Torridge District Council

Private Sector Housing Enforcement Policy

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Introduction

Local authorities have powers and responsibilities to assess housing conditions and enforce minimum standards through a range of measures. Torridge District Council will seek to tackle poor housing conditions using actions that are appropriate to individual situations. The purpose of this policy is to outline how we will work to improve private sector housing standards, by providing advice and guidance or, if necessary, by means of appropriate formal action to improve, repair, close or demolish dwellings that are not fit for purpose.

We recognise the importance of the private rented housing sector in providing valuable good quality accommodation and meeting housing need. We acknowledge that the majority of landlords maintain their properties to a good standard. However there are some who neglect their responsibilities and put their tenants at risk due to the poor condition of their properties. Substandard housing can have a profound impact on the mental and physical health of its occupants, and poorly maintained property also negatively impacts on its surrounding neighbourhood.

The Council's primary role is to educate and advise owners, landlords and agents on the standards they are expected to meet in their properties. We also seek to assist tenants in understanding their rights and responsibilities, and to encourage dialogue between parties to resolve issues amicably and without recourse to formal action.

This policy details the way that we will deliver private sector housing enforcement under respective legislation and what landlords and tenants can expect from the service.

Torridge District Council has a Corporate Enforcement Policy which is the overarching policy for all enforcement functions of the Council. The Private Sector Housing Enforcement Policy covers specific functions in more detail but will at all times meet the overall aims and objectives of the Corporate Enforcement Policy. All enforcement functions carried out by Torridge District Council will meet the requirements of the Legislative and Regulatory Reform Act 2006 and the Regulators' Code. The Council has a duty to follow the principles of good regulation specified in the Act and to have regard to the code when setting policies or principles that determine how it carries out its regulatory activities.

The functions of Torridge District Council covered by this policy include: -

- Taking action to remove hazards in privately-owned housing
- Regulating the management of houses in multiple occupation
- Licensing of privately rented accommodation
- Regulating the functions of landlords and managing agents

- Working with other regulating bodies having a responsibility for privately-owned accommodation (e.g. the Health and Safety Executive, the Fire and Rescue Service, Trading Standards etc.)
- Any other regulatory function arising from the condition or management of residential premises (e.g. the Building Act 1984, the Environmental Protection Act 1990 and the Protection from Eviction Act 1977)

Investigation

The Council's duties

The Housing Act 2004 places a duty on the Council to keep housing conditions in its district under review. This is normally achieved through regular stock condition surveys, stock modelling (based on a wide range of nationally-collected data) and targeted inspections.

The Council also has a duty to inspect residential premises where appropriate to determine whether or not a hazard to health exists. In practice this means:

- Individual premises where the occupant or someone acting on their behalf has notified us that there is a potential hazard.
- Types of premises shown to be at a high risk of being hazardous (e.g. houses in multiple occupation, accommodation above restaurants).
- Individual premises owned or managed by people who have a record of letting other hazardous premises.

Complaints about privately rented accommodation

Most complaints about housing conditions can and should be resolved between tenants and landlords without our direct intervention. However, we recognise that not all tenants are aware of their rights or understand the best way to approach their landlord.

Our normal procedure for dealing with complaints is to request tenants to make the first approach to their landlord themselves. We help with this by providing advice and support including letter templates. If requested to do so we will also informally contact the landlord or agent, to let them know that there has been a complaint and to offer advice.

We will normally request that the tenant contacts us after an appropriate period of time if this informal approach does not manage to resolve the problem and requires our intervention. Copies of any correspondence or details of contact with the agent or landlord by the tenant will be sought from the tenant; this may be required for evidence at a later stage.

Where there appears to be an imminent risk of harm or where a tenant can adequately show that requesting their landlord or agent to remedy a problem has had no effect then the Council may arrange an inspection immediately.

Anonymous complaints can be difficult to deal with fairly and practically and will be investigated at our discretion.

The Deregulation Act 2015

The Deregulation Act affects a landlord's right to evict tenants where a complaint has been made to them in writing about the premises and where the Council has served a notice. Because of this, if a tenant making a complaint to us can show that they have given their landlord 14 days written notice of the problem, and that there has been no adequate response, then we will normally arrange an inspection immediately.

Arranging an inspection

We are usually required to give at least 24 hours' notice of entry to the owner and occupier of the premises. We cannot take formal action at a later stage if we have not given the landlord notice of our intended visit. However, when investigating compliance with licensing requirements or the management of houses in multiple occupation we may visit the premises without notice.

Access may be at any reasonable time which, in most cases, means normal working hours between Monday and Friday. Normally we expect to give more than 24 hours' notice and any appointment will be by agreement with the occupants and the owner of the premises. We will re-arrange inspections if given a good reason and sufficient notice.

Our officers will always carry their Council identification and a copy of their authorisation can be provided on request. All officers carrying out enforcement functions on behalf of the Council are suitably qualified, trained and authorised.

An officer who is authorised to enter may:

- Take other persons with them
- Bring equipment or materials
- Take measurements, photographs or make recordings
- Leave recording equipment on the premises for later collection
- Take samples of any articles or substances found on the premises

We do not have the power to force entry to premises, even after service of a notice. However, if any person refuses entry without a good reason then they may be

prosecuted for obstruction. We may also seek a court warrant which could allow us to enter by force if necessary.

Covert Surveillance

We will not generally use covert (hidden) techniques to investigate breaches of the Housing Act 2004 and related legislation.

If such techniques are considered necessary then they will be carried out in accordance with the Code of Practice on Covert Surveillance and Property Interference and the requirements of the Regulation of Investigatory Powers Act.

Housing Health and Safety Rating System

Assessment of housing standards shall be in accordance with the Housing Health and Safety Rating System (HHSRS). This is a risk based assessment which rates the extent of hazards to health and safety.

The underlying principle of HHSRS is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor. An assessment of a dwelling will involve a physical survey that will include the identification and rating of hazards in the building. The technical guidance for the system includes a wealth of statistical information on the various hazards. The application of the system will result in a score which will be the basis of the Council's action to deal with the hazards identified. Hazards are banded from A to J with A being the most serious. Bands A, B and C are known as category 1 hazards with the rest being category 2.

Where a category 1 hazard exists (high risk of likely occurrence within the next 12 months resulting in harm) the Council has a duty to take enforcement action relating to the hazard.

Where a category 2 hazard exists (above average risk of a likely occurrence within the next 12 months resulting in harm) the Council has a discretionary power to take enforcement action.

The aim of enforcement action is to remove the hazard or reduce it to a reasonable level. In most cases, we will consider a reasonable level to be band G or lower.

Action following investigation

Remedying Hazards

General principles

We will refer to relevant published guidance, codes of practice and case law when deciding upon the most appropriate course of action.

We will normally allow 14 days to discuss the proposed content of a notice or order with the intended recipient. This will allow that person to make alternative suggestions and to agree suitable time scales for any works to be carried out.

We may be required to inform interested persons (e.g. joint owners, mortgagees or relevant bank/ Building Society) about the action being proposed.

The recipient can expect a notice to state what is wrong and recommended course of action to put things right. This may include requiring you to seek expert external advice on the issue and options available for remediation.

Where immediate action is needed, an explanation of why such action is required will be given at the time and confirmed in writing, usually within 5 working days. This explanation may be contained within the notice or by separate letter.

Details of the rights of appeal against formal action will be included in any formal correspondence.

Category 1 hazards

Where a category 1 hazard to health has been identified, the Housing Act 2004 requires us to take formal action.

The action taken will depend upon the severity of the hazard or offence, the most appropriate remedy and the urgency of the need for action to be taken. It must be one of the following:

- Service of an improvement notice requiring remedial works in accordance with section 11 of the Act.
- Making a prohibition order, preventing the use of the whole or part of a dwelling or restricting the number or class of permitted occupants in accordance with section 20 of the Act.
- Suspension of either of the above until such time as directed in the order.
- Service of a hazard awareness notice in accordance with section 28 of the Act.
- Making a demolition order in accordance with section 265 of the Housing Act 1985.
- Declaring a clearance area in accordance with section 289 of the Housing Act 1985.
- Taking emergency remedial action under section 40 of the Act.
- Service of an emergency prohibition order under section 43 of the Act.

Category 2 hazards

We may also take action for lesser (category 2) hazards although we will generally only do so only where there are aggravating factors such as where there is a permanent and persistent risk to the health, safety and/or welfare of the occupiers. Where the vulnerability of residents is a particular factor which needs to be considered or the number or extent of hazards are such that cumulatively, action to formally secure improvements are warranted.

We will usually do this formally rather than through an informal letter. This is to ensure that there is no delay to works being carried out, to prevent any ambiguity about what the Council requires and to provide the recipient with a formal right of appeal. The formal actions that we are able to take are:

- Service of an improvement notice requiring remedial works in accordance with section 12 of the Act.
- Making a prohibition order, preventing the use of the whole or part of a dwelling or restricting the number or class of permitted occupants in accordance with section 21 of the Act.
- Suspension of either of the above until such time as directed in the order.
- Service of a hazard awareness notice in accordance with section 29 of the Act.
- Taking emergency remedial action under section 40 of the Act.
- Service of an emergency prohibition order under section 43 of the Act.

If we carry out an inspection in response to a complaint to which the Deregulation Act applies (see above) we may need to serve a notice without allowing the usual 14 days for consultation. This is to ensure that any rights that the tenant may have to protection from eviction are put in place without delay.

Owner occupiers

In the case of notices or orders served upon owner occupiers there will be no charge made unless the matter in respect of which the action is taken is affecting an adjoining property or endangering public safety and the person concerned has failed to take appropriate action.

Social Landlords

Housing Providers exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by Homes England (formally the Homes and Communities Agency). Housing Providers normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not normally take formal action against Housing Provider unless:

- It is satisfied that the problem in question has been properly reported to the Housing Provider and
- The Housing Provider has then failed to take appropriate action

If the Council determines that it is appropriate to take action, it will then normally notify the Housing Provider that a complaint has been received and/or a hazard identified and seek the Housing Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action and will then determine which of the available enforcement options is the most appropriate, considering the facts of the case.

Situations where the Council service may not be provided

Where any of the following situations arise, consideration will be given to not providing or cease to provide a service:

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder or engineer, to arrange or carry out works
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
- Where the tenant's only reason for contacting the Housing Renewal team, in the opinion of the Council, is in order to pursue a higher banding with Devon Home Choice or other choice based lettings solution. The Council will aim to bring their present accommodation up to standard as a first priority
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow-up letter or appointment card
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers
- Where there is found to be no justification for the complaint, on visiting the property
- Where the tenant unreasonably refuses to provide the Council with relevant documentation

Outline of the licensing of houses in multiple occupation

(Note that the definition of a licensable HMO is subject to change so up to date guidance should be sought).

The Act provides a mandatory system of licensing for all houses in multiple occupation (HMOs) of three or more storeys and five or more occupants who constitute more than one household. At the time of writing this policy, the definition of a licensable HMO is due to change at the end of 2018, removing the three storey

requirement from the definition. We will update our website with guidance on this matter as and when it becomes available. However, this policy sets out how the Council will licence relevant HMOs meeting the current and future definition, and how enforcement powers available to the Council will be used to ensure the health, safety and welfare of occupants.

To be eligible for licensing, the HMO must be reasonably suitable for occupation by the number of persons permitted under the licence and having regard to the minimum prescribed standards of amenities and facilities. These include the number, type and quality of shared bathrooms, toilets and cooking facilities. Adopted standards are given in appendix 3 of this policy. The Council may also attach additional conditions to a licence to ensure the HMO is suitable for occupation. The licence holder must also be a fit and proper person. Controlling or managing an HMO which ought to be licensed, but is not licensed, without a reasonable excuse for doing so, is a criminal offence and the Council will take formal action as detailed in this policy.

Licensing and the HHSRS

The HHSRS does not need to be considered before a licence is issued. The issue of a licence does not imply that housing standards are acceptable and that no subsequent enforcement action will be taken to secure standards in health, safety or amenity of that property. If we become aware of potential hazards during the licensing process, action will be taken at the earliest opportunity as detailed in this policy. The issuing of the licence does not mean that the necessary planning and building control approvals are in place or would be approved. It is the licensees responsibility to ensure that these requirements are met prior to licence application.

The licence will specify the conditions that the licensee must meet. A breach of conditions may result in the licence being withdrawn. The operation of an HMO in contravention of a licensing requirement is an offence.

We will consider whether any licence applicant is a ‘fit and proper person’ as required by the Act. Landlords applying for an HMO licence will be required to declare that they have no unspent convictions for relevant offences and will be subject to a basic DBS check for which an additional charge will be applied (see current TDC fees and charges under Taxis and Private hire). This shall be provided on application and every 5 years thereafter during the period of the licence. Alternatively we will accept an existing DBS declaration at these times providing it is less than 3 months old. All such records will be treated in total confidence and will only be seen by authorised officers. In addition we will check the applicants details against the database of rogue landlords and property agents. Where the Council has evidence that a landlord is no longer a fit and proper person, licence(s) will be revoked.

A licence fee will be charged to cover the administrative costs. The fee will be reviewed annually and published on our website.

Enforcement of housing and management standards of all HMOs (including non-licensable HMOs) will be in accordance with this policy.

Unlicensed HMOs

(Note that the definition of a licensable HMO is subject to change so up to date guidance should be sought).

When an HMO is brought to the attention of the Council it will investigate whether the property should be licensed.

It is an offence for properties with three or more storeys and five or more persons in more than one household that is required to have a licence, to operate without a licence. Where such premises are found, the owner/person having control will be invited to submit a valid licence application within 28 calendar days. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements except in the case of deliberate, repeat or persistent contravention where formal action will be pursued.

Licences will only be issued following receipt of a valid application, a verification visit to the premises and satisfactory fit and proper person checks.

Non-licensable HMOs

HMOs that do not require a licence are still subject to legislation governing how they are managed and standards that must be met. These types of properties can include houses made into bedsits and common areas of flats. All non-licensed HMOs known to us will be regularly inspected having regard to the management regulations. The frequency of inspections will be on the basis of an assessment of risk, taking into account such factors as property type and condition, number of households within the property, heating type, amenities, fire precautions, and confidence in management.

The regulations set out the expected standards of management in relation to providing information, standards of accommodation, safety measures and waste disposal facilities. We will inspect properties and carry out actions to ensure that HMO management standards are maintained.

Enforcement of the HMO Management Regulations in sub-standard self- contained flats

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 will be enforced in HMOs as defined by section 257 of the Housing Act 2004.

Where breaches of the management regulations are identified in these premises the "person managing" will be notified in writing and will be required to carry out prescribed works within specified timescales to remove the breaches. Failure to remove these breaches as instructed may result in a case file being prepared for formal legal proceedings.

In circumstances where the breaches of the Management Regulations are either so severe, numerous and/or having a significant, detrimental effect on the health, safety and welfare of the occupiers, the most appropriate course of action will be determined in accordance with this policy.

Where it is disputed that a property meets the definition of a section 257 HMO the Council will accept the submission of evidence from the property owner that the conversion works making the dwellings self-contained comply with the 1991 Building Regulations. Evidence must have been provided by a competent person who is approved to validate works under the requirements of the Building Regulations.

The housing renewal team will liaise with the Planning and Building Control teams when undertaking enforcement activity in HMOs that meet the section 257 definition. HMO amenity standards given in this policy are applicable to s.257 HMO's.

Management Orders

If a property should be licensed, but there is no reasonable prospect of granting a licence, the Council may apply a Management Order. The Council will make an order where the health and safety condition as described in the 2004 Act is met.

Management orders may also be made on properties where anti-social behaviour is occurring. Management orders will result in the Council (or an appointed agent) operating as if it were the landlord, including collecting rents, forming tenancies, carrying out improvements and repairs and other related management matters depending on the order granted. Relevant costs are recoverable.

The following orders are available:

- An interim management order
- A final management order
- A special interim management order
- An interim or final empty dwelling management order

All orders can be varied or revoked in accordance with the provisions of the Act where determined necessary by the Council.

Overcrowding

The Act provides local authorities with power to investigate complaints in respect of overcrowded living conditions of any HMO where no interim or final management order is in force and it is not required to be licenced under Part 2 of the 2004 Act. Such complaints may be received from private sector tenants, third parties concerned about children or vulnerable adults living in overcrowded conditions, or where overcrowded conditions are legitimately impacting on a neighbours' health, safety or welfare.

We will liaise as necessary where enforcement action could likely result in a family having to move out of their home, to mitigate the impact of any subsequent action.

Granting of additional time for compliance

This will only be for extenuating circumstances and must be requested and formally agreed with the Council. In making an application for extension the notice recipient must:

- Show that they have taken reasonable steps to meet the terms of the notice within the timescale given
- Provide details of the intended course of action and revised timescale

No extension will be granted if civil penalty or prosecution proceedings have been instigated.

Failure to comply

Formal interview

A person who is believed to have committed an offence may be formally interviewed. This will be to establish the facts of the case, the person responsible for any offence and whether there are any circumstances that would influence a decision to prosecute or to impose a civil penalty.

Any formal interview will normally take place at the Council offices and will be conducted under the rules of the Police and Criminal Evidence Act 1984. It will be recorded and the person being interviewed will have the right to be accompanied by a legal representative.

Where a formal interview takes place elsewhere then it will be written down in the officer's notebook and the person being interviewed will be asked to sign it.

We may also formally write to you requesting information about the offence.

Where a formal interview takes place, or a written request for information relating to an investigation is issued, the following caution will be given:

'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence'

Civil penalties under the Housing and Planning Act 2016

A civil penalty is a financial penalty, up to a maximum of £30,000, imposed by the Council on an individual or organisation as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an improvement notice (section 30)
- Offences in relation to licensing of houses in multiple occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of houses in multiple occupation (section 234)

We will consider the use of civil penalties in all cases where we are satisfied beyond reasonable doubt that an offence has been committed. In each case, we will additionally consider whether the imposition of a civil penalty is in the public interest.

Whilst this will usually include all cases of failure to comply with a notice, or more serious breaches of the management regulations, it could include relatively minor breaches, for example failing to keep a garden belonging to a house in multiple occupation in a tidy condition where this is having a detrimental impact on the amenity of the area.

The level of the penalty will be determined in each case having regard to current government guidance and case law.

A civil penalty will not be applied if a person has already been convicted of that offence or where criminal proceedings have already been instigated. Income received from a civil penalty will be used to maintain the Council's statutory functions in relation to the private rented housing sector.

Our policy for imposing financial penalties is given in appendix 2 of this document.

Prosecution

Prosecution may be considered where there has been a failure:

- to license a property where required
- to comply with a licence condition
- to comply with regulations applying to houses in multiple occupation
- to comply with a notice or order served to remedy a hazard
- to provide information when required
- to comply with other relevant legislation

We will normally impose a civil penalty as an alternative to prosecution where that is an option available to us.

We will decide whether or not a prosecution is appropriate by consideration of the following factors: -

- The statutory obligations of the Council
- The seriousness of the offence

- The severity and scale of potential or actual harm
- The previous history of the premises or persons concerned
- The level of culpability of the offender
- Whether the offence was a flagrant breach of the law
- The explanation/defence offered by the company or individual
- The likely effectiveness of the various enforcement options
- Whether the enforcement option is a proportionate response
- Public interest and concern
- The views of other relevant service departments within the Council
- The views of other organisations such as the Police and Fire and Rescue.
- Whether false information has been supplied wilfully or there has been the intent to deceive
- Whether inspectors were intentionally obstructed in the lawful course of their duties
- Whether the landlord’s behaviour is such that it would be appropriate to apply for a banning order (which requires a conviction in court)

Investigating officers will inform the Environmental Health and Community Safety Manager at the early stages of any investigations that may result in prosecution. All such cases will be regularly reviewed.

Anyone faced with being prosecuted will have the opportunity to put any matters to us that they consider may contribute to the prosecution decision being reversed.

The Courts will decide any penalty but, in the case of a successful prosecution, we will make a claim for the reasonable costs of bringing the case.

Simple Cautions

A simple caution may be issued as an alternative to prosecution where there is no option to issue a civil penalty. The purpose of this is to deal quickly and simply with less serious offences, to divert less serious offences away from the courts, and to reduce the chances of repeat offences.

We will follow the Ministry of Justice guidance on Simple Cautions for Adult Offenders and the Conditional Cautioning Code of Practice and associated annexes issued by the Crown Prosecution Service. In particular, the following conditions will be fulfilled before a caution is administered: -

- The offender must be aged 18 or older
- There must be sufficient evidence of the offender’s guilt to give a realistic prospect of conviction
- The offender must admit the offence; and
- The offender must understand the significance of the caution and agree to being cautioned.

If a person declines the offer of a simple caution then we will have no option but to pursue prosecution.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These regulations allow us to impose penalty charges up to £5,000 for failure to comply with a remedial notice relating to the provision of smoke and carbon monoxide detectors in rented accommodation.

When deciding the amount of the penalty charge, we have to have regard to a set of principles that are shown in Appendix 1.

Property Redress Schemes

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.)(England) Order 2014 (SI 2014 No. 2359) requires letting agencies to join a redress scheme for dealing with complaints.

The approved schemes currently are:

- Ombudsman Services Property (www.ombudsman-services.org/property.html)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

The Council will take action where is it satisfied that, on the balance of probability, someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

Current Government guidance states that a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. Our policy therefore is to impose the maximum £5,000 penalty for failure to comply. The Council may impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager and further penalties may be applied if they continue to be in breach of the legislation.

The Proceeds of Crime Act

In some cases, the Proceeds of Crime Act 2002 allows us to seek a court order to recover the benefits of criminal behaviour which includes failure to comply with the Housing Act and similar legislation enforced by the Housing Renewal team.

In practice this means that a landlord may be liable to pay back all the rent collected for the premises during the time that the breach was occurring. This is in addition to any fine or other penalty that may be imposed.

Rent Repayment Orders

The Housing and Planning Act 2016 allows a Council or a tenant to apply to the first tier tribunal for a rent repayment order where the landlord has been convicted, or has received a civil penalty, in relation to the following housing related offences:

- The use of violence for securing entry to a premises
- Illegal eviction or harassment of occupiers
- Failure to comply with an improvement notice
- Failure to comply with a prohibition order
- Control or management of an unlicensed house or house in multiple occupation
- Breach of a banning order

Where a tenant makes an application, the first tier tribunal can order the landlord to repay up to 12 month's rent minus any universal credit or housing benefit. The Council is able to apply for the universal credit or housing benefit element of the rent.

We will normally expect to apply for a rent repayment order where there has been a payment of universal credit or housing benefit to tenants of the premises. Where we believe that a tenant may be entitled to make a claim, we will assist them in doing so.

Banning Orders

Part 2 of the Housing and Planning Act 2016 allows Councils to seek a banning order against a landlord who has been convicted of a banning order offence. A banning order will prevent a person from property letting and management, and from holding an HMO licence for at least 12 months.

Banning order offences relate to more serious offences.

Where we consider that a landlord's behaviour is such that a banning order would be appropriate we may prosecute where an offence has been committed in preference to imposing a civil penalty.

Database of rogue landlords and property agents

Where a person has been:

- convicted of a banning order offence or;
- received two financial penalties in relation to a banning order offence in a 12 month period

Their details will be added to the rogue landlords and property agents' database.

The purpose of the database is to enable Councils to identify landlords who have been convicted elsewhere in the country to inform decisions about the imposition of financial penalties, prosecutions or whether the person is a fit and proper person for the purposes of holding a licence.

Charging for Enforcement

Section 49 of the Housing Act 2004 gives us the right to make such reasonable charge as we consider appropriate as a means of recovering certain administrative and other expenses incurred by us in:

- Serving an improvement notice, prohibition order or emergency prohibition order
- Taking emergency remedial action
- Making a demolition order
- Declaring the area in which the premises are situated to be a clearance area

Administrative expenses that may be charged for include:

- Determining the appropriate course of action (including inspecting the premises)
- Identifying actions to be specified in a notice
- Serving the notice
- Reviewing suspended improvement notices and prohibition orders

Charges for housing enforcement action are published on our website and reviewed annually. Additional costs may also be payable if external specialist advice is needed such as the commissioning of a structural engineers report.
The Council will charge for taking enforcement action unless there are extenuating circumstances. Where this occurs the Environment Health and Community Safety Manager will make the final decision. All requests for this consideration should be put in writing and a response will be given within 21 calendar days of receipt.

Procedure for charging

Where a serious category 1 hazard is identified requiring the immediate service of an improvement notice, prohibition order or the taking of emergency action we will seek to recover our full costs.

In other cases where the existence of a hazard would warrant the service of a relevant notice or order, the person on whom it would be served will be sent a report clearly indicating:

- the hazard;
- the proposed remedy;

That person will then be given 14 days to indicate in writing what actions will be taken to remedy the hazard (a ‘proposal’).

If a proposal is received it will be assessed using the following criteria:

- Proposed time scale
- The nature and extent of the works required
- Likelihood that the actions will effectively remedy the hazard
- The effect that the proposal would have on any resident

We will consider alternative works proposed by the responsible person where these will achieve the same end as the proposed remedy put forward.

Where works will involve planning, building control or listed building consent, it will be the responsibility of the recipient of the notice to make the necessary enquiries into potential timescales to secure the necessary consents. These should be included and made clear in the submission.

If the proposal is not acceptable, the reasons for this will be provided. Only limited negotiation on the proposals will be entered into and in the cases of vexatious response to the involvement of the Council or to our request, no negotiation will be entered into and the notice will be served and the full charge made. If the proposal is accepted an improvement notice or prohibition order which accommodates the proposals will be served and no charge will be made.

If, however, the notice or order is subsequently not complied with then a full charge will be made.

If no proposal is received within 14 days then the relevant notice or order will be served and a full charge made.

On appeal of any such notice, the charge will be suspended pending the outcome of the appeal. If the notice is upheld, charges will be pursued.

The sum charged will be lodged as a Local Land Charge on the premises and, if not paid within one month, will be recovered in accordance with the powers available under the Law of Property Act 1925 which include the power to appoint a receiver.

Works in default

Should it be necessary for works in default to be carried out, we will endeavour to ensure that the cost of works are reasonable and recovered from the relevant person. The costs will be in addition to the administrative and any other relevant expenses. The administration charge for carrying out works in default is published on our website.

When the Council carries out works in default, an invoice requiring payment for the work will be sent to the appropriate person.

Recovery of Costs

We have a wide range of powers to recover payment of civil penalties, the cost of works in default and enforcement charges. These include:

- Action in the County Court
- Use of a debt recovery agency
- Enforced sale of the premises in question
- Appointing a receiver

Working with other enforcement bodies

During the course of an investigation an officer may become aware of breaches of legislation that are enforced by other bodies such as the Police, Fire Service, Trading Standards, the Health and Safety Executive or other departments within the Council such as Planning Enforcement or Building Control.

In such cases we will inform the appropriate body of the breach so that they may carry out their own investigations if they feel that to be appropriate.

We will liaise with other enforcement bodies and departments within the Council to ensure effective coordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.

Any information shared will be in accordance with the requirements of the General Data Protection Regulations 2018 and the Devon Community Safety Partnership protocol for the exchange of information for the purpose of the reduction of crime and disorder.

Civil Claims

Our enforcement action is completely separate and distinct from civil claims made by individuals against their landlord. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.

Upon request and, where appropriate, on payment of a fee, we will provide individuals who are pursuing a civil claim a factual report detailing our investigation and involvement in the case.

In some cases (e.g. in the case of illegal eviction) we may assist in the process of making a civil claim or will refer the person wishing to make such a claim to a third-party (e.g. Shelter).

Energy efficiency in private rented property

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions:

- Since the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an Energy Performance Certificate (EPC) rating of band F or G.
- From 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of F or G (as shown on a valid EPC for the property).

Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.
The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The Council will:

- Check that properties in the district falling within the scope of the Regulations meet minimum levels of energy efficiency.
- Issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations.
- Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirement to comply with a compliance notice or has provided false or misleading information on the exemptions register.

The Council will have regard to official guidance in the application of this legislation, the penalty amount and the publication of the penalty.

Illegal eviction and harassment

The Council will consider action under the Protection from Eviction Act 1977 which makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with them;
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home; or

- Unlawfully deprive or attempt to deprive the residential occupier of any premises they occupy or any part thereof.

For any tenancies started on or after 1st October 2015 where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, the Council will inspect and may serve a notice requiring works to be carried out, following which, for a period of six months, a section 21 notice requiring vacant possession may be deemed invalid.

The Council will endeavour to support tenants and deal with landlords and agents where these issues arise although tenants may also be advised to seek independent advice from a solicitor, Citizens Advice or Shelter.

Boarding up properties

The Council has powers to board up properties that are insecure after all efforts have been made to contact and work with the owner, to make the property safe and correct any hazards found in the properties. When deemed appropriate to do so, the Council will consider taking such action and will detail works required and the reason(s) why, e.g. prevention of unauthorised entry. The Council will look to recover expenses reasonably incurred where such works are undertaken.

Other enforcement powers

The Council will consider the use of statutory powers to deal with various housing issues, including statutory nuisance, dangerous structures, filthy and verminous premises, defective drainage and, specifically, the Antisocial Behaviour, Crime and Policing Act 2014 on a case-by-case basis in accordance with legislation, approved guidance and codes of practice etc., and in accordance with the Corporate Enforcement Policy.

Housing immigration – inspections and accommodation certificates

When an immigration application is made to come to the UK, one of the documents that must be provided is a letter confirming:

- The property the applicant intends to live in has been inspected
- The property is of an acceptable for occupation
- The property will not become overcrowded if they live there

As this is not a statutory function, we will provide this service taking into consideration other operational demands. A fee will be payable in advance for the inspection and the letter. The current fee charged is given on our website and will be subject to annual review.

Feedback and review of this policy

This policy will be reviewed from time to time and refreshed should any changes in legislation or relevant codes of practice or guidance require it to be updated. The Council will publish this on our website and welcomes and will respond to any

comments on the content of the policy at any time. This policy and any updates or changes to it will be ratified in accordance with our constitutional procedures.

If an alleged offender is being prosecuted or subject to formal legal action then in most cases the court process has its own channels for legally challenging the action of the Council or the outcome, through a court appeal.

If a matter has not yet reached court or in any other case where a person is dissatisfied, see our Customer Complaints process for further advice on how to proceed.

You can contact the Council by the following means:

Address: Riverbank House, Bideford, Devon EX39 2QG
Email: housing.renewal@torridge.gov.uk
Telephone: 01237 428700
Website: http://www.torridge.gov.uk

Appendix 1 - Penalty Charges under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Summary of Duties Under the Regulations

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires landlords of residential premises to:

- Provide a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- Provide a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- Carry out checks to ensure that each prescribed alarm is in proper working order on the day the tenancy begins, if it is a new tenancy.

Torridge District Council has a duty under the regulations to serve a remedial notice on a landlord where it has reasonable grounds to believe that one or more of the landlord's requirements has been breached.

If a landlord fails to comply with a remedial notice, the Council has a further duty under the regulations to arrange for the works to be carried out by an authorised person. Those works must be carried out within 28 days of the Council becoming aware of the failure to comply with the notice.

Penalty for failure to comply with a remedial notice

Where a landlord fails to comply with a remedial notice the Council has the power to impose a penalty charge of up to £5,000.

In order to do this, the Council must serve a penalty charge notice on the landlord within six weeks of it becoming aware of the failure to comply.

The Council has the power to reduce the penalty charge if it is paid within 14 days of the date of the penalty charge notice

Landlords may request a review of a penalty charge notice and may appeal to the residential property tribunal

The Council may take proceedings to recover the penalty charge in the same way as if it were payable under a court order.

Statement of Principles

The Council has a duty to publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. It must have regard to those principles when determining the amount of a penalty charge.

The following is the Council's statement of principles which it proposes to follow in determining the amount of a penalty charge:

- The charge will consist of a recovery element and a punitive element set to encourage compliance.
- The total penalty charge will not exceed £5,000.
- The recovery element will be equal to the cost of carrying out the remedial action including administrative and ancillary costs.

The punitive element will be determined as follows:

The baseline charge will be £3,500. It is set at this level to encourage compliance and in recognition of the fact that the recipient will have had a number of opportunities to remedy any breach and thus avoid a penalty charge. It also provides scope for increasing the penalty where there are aggravating factors.

Aggravating factors include:

- Where action has previously been taken against the recipient for failure to comply with the regulations including action that did not result in a penalty charge
- Obstruction of officers and workmen in the carrying out of their duties under these regulations
- Where there is a direct connection with other illegal activity, for example overcrowding, leading to an increased risk to the occupants from fire

Where there are aggravating factors, the punitive element will be increased by £500 per element or incident to bring the total penalty charge to the maximum of £5,000.

For first time offences only with no aggravating factors, there will be a discount for payment within 14 days of £500.

The penalty charges will be reviewed from time to time to assess their effectiveness. Any decision to alter the charge will take place through the constitutional processes of the Council.

Appendix 2 - Financial Penalty Policy

Introduction

The Housing and Planning Act 2016 allows local housing authorities to impose financial penalties of up to £30,000 as an alternative to prosecution for a range of offences contained within the Housing Act 2004:

- Failure to comply with an improvement notice
- Offences relating to the licensing of houses
- Failure to comply with an overcrowding notice
- Failure to comply with management regulations in respect of HMOs

The Council will use these powers in accordance with the following principles:

The failure to comply with the requirements listed above are criminal offences and, as such, a financial penalty will be considered in every case where an offence has been identified.

A prosecution may be an appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.

A financial penalty will only be imposed where the Council is satisfied beyond reasonable doubt that an offence has been committed.

In addition, the Council will consider whether the imposition of a financial penalty is in the public interest.

The amount of the financial penalty will reflect the seriousness of the offence and will be determined in a consistent and transparent way.

Regulations made under the Housing and Planning Act 2016 and the Housing Act 2004 enable the Council to use any financial penalty recovered to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

Schedule 13A to the Housing Act 2004 deals with the procedure for imposing financial penalties, appeals and enforcement.

Determining the Penalty

Statutory guidance states that the following factors should be considered when determining the appropriate level of penalty:

- Severity of the offence
- Culpability and track record of the offender
- Harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence

The Council will use a consistent approach which is based on the Magistrates' Court Sentencing Guidelines issued by the Sentencing Council. This is shown in more detail later in this appendix.

A penalty band will be indicated based on a judgement of culpability and harm as shown in the following matrix:

Harm	**Culpability**			
	Very high	High	Medium	Low
High	Band 6	Band 5	Band 4	Band 3
Medium	Band 5	Band 4	Band 3	Band 2
Low	Band 2	Band 1c	Band 1b	Band 1a

Further guidance to assist with the determination of culpability and Harm are given later in this document.

With the exception of band 1, each band has an assumed starting point which indicates the penalty before any possible adjustments have been considered.

Band	Financial penalty range/£	Assumed starting point/£	Adjustment increment/£
1a	100	-	-
1b	150	-	-
1c	200	-	-
2	200-800	400	200
3	1,000-4,000	2,000	1,000
4	6,000 – 12,000	8,000	2,000
5	14,000 – 20,000	16,000	2,000
6	22,500 – 30,000	25,000	2,500

The penalty bands are weighted as follows:

Band 1 relates to offences where there is a low risk of harm. Financial penalties at this level are designed to encourage compliance with lower level requirements for example failing to maintain courtyards and gardens or failure to display an

information notice in a house in multiple occupation. They will also act as an initial deterrent where management standards are beginning to slip to prevent more significant contraventions.

Bands 2 and 3 relate to more serious, but still relatively minor offences. This is reflected in lower indicative penalties. Penalties at this level will be considered as a deterrent to prevent more serious offending.

Band 4 and 5 fines relate to the type of offences that are normally dealt with by the Council where there is a higher risk of harm and greater culpability. These offences carry significantly higher financial penalties.

Band 6 is reserved for cases where the contravention exposed people to a high risk of harm due to an intentional breach or flagrant disregard of the law.

In each band, the penalty may be adjusted by the incremental value to reflect the level of co-operation experienced following identification of the offence:

Full co-operation following identification of offence	Reduce from starting point by one increment
Minimal further input required by the Council to achieve compliance	No adjustment
Significant involvement by the Council required to achieve compliance	Plus one increment
A significant lack of co-operation and/or obstruction leading to significant further enforcement activity (e.g. works in default)	Plus two increments

Finally, the Council will apply the "Totality Principle" in cases where more than one penalty has been imposed, with a view to ensuring that the total penalty or penalties properly reflect all of the offending behaviour and are just and proportionate in all the circumstances.

Ability to Pay

Statutory guidance states that local authorities should use their existing powers to, as far as reasonably possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate financial penalty.

The existing powers available to the Council include:

- Housing benefit and Council tax information (permitted by Section 237 of the Housing Act 2004)
- Service of a requisition for information under section 16 of the Local Government (miscellaneous provisions) Act 1976 (power to obtain particulars of persons interested in land)
- In limited circumstances Section 235 Housing Act 2004 (power to require documents to be produced)

When a person receives a notice of intent to impose a financial penalty they have the right to make written representations about the proposal. The Council will specifically ask for those representations to include any evidence of the person's ability to pay the proposed penalty.

If no representations are received then the presumption will be that the person is able to pay the full amount of the proposed penalty. This presumption will be tested against information held by the Council, or publicly available information such as company records or land registry entries.

Evidence put forward in representations will be assessed for accuracy against Council-held and public information.

Where appropriate, further information may be required through service of notices using the powers listed above.

Any evidence about ability to pay will be considered before a final decision is made about the level of the penalty.

Representations and Appeals

A person who is given a notice of the Council's intention to impose a financial penalty may make written representations to the Council within 28 days beginning with the day after that on which the notice was given. These should be addressed to the private sector housing team at the Council or emailed to housing.renewal@torridge.gov.uk

Written representations will be considered by the Environmental Health and Community Safety Manager.

A person who is given a final notice requiring a penalty to be paid may appeal to the First-tier Tribunal against

- The decision to impose the penalty, or
- The amount of the penalty

Details about how to make an appeal will be included with any final notice.

Recovery

A penalty must be paid within 28 days beginning with the day after that on which the notice was given

In the absence of an appeal and where a penalty is not paid within 28 days, the Council will seek to recover it through a county court order.

Determination of culpability and Harm

Culpability

Band	Description	Examples
Very high	The offender has intentionally breached or flagrantly disregarded the law	The offender has a track record of failure to comply
		There is evidence that the offender has deliberately delayed compliance for example to prevent a complainant from benefitting from improvements
		An opportunity to comply was deliberately avoided, for example, by moving a new tenant in to the property before a known hazard or breach has been remedied
		Deliberate avoidance of significant cost through non-compliance
High	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken	The offender had knowledge of the breach, for example through a complaint, but has not responded
		A clear requirement by the Council has been ignored. This would include an improvement notice that has not been complied with, or the failure to respond to a letter requesting action to address a management failure
		The offender is a member of a professional body which makes clear requirements that have not been followed, leading to the breach
		Offender had not started the works by the notice expiry date and had not made a reasonable case for an extension of time

Medium	Offence committed through act or omission which a person exercising reasonable care would not commit	A failure to carry out regular inspections, for example, of the common parts of a house in multiple occupation
		Failure to have adequate systems in place to avoid the offence, for example, an emergency contact or regular maintenance contract for gas appliances or fire alarm systems
		The offender did not provide sufficient contact information to the tenant to enable the problem to be addressed
		Offender has failed to comply with notice start by date but, nevertheless, completed the works satisfactorily within time.
Low	Offence committed with little fault, for example because: Significant efforts were made to address the risk although they were inadequate on this occasion There was no warning/circumstance indicating a breach Failings were minor and occurred as an isolated incident	Failure to comply with licence conditions aimed at lessening the impact of the use of the property on the amenity of the local area (e.g. keeping courtyards and gardens in reasonable condition) where there is no ongoing history of similar breaches
		Failure to display an information notice where required to do so

Harm

Category	Description	Examples
High	Serious adverse effect(s) on individual(s) and/or having a widespread impact High risk of an adverse effect on individual(s)	Failure to comply with an improvement notice served under section 11 of the Housing Act 2004 (category 1 hazard)
		Failure to maintain fire precautions
Medium	Adverse effect on individuals(s) Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect Legitimate industry substantially undermined by offender's activities	Failure to comply with an improvement notice served under section 12 of the Housing Act 2004 (category 2 hazard)
		Failure to maintain facilities or to clean common parts in houses in multiple occupation
		Unfair competition with landlords who do not commit offences e.g. by overcrowding
Low	Low risk of an adverse effect on individual(s)	Failure to display an information notice in a house in multiple occupation where the tenants possess that information through other means
		Minor inconvenience either to tenants or local residents through a failure to comply with licence conditions

Appendix 3 HMO amenity standards

To be added.