for a prosecution. This means that, before taking formal action, the Council must satisfy itself that, if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
- 4.8 To achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed. The same principle applies to civil penalties.
- 4.9 This is not a problem for the Council as robust procedures have been put in place to determine whether or not the criminal standard of proof has been met before a decision is made on whether enforcement action is appropriate.

### Private Sector Housing Civil Penalties Policy

- 4.10 On 19 July 2017, Cabinet approved the Civil Penalties Policy, Housing Enforcement Policy and Fees & Charges Policy. A clear policy framework is already in place, therefore, that sets out how the Council will use civil penalties and rent repayment orders to achieve its strategic objectives.
- 4.11 The Civil Penalties Policy contains a detailed description of the factors that the Council will take into account when calculating the size of the civil penalty.
- 4.12 After all the other factors have been considered and applied, however, the Council must then ensure that the civil penalty that is set deprives the offender of the financial benefit they have gained from committing the offence.

### The size and capacity of the existing Housing Enforcement Team

- 4.13 The existing team comprises a part-time Senior Housing Standards Officer, three Housing Standards Officers and a Business Support Officer.
- 4.14 In order to increase management capacity and provide the team with the necessary expertise to prosecute offenders and improve the licensing arrangements for HMOs, a full-time Senior Housing Standards Officer was recruited on an agency basis to stabilise the situation and develop the team.
- 4.15 Additional support has also been provided, on a temporary agency basis, to support the processing of HMO licences. Some of this additional capacity has been used to collect and analyse intelligence and data for the team.
- 4.16 If the Council decides to expand the Housing Enforcement Team, it will need to recruit a Housing Enforcement Manager and sufficient Intelligence Officers to ensure that the team has the capacity and expertise it requires without having to rely on temporary, agency staff to plug the gap.
- 4.17 At present, the three full-time Housing Standards Officers and part-time Senior Housing Standards Officer are spending just over half of their time on investigative enforcement work, one third of their time on HMO licensing and approximately 15% of their time responding to reactive housing complaints.
- 4.18 The three Housing Standards Officers and two Senior Housing Standards Officers are qualified Environmental Officers and have all participated in training for the Advanced Professional Certificate in Investigative Practice.
- 4.19 All members of the Housing Enforcement Team are working efficiently to prepare cases and support the successful prosecution of those cases in the Courts, the number of cases that can be tackled by the team is small compared to the number that require investigation and enforcement. The problem is compounded by the fact that the Courts are very busy and hearings are frequently postponed in order to accommodate other trials.

### **Capacity of the existing Housing Enforcement Team**

As they spend just over half of their time on proactive enforcement, the 3 Housing Standards Officers and part-time Senior Housing Standards Officer will have the capacity (between them) to investigate offences and issue civil penalties for up to 60 cases a year. Based on a ratio of 1:2, this could comprise 20 complex cases and 40 standard cases.

Assuming that 75% of the 60 civil penalties that are imposed by the Council are successful (because they are either not contested by the offender or they are upheld, on appeal, by the First Tier Tribunal), this could amount to 15 complex cases and 30 standard cases each year.

- 4.20 Although the existing Housing Enforcement Team is working hard to tackle the worst offenders and deal with the most problematic properties – based on a risk assessment of the information gathered through intelligence – the reality is that it is only scratching the surface and only a relatively small proportion of offenders will be prosecuted or receive a civil penalty.
- 4.21 The 60 civil penalties a year that the Housing Enforcement Team has the capacity to impose represents just 12% of the 492 properties that are suspected or known to be licensable HMOs and operating without a licence.
- 4.22 Even if all of the Housing Enforcement Team’s attention is focused on HMOs (rather than the whole of Northampton’s private rented sector) this is unlikely to make much of an impact or encourage behaviour change.

### **Size of the civil penalties imposed**

- 4.23 Northampton’s Private Sector Housing Civil Penalties Policy, approved in July 2017, contains a detailed description of the factors that the Council will take into account when calculating the size of the civil penalty.
- 4.24 After all the other factors have been considered and applied, however, the Council must then ensure that the civil penalty that is set deprives the offender of the financial benefit they have gained from committing the offence.
- 4.25 The size of civil penalty that is imposed by the Council will reflect the individual circumstances of each case and will often be much higher than the amounts quoted in the box below. However, the figures quoted below can help the Council to estimate the amount of income that might be generated from civil penalties, based on an assumed number and mix of civil penalties.

### **Examples of the size of the civil penalties that might be imposed**

- **Low cost civil penalty (assumed average: £4,000)**  
HMO licence is applied for late, and false information is provided on the application form and/or during interview under caution.
- **Standard civil penalty (assumed average: £5,000)**  
HMO licence is applied for late, and management offences are identified and/or an improvement notice is not complied with.
- **Complex civil penalty (assumed average: £10,000)**  
Premises are entered under warrant, numerous housing offences are found, there is dishonesty / deception and/or very high harm and culpability.

### **Civil penalty income generated by existing Housing Enforcement Team**

- 4.26 Based on the assumptions described in Paragraphs 4.19 and 4.25, it is possible to estimate the annual civil penalty income that the existing Housing Enforcement Team (including 3 Housing Standards Officers and a part-time Senior Housing Standards Officer) might be able to generate:

### **Potential civil penalty income – existing Housing Enforcement Team**

#### **Assumptions**

- 60 civil penalties are imposed (20 complex; 40 standard)
- 75% of the civil penalties imposed (15 complex; 30 standard) are successful because they are uncontested or are upheld on appeal
- 80% of the civil penalties that are successful are paid

Based on an average civil penalty of £10,000 for each complex case and £5,000 for each standard case – and a collection rate of 80% – the existing team could generate civil penalty income of around **£240,000 per annum**.

### **Help and advice to apply for a rent repayment order**

- 4.27 A rent repayment order is an order made by the First Tier Tribunal, requiring a landlord to repay up to 12 months' rent.
- 4.28 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a licensable HMO had failed to obtain a licence. However, under the Housing & Planning Act 2016, rent repayment orders were extended to cover a much wider range of offences (see Paragraph 1.9)
- 4.29 A rent repayment order can also be made against a landlord who has received a civil penalty for a housing offence, but only when there is no longer any prospect of the landlord appealing against that penalty.

### The value of a rent repayment order

Although it is for the Tribunal to determine how much rent the landlord should repay, the following examples illustrate the amount of rent that a landlord might be required to repay to each tenant if ordered to repay £30 / £50 / £80 per week of the rent s/he received during the year:

- £30 x 52 = £1,560 (Between them, 4 tenants would receive £6,240)
- £50 x 52 = £2,600 (Between them, 4 tenants would receive £10,400)
- £80 x 52 = £4,160 (Between them, 4 tenants would receive £16,640)

If the rent has been paid by the tenant(s) from their own resources, the amount of rent specified in the order must be repaid to them.

If the rent has been paid through Housing Benefit or Universal Credit, the amount of rent specified in the order must be repaid to the Council.

- 4.30 When a civil penalty is imposed, the Council must consider a rent repayment order when there is no longer any prospect of the landlord appealing against that civil penalty. The Council will usually apply for an order to recover monies paid through Housing Benefit or the housing element of Universal Credit.
- 4.31 If the tenant has paid the rent themselves, the Council must offer them advice, guidance and support to help them apply for a rent repayment order.
- 4.32 The appointment of a Tenancy Relations Officer who has the skills and experience required to investigate tenants' complaints about harassment and illegal eviction (and ensure that rent repayment orders are always considered and applied for when the conditions are met) will meet this requirement.

### Proposed expansion of the Housing Enforcement Team

- 4.33 In order to get a firm grip on the hundreds of owners / managers who are operating licensable HMOs without a licence, it is recommended that the Enforcement Team is expanded to include another 8 Environmental Health Officers, supported by 3 Intelligence Officers and a Tenancy Relations Officer.
- 4.34 The new, expanded Housing Enforcement Team will comprise the following:
- 1 Housing Enforcement Manager
  - 11½ Environmental Health Officers
  - 3 Intelligence Officers
  - 1 Tenancy Relations Officer
  - 1 Business Support Officer
- 4.35 The **Housing Enforcement Manager** will oversee all housing enforcement activity and develop, direct and manage the Housing Enforcement Service in a manner that makes best use of licensing, risk-based interventions and enforcement action to improve housing conditions, achieve a positive and sustained step change in the behaviour of landlords and ensure that, in the long term, the Service is fully funded from the income that is received in licensing fees, civil penalties and rent repayment orders.

- 4.36 The **Environmental Health Officers** will undertake a broad range of tasks relating to HMO licencing, private sector housing conditions and enforcement (including inspections, HHSRS assessments, investigations, interviews under caution, preparation of cases for enforcement, prosecutions and civil penalties) and respond to complaints about private sector housing.
- 4.37 The **Intelligence Officers** will work with a wide range of intelligence sources and enforcement agencies, gather and analyse information relating to the ownership, management, control and use of privately owned sites and buildings, build up an accurate and comprehensive intelligence picture, interview people under caution, identify licensable HMOs that are operating without a licence, support housing enforcement activity and provide evidence in support of criminal prosecutions and civil penalties.
- 4.38 The **Tenancy Relations Officer** will investigate allegations of harassment and illegal eviction, provide evidence in support of criminal prosecutions, intervene to prevent homelessness, and work with Revenues & Benefits, Legal Services and tenants to secure rent repayment orders where possible.
- 4.39 The **Business Support Officer** will administer the Council's online HMO licensing system, ensuring that it runs smoothly (for landlords, letting agents and the Council) and that all queries are dealt with quickly and efficiently.

#### **Capacity of the new, expanded Housing Enforcement Team**

It is recommended that the Housing Enforcement Team is expanded to include a Housing Enforcement Manager, 11½ Environmental Health Officers, 3 Intelligence Officers, a Tenancy Relations Officer and a Business Support Officer.

- 9½ Environmental Health Officers will spend 60% of their time on proactive housing enforcement, 30% of their time on HMO licencing and 10% of their time responding to reactive housing complaints. Between them, they will have the capacity to issue around 150 civil penalties a year. Based on a ratio of 1:2, this could amount to 50 complex cases and 100 standard cases.
- 2 Environmental Health Officers will spend 100% of their time on proactive housing enforcement, targeted at those who are operating a licensable HMO without a licence. Between them, they will have the capacity to issue around 60 civil penalties a year. Based on a ratio of 1:2, this could amount to 20 standard cases and 40 low-cost cases.
- The 3 Intelligence Officers will spend most of their time gathering, analysing, and managing data and information for the Environmental Health Officers, Tenancy Relations Officer and Managers. Between them, however, they will have the capacity to issue around 15 civil penalties a year. All of these will be low-cost civil penalties.

Assuming that 75% of the 225 civil penalties that are imposed by the Council are successful (because they are either not contested by the offender or they are upheld, on appeal, by the First Tier Tribunal), this could amount to 169 successful civil penalties each year.

- 4.40 Based on these figures, it is possible to estimate the annual civil penalty income that the expanded Housing Enforcement Team could generate:



## **Potential civil penalty income – expanded Housing Enforcement Team**

### Assumptions

- 225 civil penalties are imposed (50 complex; 120 standard; 55 low-cost)
- 75% of the penalties imposed (38 complex; 90 standard; 41 low-cost) are successful because they are uncontested or upheld on appeal
- 80% of the civil penalties that are successful are paid

Based on an average civil penalty of £10,000 for each complex case, £5000 for each standard case and £4,000 for each low-cost case – and a collection rate of 80% – the expanded team could generate civil penalty income of around **£795,000 per annum**.

### Impact of housing enforcement activity on the Council's HMO fee income

- 4.41 In most instances – except where the HMO has already been sold – the successful imposition of a civil penalty for failing to license a licensable HMO will result in the offender licensing the HMO.
- 4.42 It is hoped also that, with all of the extra publicity about the expansion of the Housing Enforcement Team and its capacity to investigate hundreds of cases a year will encourage landlords to license their HMOs – especially those affected by the extension of the definition of Mandatory HMOs – voluntarily.
- 4.43 Each HMO that is licensed will generate fee income of at least £585 and, if it is licensed late, the initial fee will be at least £735. HMOs that are licensed more than 13 weeks late will be issued with a shorter licence (lasting only 1 or 2 years, rather than the usual 5 years) and, even if the landlord subsequently renews the HMO licence on time and qualifies for the 'early bird discount', they will be charged at least £535 to renew the HMO licence for 5 years.

## **Estimate of extra HMO fee income generated by enforcement action**

### Assumptions

- 75% (127) of the 169 civil penalties that are successfully imposed each year by the expanded Housing Enforcement Team relate to the failure to license a licensable HMO
- 80% (101) of the 127 unlicensed HMOs that are the subject of the successful imposition of a civil penalty because they are unlicensed are subsequently licensed late and are granted a shorter HMO licence lasting only 1 or 2 years
- 90% (90) of the 101 HMO licences applied for late are renewed on time when they expire after 1 or 2 years. The rest are renewed late.

Based on an initial HMO licence fee of £735 and a renewal fee of £535, the imposition of civil penalties could generate extra HMO fee income of **£89,400 per annum** in initial HMO licences and an extra **£60,700** when those licences are renewed during the following 2 years.

- 4.44 The above figures do not take into account the extra HMO fee income that will be generated indirectly – through behaviour change – as a consequence of the increased housing enforcement activity in Northampton.
- 4.45 It is hoped that, as offenders realise that their prospects of being caught and punished for operating a licensable HMO without a licence are much greater than before, many will decide to comply with their licensing obligations.
- 4.46 As explained in Section 2 of this Business Case and based on all of the intelligence it has gathered, the Housing Enforcement Team has identified 492 properties that it knows or suspects are licensable HMOs and operating without an HMO licence. Even if only one third (164) of these unlicensed HMOs are licensed late without the need for formal enforcement action, this will generate extra HMO fee income of at least **£120,000** in initial fees and at least **£87,700** when those licences are renewed during the following 2 years.
- 4.47 In April 2018, the number of licensable HMOs – and, of course, the number of licensable HMOs that are operating without a licence – will increase significantly when the Government extends the definition of Mandatory HMOs to include HMOs that have less than 3 storeys.

#### Impact of housing enforcement activity on rent repayment orders

- 4.48 When a civil penalty is successfully imposed, the Council will consider a rent repayment order. If the tenant has paid the rent themselves, the Council must offer them advice, guidance and support to help them apply for a rent repayment order. If the rent has been paid through Housing Benefit or the housing element of Universal Credit, the Council will normally seek recovery of the monies by making its own application for a rent repayment order.
- 4.49 The appointment of a Tenancy Relations Officer (who will be responsible for ensuring that rent repayment orders are always considered and applied for when the conditions are met) will meet this requirement.
- 4.50 Based on past experience, the Housing Enforcement Team anticipates that the vast majority of the civil penalties that are successfully imposed will relate to properties that are occupied by tenants (including students) who are meeting their rent from their own resources.

#### **Estimate of potential income from rent repayment orders**

##### Assumptions

- Rent repayment orders will be actively considered in the 169 cases a year that involve the successful imposition of civil penalties
- The tenants in two thirds (112) of the 169 properties that are the subject of a civil penalty will apply for a rent repayment order
- 75% (84) of the rent repayment order applications are successful
- Rent repayment orders, worth an average of £30 per week for 12 months, will be awarded to 250 tenants in 84 properties

Based on an average award of £1,560 (it could be much higher), the rent repaid to the 250 tenants would amount to around **£390,000 per annum**.

Although some of these monies might be paid to the Council (because the rent was paid through Housing Benefit or the housing element of Universal Credit) it is not possible to estimate how much this might be.

- 4.51 It is hoped that the opportunity to recover up to a year's rent – by obtaining a rent repayment order – will act as a powerful incentive for tenants who are living in unsafe, substandard and unlicensed accommodation to inform the Council and support the action it is taking to prosecute, or impose a civil penalty on, their landlord or managing agent.

### **Issues / Risks / Opportunities**

- 4.52 The measures that the Government has introduced to tackle rogue landlords are ideally suited to the intelligence-led, 'offender pays' approach that the Council has introduced and championed during the last couple of years.
- 4.53 However, the new powers that the Government has given to local authorities are largely untested and it is essential that the Council gives careful consideration to the risks as well as the opportunities.

### **Issues**

- 4.54 As explained throughout this Business Case, the scale and nature of landlords' non-compliance with the law – especially in relation to HMO licensing and the HMO Management Regulations – is stark but not surprising. It reflects their confidence in avoiding prosecution.
- 4.55 Although current staffing levels in the Housing Enforcement Team are insufficient to address the overwhelming number of licensable HMOs that are operating without a licence, the problem is compounded by the fact that, when resources are limited, the highest risk properties have to be the priority.
- 4.56 For things to change, the Housing Enforcement Team must be provided with the capacity it needs to deliver a large-scale programme of investigations, interventions and enforcement that substantially increases the number of landlords and managing agents that are prosecuted or receive a civil penalty and/or rent repayment order but also encourages positive and sustained change in the behaviour of landlords and letting agents in the borough.
- 4.57 Although the income received from civil penalties will be sufficient to fund a significant increase in the size of the Housing Enforcement Team, the structure of the team and the roles within it must be carefully considered:
- Unless the team contains enough Environmental Health Officers to make a significant impact on the higher risk, most problematic private rented accommodation, it is difficult to justify dedicating one or more of those Officers to tackling the large number of offenders who are operating a licensable HMO without an HMO licence.
  - Northampton's intelligence-led approach to tackling criminal, rogue and irresponsible landlords is reliant on the Council employing the required number of Intelligence Officers. Each Intelligence Officer has the capacity to support up to 4 full-time Housing Enforcement Officers (including the Tenancy Relations Officer) by providing them with comprehensive intelligence reports on premises, land, individuals, businesses and organisations.
  - Although the Tenancy Relations Officer will spend a substantial amount of their time encouraging and supporting applications for rent repayment orders, s/he will also investigate allegations of retaliatory

eviction, harassment and illegal eviction, provide evidence in support of criminal prosecutions and intervene to prevent homelessness.

- The significant increase in the size of the team will require close and effective working between the Housing Enforcement Manager and the Private Sector Housing Manager who will need to share responsibility for managing, supporting and appraising the Officers.

### Risks

4.58 The risks and proposed mitigation are described in detail in Section 8 of this Business Case. However, the principal risks can be summarised as follows:

- The Council is being asked to appoint a significant number of additional Officers (as part of a larger Housing Enforcement Team) before it knows exactly how much extra income they will be able to generate in civil penalties, rent repayment orders and HMO fees
- The decisions that are made by the First Tier Tribunal in relation to civil penalties and rent repayment orders may be disappointing and result in civil penalties being quashed or reduced and applications for rent repayment orders being turned down
- The Council may find it difficult to recruit the large number of highly-skilled investigative enforcement officers (especially Environmental Health Officers) that it is going to need in order to apply this new area of legislation efficiently and protect its interests
- Even when the Council has successfully imposed a civil penalty, it may not always be able to collect all of the money
- Increased housing enforcement activity will place a huge demand on the Council's Legal Team for help and support in investigating offences, prosecuting offenders and defending civil penalty appeals
- The Council may be criticised for imposing excessively large civil penalties on landlords and managing agents

### Opportunities

4.59 Although largely untested, the new powers the Government has given local authorities under the Housing & Planning Act 2016 will enable the Council to:

- Fund the expansion of the Private Sector Housing Team and provide it with the extra capacity it needs in order to increase the amount of enforcement action it undertakes, reduce the number of licensable HMOs that are operating without a licence, and speed up the improvement of housing standards in the private rented sector
- Assist the re-organisation of the Private Sector Housing Team and the creation of a dedicated Housing Enforcement Team that is made up of specialist investigators and is financed, in the main, from the income received from HMO fees, civil penalties and rent repayment orders
- Fund a Tenancy Relations Officer who will investigate complaints of retaliatory eviction, harassment and illegal eviction, prevent homelessness and help tenants to apply for rent repayment orders
- Demonstrate its commitment to tracking down and punishing offenders, especially those who are operating a licensable HMO without a licence, and charging offenders for enforcement

- Challenge the complacency of landlords and managing agents who are letting out substandard, unlicensed, unsafe and overcrowded housing and are confident they can always avoid prosecution
- Effect behaviour change, and nurture a culture of compliance, among landlords and managing agents operating in Northampton

## 5. HIGH LEVEL IMPACT

5.1 The proposed expansion of the Housing Enforcement Team will help to meet 3 of the priorities in the Corporate Plan:

- **Safer Communities:** A larger Housing Enforcement Team will be able to take more enforcement action to tackle unsafe, substandard, badly managed housing and improve the standard of private rented housing.
- **Housing for Everyone:** A larger Housing Enforcement Team will be able to tackle a much larger number of criminal, rogue and irresponsible landlords and managing agents. As well as improving the condition and management of private rented housing in Northampton, it will enforce tenants' rights and reduce the incidence of retaliatory eviction, harassment and illegal eviction.
- **Working Hard and Spending your Money Wisely:** A larger Housing Enforcement Team will have the capacity to undertake more housing enforcement action and, as a consequence, accelerate the rate at which Northampton's private rented sector is improved. As the team will generate income from civil penalties, rent repayment orders and HMO licensing fees, the expansion of the Housing Enforcement Team will have a cost neutral impact on the Council's finances and may also be able to contribute to the operating costs of other private sector housing functions, such as the social lettings agency.

5.2 The proposed expansion of the Housing Enforcement Team will also make a positive contribution to 2 of the 3 Business Development Priorities that support the Corporate Plan and help manage the Council's future financial challenges:

- **Empowering Communities:** A larger Housing Enforcement Team will have a higher profile and the capacity to take more enforcement action against those landlords and managing agents who are letting out accommodation that is unsafe, substandard, badly managed and/or operating without an HMO licence. This will provide tenants with the confidence to seek help at an early stage and, where appropriate, to work with the Council to apply for a rent repayment order.
- **Partnership Working:** A larger Housing Enforcement Team will have the capacity to work even more closely with the Police, Northamptonshire Fire & Rescue Service, Trading Standards and the UK Border Agency to disrupt criminal activity through joint working. As well as making best use of the resources available, this will deliver better outcomes and improve residents' housing, health and wellbeing.

## 6. ALTERNATIVE OPTIONS

- 6.1 Expansion of the Housing Enforcement Team will enable the Council to increase its housing enforcement activity and use of civil penalties and rent repayment orders. It will also speed up the improvement of housing standards in Northampton's private rented sector and act as a bigger deterrent for those landlords and managing agents who knowingly rent out substandard, unlicensed unsafe and overcrowded housing.
- 6.2 Although it is recommended that the Housing Enforcement Team is expanded to include an extra 13 staff (a Housing Enforcement Manager, 8 Environmental Health Officers, 3 Intelligence Officers and a Tenancy Relations Officer), the alternative options are as follows:
- Do nothing
  - Recruit a Housing Enforcement Manager and Intelligence Officer to replace the temporary, agency staff that are currently supporting the Housing Enforcement Team
  - Expand the Housing Enforcement Team, but with fewer Officers, initially, than the number recommended in this Business Case
  - Expand the Housing Enforcement Team but with more Officers than the number recommended in this Business Case
- 6.3 As the Housing Enforcement Team will require a Manager and a Tenancy Relations Officer, most of the options will involve the Council appointing more or less Officers than the 8 additional Environmental Health Officers and 3 Intelligence Officers in the recommended option (Option 4).
- 6.4 If the Council decides that fewer Officers should be appointed than the number proposed in the Business Case – at least initially – this will reduce the risk involved in the Council taking on additional staffing costs before it knows exactly how much extra income the additional Officers will be able to generate.
- 6.5 If the Council decides that more Environmental Health Officers should be appointed than the number proposed in the Business Case, it may prove very difficult to recruit the number of Officers approved.

### Doing nothing

- 6.6 Doing nothing is not recommended because it would result in either the functions of the full-time Senior Housing Standards Officer and the Intelligence Officer continuing to be undertaken by temporary, agency staff or the loss of the full-time Senior Housing Standards Officer and the Intelligence Officer.
- 6.7 If the Council chooses to cover the roles with temporary, agency staff, this will have cost implications. If the Council chooses to reduce the size of the team, the smaller team (comprising a part-time Senior Housing Standards Officer, 3 Housing Standards Officers and a Business Support Officer) will only have sufficient capacity to manage HMO licensing, respond to housing complaints and prosecute or impose a civil penalty in a relatively small number of cases.

### Option 1

- 6.8 The Council could decide to simply replicate what is in place at the moment, but recruit a Housing Enforcement Manager and Intelligence Officer to avoid the need to employ those Officers on a temporary, agency basis.
- 6.9 If the Council chooses Option 1, the Housing Enforcement Team will continue to take as much enforcement action as possible but will struggle to make an impact on the standards in the private rented sector and the high number of licensable HMOs operating in Northampton without a licence. As a Tenancy Relations Officer would not be recruited, the team will not have the capacity to maximise the use of rent repayment orders.
- 6.10 As explained in Paragraph 4.19, a team of this size will only have the capacity to impose **around 60 civil penalties a year**. This is 165 less than the number of civil penalties that could be imposed by the size of team that is recommended in this Business Case.
- 6.11 Option 1 would benefit the Council financially because, even without any real increase in the size of the team, a Housing Enforcement Team of this size would generate a significant income from civil penalties and rent repayment orders that can be used to offset some of the operating costs of the team.
- 6.12 The financial considerations are set out in Section 7 of this Business Case.

### Option 2

- 6.13 The Council could decide to expand the Housing Enforcement Team by appointing a Manager, a Tenancy Relations Officer, 4 additional Environmental Health Officers and 2 Intelligence Officers.
- 6.14 If this happens, the Housing Enforcement Team would have the capacity to impose **around 120 civil penalties a year**. This is 60 more than the number of civil penalties that can be imposed by the existing Housing Enforcement Team (Option 1), but 105 less than the number that could be imposed by the size of team (Option 4) recommended in this Business Case.
- 6.15 If Option 2 is chosen, the income generated from civil penalties (estimated at £480,000 per annum) could cover approximately 82% of the Housing Enforcement Team's annual operating costs over the next 3 years.
- 6.16 The financial considerations are set out in Section 7 of this Business Case.

### Option 3

- 6.17 The Council could decide to expand the Housing Enforcement Team by appointing a Manager, a Tenancy Relations Officer, 6 additional Environmental Health Officers and 2 Intelligence Officers.
- 6.18 If this happens, the Housing Enforcement Team would have the capacity to impose **around 160 civil penalties a year**. This is 100 more than the number of civil penalties that can be imposed by the existing Housing Enforcement Team (Option 1), but 85 less than the number that could be imposed by the team (Option 4) recommended in this Business Case.

6.19 If Option 3 is chosen, the income generated from civil penalties (estimated at £640,000 per annum) could cover approximately 99% of the Housing Enforcement Team's annual operating costs over the next 3 years. The average annual deficit would be approximately £5,000.

6.20 The financial considerations are set out in Section 7 of this Business Case.

#### Option 4 (The Preferred Option)

6.21 The Council could decide to expand the Housing Enforcement Team by appointing a Manager, a Tenancy Relations Officer, 8 additional Environmental Health Officers and 3 additional Intelligence Officers.

6.22 If this happens, the Housing Enforcement Team would have the capacity to impose **around 225 civil penalties a year**. This is 165 more than the number of civil penalties that could be imposed by the existing Housing Enforcement Team (Option 1).

6.23 If Option 4 is chosen, the income generated from civil penalties (estimated at £795,000 per annum) could cover almost 100% of the Housing Enforcement Team's annual operating costs over the next 3 years. The average annual deficit would be less than £1,000.

6.24 The financial considerations are set out in Section 7 of this Business Case.

#### Option 5

6.25 The Council could decide to expand the Housing Enforcement Team by appointing a Manager, a Tenancy Relations Officer, 10 additional Environmental Health Officers and 4 Intelligence Officers.

6.26 If this happens, the Housing Enforcement Team would have the capacity to impose **around 290 civil penalties a year**. This is 230 more than the number of civil penalties that can be imposed by the existing Housing Enforcement Team (Option 1), and 65 more than the number that could be imposed by the team (Option 4) recommended in this Business Case.

6.27 If Option 5 is chosen, the income generated from civil penalties (estimated at £952,000 per annum) could cover 100% of the Housing Enforcement Team's annual operating costs over the next 3 years. The average annual surplus would be approximately £34,000.

6.28 The financial considerations are set out in Section 7 of this Business Case.

## **7. FINANCIAL CONSIDERATIONS**

### A series of assumptions

7.1 As already explained, it is extremely difficult to quantify the amount of money that the Council is likely to generate in civil penalties, rent repayment orders and extra HMO licensing fees if the size of the Housing Enforcement Team is increased. This is because there are so many variables, including the behaviour of landlords and managing agents, the judgments made by Tribunals and, in the case of rent repayment orders, how the rent was paid.



- 7.2 Although this Business Case makes a series of assumptions – about, for example, the number of civil penalties that each Officer may be able to impose in a year, how many of those penalties will be successful and what proportion of the civil penalties imposed will be collected – all of them are intended to under-estimate the amount of income that may be generated.
- 7.3 The average size of the civil penalties quoted in this Business Case (categorised as ‘complex’, ‘standard’ and ‘low-cost’) are on the low side, as the maximum civil penalty is **up to £30,000 per offence** and the figures do not take into account the fact that, when dealing with HMOs in particular, there are likely to be multiple offences and the Council may, on occasions, impose a civil penalty on both the owner and the managing agent.
- 7.4 For illustrative purposes and completeness, this Business Case includes a number of assumptions about rent repayment orders and the extra HMO fees that it is hoped will be generated by the increased enforcement activity, landlords’ behaviour change and the new definition of Mandatory HMO. These figures have been omitted, however, from the calculation of the amount of income that the Housing Enforcement Team is likely to generate each year.

The collection of civil penalties

- 7.5 Where it is decided – on completion of appropriate enquiries – that a civil penalty should be imposed, the Housing Enforcement Team will issue a notice of intention, setting out details of the offence(s), how much the civil penalty will be and how it has determined the size of that penalty.
- 7.6 When a final notice is issued, the Housing Enforcement Team will send out an invoice, giving details of how and when to pay.
- 7.7 If the civil penalty is not appealed and the invoice is not paid within 28 days, the Council will apply to the Court for a finance order. All that the Council is required to do to prove the debt is to provide the court with a letter from the Chief Finance Officer, confirming that the invoice remains unpaid.
- 7.8 As the debt is property-related, robust enforcement action will be taken to recover all of the monies owed as soon as practicable. This will include the use of high court sheriffs and, where appropriate, legal action to enforce the sale of the landlord’s property to settle the debt.

Estimate of civil penalty income generated by the Housing Enforcement Team

- 7.9 The following tables illustrate the amount of civil penalty income that might be generated by the different sizes of Housing Enforcement Team:

**OPTION 1 (REPLICATING THE EXISTING TEAM)**

- 7.10 If the Council decided to replicate the existing team by replacing the temporary, agency staff with a Housing Enforcement Manager and an Intelligence Officer, the team’s annual operating costs are expected to be:

<b>OPTION 1 ANNUAL EXPENDITURE (OPERATING COSTS)</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Employee costs (including on-costs)	£249,400	£251,900	£254,600	£755,900

Team subscriptions (Law, Call Credit and intelligence database)	£ 7,800	£ 7,800	£ 7,800	£ 23,400
Interpreter and translation services	£ 15,000	£ 15,000	£ 15,000	£ 45,000
IT subscriptions	£ 800	£ 800	£ 800	£ 2,400
Training	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Furniture	£ 500	£ 500	£ 500	£ 1,500
Printing	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Photocopying	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Stationery / supplies	£ 1,600	£ 1,600	£ 1,600	£ 4,800
Postage	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Advertising and publicity	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Vehicle allowances	£ 500	£ 500	£ 500	£ 1,500
<b>TOTAL</b>	<b>£280,600</b>	<b>£283,100</b>	<b>£285,800</b>	<b>£849,500</b>

- 7.11 Based on the assumptions set out in Paragraphs 4.19, 4.25 and 4.26 of this Business Case, this size of Housing Enforcement Team is expected to impose an average of 60 civil penalties a year and generate civil penalty income in the region of **£240,000 per annum**.

<b>OPTION 1 NET COST OF HOUSING ENFORCEMENT TEAM</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Annual operating costs	£280,600	£283,100	£285,800	£849,500
Annual income that is likely to be generated from civil penalties	£240,000	£240,000	£240,000	£720,000
<b>TOTAL</b>	<b>£ 40,600</b>	<b>£ 43,100</b>	<b>£ 45,800</b>	<b>£129,500</b>

**PLEASE NOTE:** The above figures do not take into account any other income that is generated through rent repayment orders and HMO licensing fees. The deficit will be covered from the existing Housing Enforcement budget.

## **OPTION 2 (EXPANDED TEAM)**

- 7.12 If the Housing Enforcement Team is expanded (to comprise a Housing Enforcement Manager, 7½ Environmental Health Officers, 2 Intelligence Officers, a Tenancy Relations Officer and a Business Support Officer), the annual operating costs would be:

<b>OPTION 2 ANNUAL EXPENDITURE (OPERATING COSTS)</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Employee costs (including on-costs)	£517,500	£522,700	£528,300	£1,568,500
Office hardware (furniture, computers, telephones, etc)	£ 12,000	£ 0	£ 0	£ 12,000
Surveying equipment (cameras, measures, damp meters, etc)	£ 1,700	£ 0	£ 0	£ 1,700
Investigatory equipment (NEAL machine, CDs, Pace notebooks and interpreter and subscription services)	£ 18,000	£ 15,500	£ 15,500	£ 49,000
Personal protective equipment (stab vests, hardhats, safety shoes, etc)	£ 1,600	£ 0	£ 0	£ 1,600
Initial training	£ 14,000	£ 0	£ 0	£ 14,000
Team subscriptions (Law, Call Credit and intelligence database)	£ 7,800	£ 7,800	£ 7,800	£ 23,400
IT subscriptions	£ 1,500	£ 800	£ 800	£ 3,100
Additional M3 licences	£ 1,500	£ 0	£ 0	£ 1,500
Additional M3 maintenance	£ 400	£ 400	£ 400	£ 1,200
Mobile phones	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Training	£ 2,000	£ 2,000	£ 2,000	£ 6,000
Furniture	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Printing	£ 2,000	£ 2,000	£ 2,000	£ 6,000
Photocopying	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Stationery / supplies	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Postage	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Advertising and publicity	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Vehicle allowances	£ 2,000	£ 2,000	£ 2,000	£ 6,000
<b>TOTAL</b>	<b>£596,000</b>	<b>£ 567,200</b>	<b>£ 572,800</b>	<b>£1,736,000</b>

- 7.13 Based on the assumptions set out in Paragraphs 4.25 and 6.13 – 6.15 of this Business Case, the Housing Enforcement Team is expected to have the capacity to impose an average of 120 civil penalties a year. If 90 of these civil penalties (30 complex and 60 standard) are successful and the Council is able to collect 80% of the monies due, this will generate civil penalty income in the region of **£480,000 per annum**.

<b>OPTION 2 NET COST OF HOUSING ENFORCEMENT TEAM</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Annual operating costs	£596,000	£567,200	£572,800	£1,736,000
Annual income that is likely to be generated from civil penalties	£480,000	£480,000	£480,000	£1,440,000
<b>TOTAL</b>	<b>£ 116,000</b>	<b>£87,200</b>	<b>£92,800</b>	<b>£ 296,000</b>

**PLEASE NOTE:** The above figures do not take into account any other income that is generated through rent repayment orders and HMO licensing fees. The deficit will be covered from the existing Housing Enforcement budget.

#### **OPTION 3 (EXPANDED TEAM)**

- 7.14 If the Housing Enforcement Team is expanded (to comprise a Housing Enforcement Manager, 9½ Environmental Health Officers, 2 Intelligence Officers, a Tenancy Relations Officer and a Business Support Officer), the annual operating costs would be:

<b>OPTION 3 ANNUAL EXPENDITURE (OPERATING COSTS)</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Employee costs (including on-costs)	£581,000	£586,800	£593,100	£1,760,900
Office hardware (furniture, computers, telephones, etc)	£ 18,000	£ 0	£ 0	£ 18,000
Surveying equipment (cameras, measures, damp meters, etc)	£ 2,200	£ 0	£ 0	£ 2,200
Investigatory equipment (NEAL machine, CDs, Pace notebooks and interpreter and subscription services)	£ 18,000	£ 15,500	£ 15,500	£ 49,000
Personal protective equipment (stab vests, hardhats, safety shoes,	£ 2,500	£ 0	£ 0	£ 2,500

etc)				
Initial training	£ 14,000	£ 0	£ 0	£ 14,000
Team subscriptions (Law, Call Credit and intelligence database)	£ 7,800	£ 7,800	£ 7,800	£ 23,400
IT subscriptions	£ 800	£ 800	£ 800	£ 2,400
Additional M3 licences	£ 1,500	£ 0	£ 0	£ 1,500
Additional M3 maintenance	£ 400	£ 400	£ 400	£ 1,200
Training	£ 2,000	£ 2,000	£ 2,000	£ 6,000
Mobile phones	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Furniture	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Printing	£ 2,000	£ 2,000	£ 2,000	£ 6,000
Photocopying	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Stationery / supplies	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Postage	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Advertising and publicity	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Vehicle allowances	£ 2,000	£ 2,000	£ 2,000	£ 6,000
<b>TOTAL</b>	<b>£666,200</b>	<b>£ 631,300</b>	<b>£ 637,600</b>	<b>£1,935,100</b>

- 7.15 Based on the assumptions set out in Paragraphs 4.25 and 6.17 – 6.19 of this Business Case, the Housing Enforcement Team is expected to have the capacity to impose an average of 160 civil penalties a year. If 120 of these civil penalties (40 complex and 80 standard) are successful and the Council is able to collect 80% of the monies due, this will generate civil penalty income in the region of **£640,000 per annum**.

<b>OPTION 3 NET COST OF HOUSING ENFORCEMENT TEAM</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Annual operating costs	£666,200	£631,300	£637,600	£1,935,100
Annual income that is likely to be generated from civil penalties	£640,000	£640,000	£640,000	£1,920,000
<b>TOTAL</b>	<b>£ 26,200</b>	<b>(£ 8,700)</b>	<b>(£ 2,400)</b>	<b>£ 15,100</b>

**PLEASE NOTE:** The above figures do not take into account any other income that is generated through rent repayment orders and HMO licensing fees. Any deficit will be covered from the existing Housing Enforcement budget.

#### **OPTION 4 (THE RECOMMENDED OPTION)**

7.16 If the Housing Enforcement Team is expanded (to comprise a Housing Enforcement Manager, 11½ Environmental Health Officers, 3 Intelligence Officers, a Tenancy Relations Officer and a Business Support Officer), the operating costs would be:

<b>OPTION 4 ANNUAL EXPENDITURE (OPERATING COSTS)</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Employee costs (including on-costs)	£701,200	£708,200	£715,800	£2,125,200
Office hardware (furniture, computers, telephones, etc)	£ 24,000	£ 0	£ 0	£ 24,000
Surveying equipment (cameras, measures, damp meters, etc)	£ 3,000	£ 0	£ 0	£ 3,000
Investigatory equipment (NEAL machine, CDs, Pace notebooks and interpreter and subscription services)	£ 23,000	£ 21,000	£ 21,000	£ 65,000
Personal protective equipment (stab vests, hardhats, safety shoes, etc)	£ 3,500	£ 0	£ 0	£ 3,500
Interpreter and translation services	£ 18,000	£ 18,000	£ 18,000	£ 54,000
Initial training	£ 14,000	£ 0	£ 0	£ 14,000
Team subscriptions (Law, Call Credit and intelligence database)	£ 7,800	£ 7,800	£ 7,800	£ 23,400
IT subscriptions	£ 1,500	£ 1,500	£ 1,500	£ 4,500
Additional M3 licences	£ 1,500	£ 0	£ 0	£ 1,500
Additional M3 maintenance	£ 400	£ 400	£ 400	£ 1,200
Mobile phones	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Training	£ 1,500	£ 1,500	£ 1,500	£ 4,500
Furniture	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Printing	£ 2,300	£ 2,300	£ 2,300	£ 6,900
Photocopying	£ 3,400	£ 3,400	£ 3,400	£ 10,200

Stationery / supplies	£ 3,500	£ 3,500	£ 3,500	£ 10,500
Postage	£ 3,500	£ 3,500	£ 3,500	£ 10,500
Advertising and publicity	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Vehicle allowances	£ 2,800	£ 2,800	£ 2,800	£ 8,400
<b>TOTAL</b>	<b>£819,900</b>	<b>£ 778,900</b>	<b>£ 786,500</b>	<b>£2,385,300</b>

- 7.17 Based on the assumptions set out in Paragraphs 4.25 and 4.33 – 4.40 of this Business Case, the Housing Enforcement Team is expected to have the capacity to impose an average of 225 civil penalties a year. If 169 of these civil penalties (38 complex, 90 standard and 41 low-cost) are successful and the Council is able to collect 80% of the monies due, this will generate civil penalty income in the region of **£795,000 per annum**.

<b>OPTION 4 NET COST OF HOUSING ENFORCEMENT TEAM</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Annual operating costs	£819,900	£778,900	£786,500	£2,385,300
Annual income that is likely to be generated from civil penalties	£795,000	£795,000	£795,000	£2,385,000
<b>TOTAL</b>	<b>£ 24,900</b>	<b>(£16,100)</b>	<b>(£ 8,500)</b>	<b>£ 300</b>

**PLEASE NOTE:** The above figures do not take into account any other income that is generated through rent repayment orders and HMO licensing fees. Any deficit will be covered from the existing Housing Enforcement budget.

#### **OPTION 5 (EXPANDED TEAM)**

- 7.18 If the Housing Enforcement Team is expanded (to comprise a Housing Enforcement Manager, 13½ Environmental Health Officers, 4 Intelligence Officers, a Tenancy Relations Officer and a Business Support Officer), the annual operating costs would be:

<b>OPTION 5 ANNUAL EXPENDITURE (OPERATING COSTS)</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Employee costs (including on-costs)	£833,400	£841,700	£850,800	£2,525,900
Office hardware (furniture, computers, telephones, etc)	£ 28,000	£ 0	£ 0	£ 28,000

Surveying equipment (cameras, measures, damp meters, etc)	£ 4,000	£ 0	£ 0	£ 4,000
Investigatory equipment (NEAL machine, CDs, Pace notebooks and interpreter and subscription services)	£ 25,000	£ 21,000	£ 21,000	£ 67,000
Personal protective equipment (stab vests, hardhats, safety shoes, etc)	£ 4,200	£ 0	£ 0	£ 4,200
Initial training	£ 14,000	£ 0	£ 0	£ 14,000
Team subscriptions (Law, Call Credit and intelligence database)	£ 7,800	£ 7,800	£ 7,800	£ 23,400
IT subscriptions	£ 1,500	£ 1,500	£ 1,500	£ 4,500
Additional M3 licences	£ 1,500	£ 0	£ 0	£ 1,500
Additional M3 maintenance	£ 400	£ 400	£ 400	£ 1,200
Mobile phones	£ 1,500	£ 1,500	£ 1,500	£ 4,500
Training	£ 2,000	£ 2,000	£ 2,000	£ 6,000
Furniture	£ 1,000	£ 1,000	£ 1,000	£ 3,000
Printing	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Photocopying	£ 4,000	£ 4,000	£ 4,000	£ 12,000
Stationery / supplies	£ 4,000	£ 4,000	£ 4,000	£ 12,000
Postage	£ 4,000	£ 4,000	£ 4,000	£ 12,000
Advertising and publicity	£ 3,000	£ 3,000	£ 3,000	£ 9,000
Vehicle allowances	£ 3,600	£ 3,600	£ 3,600	£ 10,800
<b>TOTAL</b>	<b>£945,900</b>	<b>£898,500</b>	<b>£ 907,600</b>	<b>£2,752,000</b>

7.19 Based on the assumptions set out in Paragraphs 4.25 and 6.25 – 6.27 of this Business Case, the Housing Enforcement Team is expected to have the capacity to impose an average of 290 civil penalties a year. If 218 of these civil penalties (38 complex, 90 standard and 90 low-cost) are successful and the Council is able to collect 80% of the monies due, this will generate civil penalty income in the region of **£952,000 per annum**.

<b>OPTION 5 NET COST OF HOUSING ENFORCEMENT TEAM</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>TOTAL</b>
Annual operating costs	£945,900	£898,500	£907,600	£2,752,000
Annual income that is	£952,000	£952,000	£952,000	



likely to be generated from civil penalties				£2,856,000
<b>TOTAL</b>	<b>(£ 6,100)</b>	<b>(£53,500)</b>	<b>(£44,400)</b>	<b>(£104,000)</b>

**PLEASE NOTE:** The above figures do not take into account any other income that is generated through rent repayment orders and HMO licensing fees.

## 8. RISKS AND MITIGATION

Risk	Mitigation	Residual Risk
The Council is being asked to fund the expansion of the Housing Enforcement Team before it knows exactly how much extra income the bigger team will be able to generate in civil penalties, rent repayment orders and HMO licensing fees	<p>A comprehensive business case has been produced, providing an overview of the changes to the regulatory framework affecting private sector housing, the number of licensable HMOs that are believed to be operating in Northampton without a licence, and the community benefits to be achieved by increasing the amount of housing enforcement activity.</p> <p>Realistic estimates have been made of the size and number of civil penalties that the Housing Enforcement Team is likely to be able to impose and collect in a year.</p> <p>Although the Business Case includes estimates of the amount of money that might be generated in rent repayment orders and extra HMO licensing fees, these figures have not been taken into account in the projection of the Housing Enforcement Team's income over the next three years.</p> <p>When Cabinet considers the Business Case on 17/01/2018, it will be recommended to approve a 2-stage expansion of the Housing Enforcement</p>	

	Team, starting with Option 2.	
<p>The decisions made by the First Tier Tribunal in relation to civil penalties and rent repayment orders may be disappointing and result in civil penalties being quashed or reduced and applications for rent repayment orders being turned down</p>	<p>The government has made it very clear that offenders must not benefit financially from their offending. This is why the maximum civil penalty has been set at £30,000 per offence and rent repayment orders have been extended to cover a wider range of housing offences.</p> <p>The government has also assured local authorities that Tribunals have been fully briefed on the impact and expectation of civil penalties.</p> <p>Northampton's Private Sector Housing Civil Penalties Policy (which was approved by Cabinet on 19/07/17) is comprehensive, clear, equitable and defensible.</p> <p>Offences will be investigated by well-trained investigators, and the civil penalties that are imposed will not only be fully justified but will also be robustly and competently defended in the First Tier Tribunal.</p> <p>The Council's Private Sector Housing Manager has a good working relationship with the President of the Tribunals Service and is part of a DCLG / Home Office rogue landlords working group and the Local Government Association's private sector housing group, so is well placed to provide feedback on the performance and decisions of the First Tier Tribunal.</p> <p>The Business Case assumes that only 75% of the civil penalties imposed will be successful.</p>	
Recruitment of a large team of highly-skilled	All Job Descriptions have	

<p>investigative enforcement officers (especially Environmental Health Officers) who have the skills, qualities and experience required to apply the new legislation and protect the Council's interests</p>	<p>been written and evaluated, and the posts will be advertised as widely as possible after Cabinet has considered the Business Case on 17/01/18.</p> <p>A rigorous recruitment and training process will ensure that all of the Officers who are recruited are able to achieve the Advanced Professional Certificate in Investigative Practice within 3 months of them taking up post.</p>	
<p>Even when the Council has successfully imposed a civil penalty, it may not always be able to collect all of the money</p>	<p>Robust procedures are being put in place to ensure that, when a civil penalty is successfully imposed, it is collected as quickly and efficiently as possible.</p> <p>The Business Case assumes that 80% of the money that is owed in civil penalties will be collected from offenders.</p>	
<p>Increased housing enforcement activity and/or the need to deal with a higher than expected number of civil penalty appeals will place an unmanageable demand on the Council's Legal Service.</p>	<p>Additional staffing resources will be brought in if the Council's Legal Service is unable to meet the demand.</p>	
<p>Risk to the Council's reputation</p>	<p>The Council's 'offender pays' approach to tackling criminal, rogue and irresponsible landlords is popular with politicians, members of the public and most landlords and managing agents.</p> <p>The Housing Enforcement Team has clear objectives, and its operational activity and performance will be closely monitored in order to identify potential issues early.</p>	