

Date of issue: Tuesday, 30 August 2022

<b>MEETING</b>	<b>CUSTOMER AND COMMUNITY SCRUTINY PANEL</b> (Councillors Begum (Chair), Muvvala (Vice Chair), Ali, Brooker, Hussain, Kaur, M. Malik, S. Malik, Mohammad,  <u>Non-Voting Co-opted Members</u> Trevor Pollard (Residents Panel Board)
<b>DATE AND TIME:</b>	WEDNESDAY, 7TH SEPTEMBER, 2022 AT 6.30 PM
<b>VENUE:</b>	COUNCIL CHAMBER - OBSERVATORY HOUSE, 25 WINDSOR ROAD, SL1 2EL
<b>DEMOCRATIC SERVICES OFFICER:</b> (for all enquiries)	MANIZE TALUKDAR 07871 982 919

NOTICE OF MEETING

You are requested to attend the above Meeting at the time and date indicated to deal with the business set out in the following agenda.



**GAVIN JONES**  
Chief Executive

**AGENDA**

**PART I**

<b>AGENDA ITEM</b>	<b>REPORT TITLE</b>	<b>PAGE</b>	<b>WARD</b>
	Apologies for absence.		
1.	Declarations of Interest	-	-
	<i>All Members who believe they have a Disclosable Pecuniary or other Interest in any matter to be considered at the meeting must declare that interest and, having regard to the circumstances described in Section 9 and Appendix B of the Councillors' Code of Conduct, leave the meeting while the matter is discussed.</i>		
	<b>CONSTITUTIONAL MATTERS</b>		
2.	Minutes of the Meeting held on 6 <sup>th</sup> July 2022	1 - 12	-

AGENDA ITEM	REPORT TITLE	PAGE	WARD
3.	Member Questions  <i>(An opportunity for panel members to ask questions of the relevant Director/Associate Director, relating to pertinent, topical issues affecting their Directorate – maximum 10 minutes allocated.)</i>	-	-
<b>ITEMS FOR INFORMATION</b>			
4.	Housing Regulation Enforcement, Licensing and Civil Financial Penalties Policies	13 - 102	All
5.	Members' Attendance Record	103 - 104	-
6.	Date of Next Meeting -  20 October 2022.	-	-

#### Press and Public

**Attendance and accessibility:** You are welcome to attend this meeting which is open to the press and public, as an observer. You will however be asked to leave before any items in the Part II agenda are considered. For those hard of hearing an Induction Loop System is available in the Council Chamber.

**Webcasting and recording:** The public part of the meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The footage will remain on our website for 12 months. A copy of the recording will also be retained in accordance with the Council's data retention policy. By entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings.

In addition, the law allows members of the public to take photographs, film, audio-record or tweet the proceedings at public meetings. Anyone proposing to do so is requested to advise the Democratic Services Officer before the start of the meeting. Filming or recording must be overt and persons filming should not move around the meeting room whilst filming nor should they obstruct proceedings or the public from viewing the meeting. The use of flash photography, additional lighting or any non hand held devices, including tripods, will not be allowed unless this has been discussed with the Democratic Services Officer.

**Emergency procedures:** The fire alarm is a continuous siren. If the alarm sounds Immediately vacate the premises by the nearest available exit at either the front or rear of the Chamber and proceed to the assembly point: The pavement of the service road outside of Westminster House, 31 Windsor Road.

**Customer and Community Scrutiny Panel – Meeting held on Wednesday, 6th July, 2022.**

**Present:-** Councillors Begum (Chair), Muvvala (Vice-Chair), Ali, Kaur, M. Malik, S. Malik, Mohammad and Trevor Pollard

**Also present under Rule 30:-** Councillors Ajaib and Hulme

**Apologies for Absence:-** Councillors Brooker and Hussain

**PART 1**

**1. Declarations of Interest**

No declarations were made.

**2. Appointment of Chair & Vice Chair**

**Resolved** – To note the appointment of Councillor Begum as Chair and Councillor Muvvala as Vice Chair of the Panel for the 2022-23 Municipal Year.

**3. Minutes of the Meeting held on 6 April 2022**

**Resolved** – That the minutes of the meeting held on 6 April 2022 be agreed as a correct record.

**4. Member Questions**

None received.

**5. Houses of Multiple Occupation**

The SBC Housing Regulation Manager provided a brief overview of the report entitled Houses of Multiple Occupation. She and the SBC AD, Place Regulation, responded to Members' questions and comments as set out below.

Why did the figures in the table on page 18 of the agenda, which set out the number of HMOs by ward, relate to 2018 only? Was there any data for the 2019-22 period?

Officers responded that this data was provided by the stock modelling exercise, which had been commissioned through consultants in 2018. The modelling had been carried out to ascertain whether the housing stock in Slough would fit the criteria for implementing the proposed licensing schemes. There were no methodologies to review the data annually and the modelling exercise would be revisited in the future if the current scheme was reviewed.

Had any fly tipping enforcement action been taken against HMOs?

Fly tipping enforcement was not part of the housing team's remit. However, waste management regulations would be reviewed as part of the compliance audit of an HMO and any breaches of licensing conditions would be enforced.

Were properties inspected prior to the issue of an HMO license?

In the past, all proposed HMOs were inspected prior to issuing a license. However, this was no longer possible due to staff resourcing issues. Her team were committed to inspecting each property within five years of receipt of a licensing application. Inspections were also carried out following complaints, or where there was a history of non-compliance by landlords. This approach would ensure that resources were targeted at those HMOs which posed the greatest risk.

What was the basis for the predictions made as part of the modelling exercise?

The stock modelling exercise undertaken by consultants in 2018 had been based on large data set. She undertook to circulate the report setting out the methodology used for the projections. The consultants had acknowledged that the accuracy of the modelling exercise for HMOs was lower than that for private properties.

The Member stated that he would have preferred to see more accurate, recent figures included in the report. The figures provided were four years out of date. He asked what system was in place to ensure more realistic figures in the future and how officers would ensure that all HMOs were licensed.

The SBC Housing Regulation Manager advised that the consultants had relied on a wide variety of external data sources to make the projections. It should be noted that Council data sources were unreliable predictors of locations of HMOs. Officers depended on information from the public and other council departments to help identify unlicensed properties. Work relating to housing regulations was often reactive i.e. dealing with complaints. The licensing work had to be balanced against other workstreams. There were plans to recruit additional staff which would help ease the pressure. In future, she expected the modelling predictions to be more accurate as more data and intelligence would be available. It should be noted that this was a brand new initiative that would take a few years to bed in.

She added that the graph in the report related to the number of applications received for HMOs and not the number of licenses issued. The Housing team were actively working to identify any unlicensed properties. It was an offence to run an HMO without a license. In terms of modelling, trying to work out the tenure of properties was a time consuming, expensive and complex process requiring specific expertise to create the models and the algorithms and to buy in the data. It would therefore be costly to run this annually. The modelling had been carried out to ascertain whether there was a need for a licensing scheme and whether the conditions for implementing one had been

met. The process for identifying unlicensed HMOs was often complex with the added challenge of some landlords not wanting to be regulated. The current scheme would expire in June 2024 and a new modelling exercise would be undertaken and be reported to Panel.

Following a question regarding the margin for error in the projections, an officer confirmed that the actual numbers of HMOs in operation may be lower than the predicted number.

A Member stated that she would like to see future stock modelling data. She asked if children were allowed in HMOs?

An officer responded that there were no restrictions on who could rent an HMO.

Who was the selected licensing scheme aimed at? Was its purpose to generate income or to protect tenants? Would the scheme be rolled out to other Wards?

The SBC Housing Regulation Manager advised that fees could only be set to administer the scheme, with the aim of improving the management of properties, and that under law, the Council was not permitted to make a profit from administering it. Legislation required that certain conditions be met before a selective licensing scheme could be introduced and must take account of the proportion of privately rented properties, levels of anti-social behaviour, inward migration, deprivation and crime in the area. The Council would need to be satisfied that the introduction of a selective licensing scheme would help tackle these issues. For example, 50% of the housing stock in Chalvey was privately rented – this figure was significantly higher than the national average. She added that to go above the current 20% threshold of privately rented stock or 20% of the geographical area would require an application to the Secretary of State.

The Member requested that the new enforcement policies being drafted should be circulated to Councillors for their feedback. The SBC AD, Place Regulation, responded that a workshop with Members could be arranged prior to the policies being submitted to scrutiny.

Had video calls to landlords been considered in cases where physical inspections were not possible?

Officers had not considered doing this en masse, however, landlords were often contacted by phone. Going forward, video calls would be considered for higher risks cases.

Were there any figures relating to the income generated from HMOs and selective licensing schemes? The SBC Housing Regulation Manager undertook to provide this information after the meeting. She added that any income received from the schemes was used to cover the cost of administering the scheme.

Would the planned staff recruitment mean there would be additional enforcement officers?

The SBC Housing Regulation Manager advised the recruitment drive was intended to fill existing vacancies. Some staff in the team were currently acting up, (a process whereby an existing member of the team steps into higher grade post on a temporary basis) which not only provided a development opportunity for staff but was also an additional resource in the team.

Following a question, the SBC Housing Regulation Manager advised that a change of use would be required if there were seven or more occupants in an HMO. Any change of use would require planning permission and this work fell within the remit of the planning team.

The report stated that implementation of the scheme had put pressure on legal and support services. What were the timescales for implementation of the new policies and protocols?

SBC Housing Regulation Manager stated that the policies had been reviewed by HBLaw and all recommendations suggested by the legal team had been reviewed and implemented and an Eqia had also been undertaken. These policies and protocols could be submitted to the proposed Members' workshop.

The report stated that the Housing regulation team reserved formal sanctions for serious, persistent offenders. How were the lesser category of offenders dealt with?

All decisions regarding sanctions were made in line with the Council's general enforcement policy. Draft housing regulations and specific enforcement policies were being drafted. In the case of criminal sanctions, officers were obliged to take into account the evidence code for crown prosecutors. Each case was assessed on its merits with no predetermined sanctions. However, both civil and financial penalties, which were designed to be deterrents, could be issued. The revised protocol would allow the penalty bands to be more flexible, allowing lower sanctions for more trivial offences. A number of different enforcement tools such as issuing statutory notices, prohibition orders, etc could be used.

How did the team receive referrals?

The SBC Housing Regulation Manager advised that the figures relating to this had not yet been assessed. She undertook to provide this information after the meeting. She added that a significant number of referrals were received from council colleagues and partners, for example, from the planning enforcement team, GPs, social services, the fire service, local residents and estate agents.

## Customer and Community Scrutiny Panel - 06.07.22

There was a correlation between poor housing and health. Should the Council alert all relevant partners to a referral method?

The Housing team tended to receive more referrals from social care, health and support services with regard to poor quality housing. The team was committed to tackling this issue within the resources available.

How was bulky waste disposal and fly tipping around the town dealt with?

This issue was not covered by the licensing scheme and fell within the remit of resilience team. This issue could be considered at a future scrutiny meeting.

Additional and selective licensing schemes were discretionary. The current scheme would expire at the end of June 2024, when it would be up for renewal. Mandatory licensing for larger HMOs lasted in perpetuity.

Many residents may not be aware of the need for HMO licensing. The Council should consider publicising this requirement through newsletters and social media in order to reach more landlords.

The SBC Housing Regulation Manager stated that the enforcement team would tend to give the benefit of the doubt before taking enforcement action against unlicensed landlords. A Facebook campaign had been carried out in 2021 with further communications planned in the near future.

Had officers considered checking on the Gumtree and Spare room websites for unlicensed HMOs?

SBC Housing Regulation Manager advised that on the whole, the landlords advertising on these sites tended to be compliant. Unlicensed HMOs were difficult to locate and there were RIPA (regulation of investigatory powers act) put up barriers to using certain types of information on websites.

Were there ward breakdowns of the number of selective licenses in each ward?

Selective licensing only covered Chalvey and Central districts. She undertook to provide figures regarding these after the meeting.

Many HMOs were poorly maintained. Did her team have any powers over poorly maintained properties?

The SBC Housing Regulation Manager stated that it was not always the case that privately rented housing stock was poorly maintained. Many poorly maintained properties may have owner occupiers or be in the social rented sector. However, poor management did have impact on the community. In the case of poor physical condition of a property for single occupancy properties, part 1 of the housing act covered hazards and safety, however, any issues related to the cosmetic appearance or the level of comfort in a

property did not fall within its purview. In the case of refuse outside properties, this was not a licensing issue and would come within the remit of other teams, which could take the necessary enforcement action.

The report advised of 53 licences which had been revoked. Had any other action been taken against these landlords?

The SBC Housing Regulation Manager advised that licenses were not transferrable. The majority of those licenses had been revoked with the agreement of the license holder, for example, when a property had changed hands or the landlord had lawfully evicted the tenants. In some cases the landlord had been deemed not fit and proper and had failed to engage with the Council or appoint alternate managing agents.

In conclusion, the Chair highlighted some of the concerns set out in the report arising from HMOs, namely that poor housing conditions were linked to a host of negative consequences on the lives of residents. The implementation of the HMOs would need to be monitored effectively to ensure good quality, safe homes for residents, leading to improvements in the locality.

The Panel agreed that it would like to review HMOs and the selective licensing schemes in the Chalvey and Central areas at future sessions.

**Resolved** – That the report be noted.

## **6. Call Centre Statistics**

The SBC Group Manager for Customer Support presented the report on Call Centre Statistics.

Members asked the questions below and received the following responses.

With regard to customer service improvement, would it be possible to allocate an operative to deal with customers at Observatory House for a few hours per day? How many residents were using CAPS (customer access points) at each of the hubs?

The SBC Group Manager advised that there were a number of customer access points at the hubs where residents could make appointments. Observatory House had been designated for staff use only and could not be used to locate CAPS.

The SBC Customer Service Operational Lead replied that in each locality there was one full time member of staff working from Monday to Friday, dealing with approximately five hundred appointments per month. Scanning devices would be installed at the hubs which would enable customers to submit their documents more easily, thereby saving time.

## Customer and Community Scrutiny Panel - 06.07.22

How was the Council improving its communications with residents? The Member suggested that an email newsletter, containing all relevant information and updates for residents should be explored.

The SBC Group Manager stated that a working group was being set up as part of the customer engagement strategy to assess the best way to engage with residents, whether through focus groups or surveys aimed at improving customer satisfaction and customer experience. The suggestion of an email newsletter would be explored further with the Communications team.

The figures in the report showed that the call centre response rate and wait times had not improved. What was the appointments system at the hubs? If online, then how many residents had access to online bookings? Which areas of the service had seen improvement and which areas required further improvement?

The SBC Group Manager advised that there was an online appointment booking system. Residents had access to the public computers at some of the hubs and library staff were on hand to help residents make appointments. Depending on staff availability, some customers would be able to get appointments the same day.

Landmark Place used to have approximately 36,000 face to face appointments annually. Were the new hubs aiming to reach same level of appointments, and if so, how?

The SBC Customer Service Operational Lead advised that the number of residents attending Landmark Place had become unmanageable. In closing Landmark place, the Council's strategy had been to ensure channel shift among residents, however, there was still work to be done to encourage channel shift among residents.

A Member stated that a number of residents had complained to him about not being able to contact the Council, some of whom were attempting to pay their council tax or parking fines.

Officers advised that on phoning the contact centre, callers were given the option to connect to an automated payment line and that the call centre did not deal with parking fines, this function had been outsourced to an external parking team.

The SBC Customer Service Operational Lead added that not all frontline services were dealt with by customer services. Communications between back office teams and customers was key. Many back office services had moved to digital channels,

Had it been a wise decision to remove 18 call centre staff in 2020 as part of transformation initiative only to appoint 18 new staff in 2022 on a temporary basis? What improvements were planned for the service?

## Customer and Community Scrutiny Panel - 06.07.22

The SBC Director of Finance advised that this had been a consequence of the 'Our Futures' programme, the introduction of subsequent budget reductions and the fact that digitisation did not take place as planned. This situation needed to be addressed. Planned improvements would be part of the budget process and submitted to Members for agreement. The task of digitisation would take some time to complete.

How would the Customer engagement strategy obtain necessary insights from residents and councillors to inform future service delivery?

The SBC Group Manager stated that the proposed working group would consider this with input from all relevant council teams.

If progress was made, how would this be fed-back to Councillors and residents?

The SBC Group Manager stated that once the customer engagement strategy was in place a report would be shared with the Corporate Leadership Team, possibly Cabinet and any residents who had engaged with the Council regarding the matter.

How would the Council engage with digitally excluded residents?

The working group would be considering this. Other means of engaging with digitally excluded residents would be explored.

Why didn't council staff use teams messaging among themselves or to deal with queries from the public? How could digitally excluded residents receive the council tax rebate?

The SBC Customer Service Operational lead stated that the customer service team used a different telephone platform and could not easily take teams calls. Council staff all used outlook email for daily communication.

He added that residents could book appointments at the CAPs and staff there would help them to complete online forms. Staff at the contact centre could also assist callers with this.

Following a question about the council tax rebate, the Director of Finance advised the rebate would be credited to residents in the 2022-23 financial year.

What were the busiest periods for the call centre? Did all 18 of the temporary recruits need work at the call centre on a full time basis?

The SBC Customer Service Operational lead advised that the busiest periods were mornings from 9 am and lunchtimes. The call centre was open till 5pm. Staff at the call centre dealt with eighteen separate service areas, undertook training, dealt with email enquiries and processed blue badge applications.

## Customer and Community Scrutiny Panel - 06.07.22

What developments had been made to date with the new Customer Engagement Strategy?

The SBC Group Manager stated that work on the strategy was ongoing and that the working group would be a key driver in this. Engagement with stakeholders and customers would inform and define the strategy.

What consideration would be given to disabled residents or those with additional needs and how would they be communicated with?

The SBC Group Manager stated that the use of technology such as hearing loops and working closely with the Council's equalities officer would help to ensure that services were accessible. Other options included face to face appointments, conference calls and updating the IT system so it would flag up vulnerable customers.

The report showed that call duration times had increased, causing further delays - what was being done to address this?

The SBC Customer Service Operational lead advised that additional staff training, staff mentoring and coaching for the temporary members of staff to gain confidence, not using the call hold mechanism would help reduce transaction times.

What was entailed in the review process?

The SBC Group Manager stated that the review process would evaluate the customer journey, e.g. how did customers contact the Council, what contact information was available on the Council's website, the quality of the service used and that digital processes were as simple as possible for residents.

Did the CAPs see as many customers as Landmark place?

The SBC Customer Service Operational lead stated that the closure of Landmark place had been a political decision, agreed by Council and currently fewer customers were being seen.

A Member stated that she had not found an Eqia for the 'our futures' programme. Would an Eqia be undertaken prior to channel shift? She was concerned that digitally excluded, vulnerable residents would not receive the necessary support. When would a report regarding resident engagement plan be submitted to Members? She understood that there was a one to two week waiting time at Britwell for face to face appointments. How long was it taking to process housing benefit claims?

The SBC Customer Service Operational lead stated that the CAP at Britwell was quite busy and waiting times for appointments could be between 2-4 weeks. The hub had moved to an appointment based system as there was only one member of staff there.

## Customer and Community Scrutiny Panel - 06.07.22

The Director of Finance confirmed that Eqias would be undertaken for all future budget proposals and staff had received the necessary training to carry out Eqias. The engagement plans would be shared with Cabinet and scrutiny in the near future.

How many residents had signed up to the self-service portals?

The SBC Customer Service Operational lead stated that his team did not deal with housing benefit claims and he did not have information regarding the self-service portals. The Director of Finance undertook to provide a response to the above queries after the meeting.

What were the most common queries dealt with by the contact centre? These should be analysed in a bid to reduce call volumes. He had received a number of complaints regarding the call centre.

The SBC Customer Service Operational lead stated that six service areas were in high demand. The CRM reporting mechanism, could track the most frequently asked questions by customers and that this intelligence and data would help inform future improvements.

He added that many residents phoned the call centre following receipt of council communications. These residents were not phoning to complain but to make enquiries. Complaints were dealt with under a different mechanism.

How many calls were received for each service area?

The Director of Finance directed the Member to the forthcoming finance action plan report, which would be submitted to Cabinet, which would provide the information requested.

Which Wards were most calls received from?

The SBC Customer Service Operational lead advised that the service did not currently gather demographic data.

In summary, the Chair noted that the call centre currently received fewer calls than in 2020 and 2021. Nevertheless, it was reassuring that there had been some improvements and that the whole customer experience would be factored into the improvement plan. Priority should be given to the needs of vulnerable customers. Members looked forward to crucial remodelling of the service area and a more efficient, effective and adequate service in the future.

**Resolved** – That the report be noted.

**7. Date of Next Meeting**

7 September 2022.

Chair

(Note: The Meeting opened at 6.36 pm and closed at 8.44 pm)

This page is intentionally left blank

## Slough Borough Council

**Report to:** Customer and Community Scrutiny Panel

**Date:** 6<sup>th</sup> July 2022

**Contact officer:** Rhian Richards, Housing Regulation Manager

**(For all enquiries)** (01753) 477396

**Ward(s):** All

### Part I

#### For comment & consideration

### Housing Regulation Enforcement, Licensing and Civil Financial Penalties Policies

#### 1. Purpose of report

To seek the Committee's views, comments and recommendations on the following draft policies relating to regulation and enforcement in private sector housing;

- Housing Regulation Enforcement Policy
- Revised Protocol for Civil Financial Penalties
- Property Licensing Decisions Policy

#### 2. Recommendation(s)/proposed action

The Committee is requested to review and comment on the proposed policies and to recommend any amendments they wish to be considered for inclusion in the final versions which will be presented to Cabinet for consideration in due Course.

#### 3. The slough joint wellbeing strategy and the JSNA

##### ***3a. Slough wellbeing strategy priorities***

Housing is widely recognised as a key determinant of health and wellbeing. The Local Authority Health Profile for Slough published early in 2020 by Public Health England highlighted a number of areas where the health of people in Slough is worse than the England average. Research suggests that a number of these areas can be linked to poor housing conditions:

- Early deaths from cardiovascular disease- damp and cold homes have been linked to an increased risk from respiratory and cardiac conditions and in turn to excess winter deaths.
- Rate of hip fractures- Falls are most likely to occur in the home. Disrepair in residential properties for example to floors, stairs and handrails can increase

the risk of falls on level surfaces, stairs and those associated with baths and showers

- Hospital admissions for violence- Research by the Police Federation identified a link between the levels of violence in communities and prevalence of houses in multiple occupation
- Rates of T.B. which are almost 4 times the UK average- TB and other infectious diseases can spread more easily where conditions are overcrowded and/ or unsanitary.

In addition there is emerging evidence of a link between an increased risk of Covid 19 and over-crowded housing.

As well as the impact on health, unsafe, unsuitable or insecure housing can also have a long term impact on a child's academic attainment and life chances. Shelters report 'Chance of a lifetime- The impact of bad housing on Children's lives' (2006), highlighted that children who grow up in poor housing are more likely to be unemployed or to experience poverty in adulthood.

The impact of housing on health and well-being is recognised in the Slough Wellbeing Strategy 2020-25 which makes the improvement 'of the life chances of residents by focussing on areas such as housing...' a key ambition under *Priority 3: Strong, healthy and attractive neighbourhoods*.

The thorough and effective enforcement of standards in privately rented properties can directly support this ambition by identifying and improving poorly maintained and badly managed privately rented homes.

#### **4. Other implications**

##### **(a) Financial**

It is foreseeable that the implementation of the policies could lead to a marginal increase in the amount of enforcement activity which may in turn increase the demand for legal support services. However, this demand and any associated increase in costs will be offset by improvements in the quality of information and evidence gathered by officers; and in the robustness of their decision making. This will both deter erroneous legal challenges and allow legal support services to deal with cases more swiftly and efficiently.

Income received from any civil financial penalties issued under the revised Protocol for Issuing Civil Financial Penalties can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

(b) Risk management

<i>Recommendation from section 2 above</i>	<i>Risks/Threats/ Opportunities</i>	<i>Current Controls</i>	<i>Using the Risk Management Matrix Score the risk</i>	<i>Future Controls</i>
	<p><b>Health and Safety:</b>  <i>When carrying out regulatory activities that involve the assessment of physical hazards and regular contact with the public there will always be some risk to the health and safety of staff and residents. However, as the policies which accompany this report are designed to help improve the delivery of statutory functions relating to housing conditions and management in the private rented sector, it is likely that the adoption of the policies will reduce the risk to the Health and Safety of Slough Residents.</i></p>	<p><i>Comprehensive risk assessments are in place and are kept under regular review to ensure risks to residents and staff are minimised.</i></p> <p><i>Team take a risk based approach to their interventions ensuring that properties most likely to present serious risk of harm are inspected first.</i></p>	<p><b>6</b>  <i>Marginal impact- low probability</i></p>	<p><i>The adoption of the policies will improve the regulation of the private rented sector in Slough, resulting in improved property management and a reduction in the number and severity of hazards in residential dwellings. They will also make the enforcement decision making process more efficient and robust, leading to a faster resolution for residents suffering in poor quality homes.</i></p>

	<p><b>Legal/Regulatory</b>  <i>Regulation and enforcement by their nature pose regulatory and legal risks as their implementation necessitate support from HB Law and other support services placing additional demands on those services. There is always a risk of successful legal challenges against action taken by the Council.</i></p>	<p><i>Enforcement decisions taken in line with statutory and local guidance and protocols and signed off by manager at level commensurate with the risk associated with the decision. E.g. prosecution signed off at Group Manager/AD level.</i></p>	<p>8  <i>Marginal Impact-significant probability</i></p>	<p><i>The policies and revised protocol which form the basis of this report are designed to improve the transparency and consistency of regulatory decision making in respect of private sector housing. The drafts have already been reviewed by HB Law and their recommendations incorporated. ... Should the policies be finalised and approved, regulatory decisions will be made with a clear and published rationale which should allow legal challenges to be dealt with more efficiently.</i></p>
--	---	--	--	---

**(c) Human rights act and other legal implications**

The policies have been devised having regard to all relevant legislation, statutory guidance and the Council's Enforcement and Regulatory Services Enforcement Policy which conforms to the human Rights Act 1998. The policies have also been scrutinised by HB Law.

**(d) Equalities impact assessment**

An equalities impact assessment has been undertaken in relation to the proposed policies and is attached in the supporting documents. The Assessment

acknowledges the need for further data collection in relation to the impact of enforcement in the private sector and sets out a set of actions to address this.

(e) Workforce

The proposed policies relate to business as usual activities and therefore there are no specific workforce implications associated with the report.

## 5. Supporting information

The Legislative and Regulatory Reform Act 2006 and the Regulators Code (BRDO, 2014) require the Council to uphold certain principles in the exercise of its regulatory functions; in particular to be transparent, accountable, proportionate and consistent.

In pursuance of those principles Slough Borough Council devised its Regulatory and Enforcement Services Enforcement Policy (updated in 2020), to which officers with relevant delegated authority must have regard when taking enforcement decisions. This policy broadly sets out the general principles underpinning the Council's approach to enforcement and regulation, and is flexible enough to be applied across the full range of functions undertaken by officers in regulatory and enforcement roles.

However, it has become increasingly apparent that the wide range of regulatory and enforcement tools available to those regulating private sector housing, and the implementation of discretionary property licensing schemes in Slough in 2019, necessitates the introduction of a more narrowly focussed, sector specific suite of policies. These policies should complement rather than replace the existing generic Regulatory and Enforcement Service Policy.

Furthermore, the housing regulation team's existing protocol for issuing civil financial penalties for housing offences, which was approved by Cabinet in 2017 <https://democracy.slough.gov.uk/ieListDocuments.aspx?CId=109&MId=5758&Ver=4> requires revision; as despite being utilised to issue appropriate sanctions to a number of offenders (some of which were detailed in a report to this Committee on 6<sup>th</sup> July 2022), the protocol does not sufficiently take account of the differing levels of culpability and seriousness in offending behaviour in Slough.

As a consequence, the housing regulation team has drafted two new policies, and revised one existing policy relating to the regulation of private housing in Slough. In drafting the documents the housing regulation team has sought and incorporated the views of relevant services across the Council that may be affected by the implementation of the policies, including:

- Housing Demand
- Planning and Building Control
- Trading Standards
- Food and Safety
- Resilience and Enforcement
- Community Safety

A brief description of the policies and further information about how they will contribute to the delivery of the Council's statutory functions, while upholding the principles of transparency, accountability, proportionality and consistency is

provided in this report; with the draft policies themselves contained within the Background Papers.

### **a) *Housing Regulation Enforcement Policy***

This policy aims to provide a framework for decision making across the full range of private sector housing activities including;

- Addressing housing conditions using the Housing Health and Safety Rating System and enforcement tools under Part 1 of the Housing Act 2004
- Licensing of houses of multiple occupation and other houses under Parts 2 and 3 of the Housing Act 2004
- Implementing Part 4 of the Housing Act 2004 relating to Interim and Final Management Orders and Interim and Final Empty Dwelling Management Orders
- Investigating cases of alleged unlawful eviction or harassment under the Protection from Eviction Act 1977
- Enforcing minimum safety standards in privately rented accommodation as set out in the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020; The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

It is the Council's intention that this policy fulfils the requirement to maintain policies relating to the Council's use of the Rogue Landlord Database, Rent Repayment Orders and Banning Orders as set out in the following statutory guidance:

- Rent repayment orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities' (Department for Communities and Local Government now Department of Levelling up, Housing and Communities (DLUHC), 2017)
- Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities (Ministry of Housing, Communities and Local Government (now DLUHC) , 2018)
- Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Housing Authorities (Ministry of Housing, Communities and Local Government (now DLUHC), 2018)

The policy provides an overview of the powers available to officers working in private sector housing, and sets out in general terms, the circumstances in which those powers will be exercised. The policy is flexible enough to allow officers and managers to use their professional judgement; ensuring that proportionality, fairness and consistency are at the fore front of decision making. The policy also reflects the Council's overarching commitment to taking a risk based approach to all its regulatory activities; as set out in the Enforcement and Regulatory Services Enforcement Policy.

If approved and implemented the policy will contribute to a culture of openness and accountability in the housing regulation team; providing residents, property

owners and others with the information they need to challenge the Council's decision making if they feel it has been flawed.

If approved, the final iteration of the policy will be published on Slough Borough Council's website and will be referenced by officers undertaking regulatory or enforcement activities in the context of private sector housing.

In the event the enforcement policy is not approved for implementation, housing regulation will continue to rely solely on the generic Regulatory and Enforcement Services policy in making its decisions. However, this will not only constrain the use of certain enforcement tools such as rent repayment and banning orders, but will also reduce officer confidence, limiting the volume of enforcement activity generally.

### ***b) Property Licensing Decisions Policy***

This policy sets out the principles which underpin decisions relating to property licensing, including:

- Granting or refusing to grant an HMO licence under Section 64 of the Housing Act 2004
- Granting or refusing to grant a Selective licence under Section 88 of the Housing Act 2004
- Deciding whether or not to revoke or vary an HMO or Selective Licence under Sections 69/70 or 92/93 of the Housing Act 2004
- Deciding whether to issue a temporary exemption notice under section 62 or 86 of the Housing Act 2004
- Determining whether or not to issue an HMO designation under section 255 of the Housing Act 2004

To date these decisions have been made having regard to the Council's enforcement policy and on the basis of the limited criteria set out in the legislation. However, there are matters not listed specifically in the legislation which the Council can consider relevant in making their decisions, such as historic conduct of the proposed licence holder or manager with respect to maintenance of properties, engaging with the Council and their response to complaints about ASB and Nuisance. This policy sets out the Council's expectations in regards to these matters and how breaches or failures in property management will be treated when determining whether a person(s) are 'fit and proper' to hold a licence or manage a property.

Without this policy there is a risk that decisions relating to property licensing will be successfully challenged, undermining the effectiveness of the licensing schemes. Furthermore, officers may be resistant to taking a robust approach without a written and published policy to support their decisions.

### ***c) Revised Policy and Protocol for issuing Civil Financial Penalties for certain Housing Act Offences***

The Council's original '*Policy and Protocol for issuing Civil Penalties for Certain Housing Offences*' was approved by Cabinet in 2017. Since then it has been used to issue 7 Civil Financial Penalties, details of which were presented to the Place and Community Scrutiny Committee on 6<sup>th</sup> July 2022.

However, having applied the protocol in a number of cases the housing regulation team is of the view that the penalty 'bands' used by officers to calculate the level of financial penalty, are insufficiently flexible and do not adequately differentiate between the different levels of offending behaviour or between the size and scale of the operators in the sector.

For example, under the current protocol an offence which presents little risk of harm, committed by a landlord with one property who is deemed to have 'medium' culpability will attract a fine with a starting point of £7500. If a large operator, like an estate agent commits a similar offence, it will attract a fine with the same starting point of £7500. Although the current protocol does allow for the fine to be adjusted to reflect the financial assets of the offender, the amount by which the fine can be varied is limited and as such it would be more appropriate to have a range of different 'starting points' depending on the scale of the offender's operation.

The 'Revised Policy and Protocol for Issuing Civil Financial Penalties for Certain Housing Act offences' that accompanies this report seeks to address the shortcomings of the existing policy through the introduction of offender categories which are determined based on the number of properties 'operated' by the offender. In addition, the policy retains the option of reducing or increasing the fine to reflect the existence of mitigating or aggravating factors, but rather than specifying a fixed adjustment for each factor, it allows for an overall adjustment to be made which in the judgement of the officer reflects the mitigating and aggravating factors in their entirety.

The revised Protocol was devised having full regard to 'Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities' which was published in 2017 by the then Ministry of Housing, Communities and Local Government.

## **6. Comments of other committees**

This report has not been considered by any other committee

## **7. Conclusion**

This report provides a brief summary of three documents essential to the successful delivery of the Council's statutory duties relating to the regulation of private housing; particularly private rented housing in Slough. The views, comments and recommendations of the Committee are sought in relation to each of the documents.

## **9. Background papers (*This is compulsory*)**

1. Proposed Housing Regulation Enforcement Policy (draft)
2. Proposed (Revised) Protocol for Issuing Civil Financial Penalties under the Housing and Planning Act 2016 (draft)
3. Proposed Licensing Decisions Policy (draft)
4. Eqia

**SLOUGH BOROUGH COUNCIL  
HOUSING REGULATION  
ENFORCEMENT POLICY**

**(XXXXXXXXX 2022)**

DRAFT

## Slough Borough Council- Housing Regulation

### Enforcement Policy

Document number	
Version number	Draft- Version 3
Date approved	
Approved by	
Effective	
Author	Rhian Richards

**If you have any further questions about this policy please contact:  
[privatesecorhousing1@slough.gov.uk](mailto:privatesecorhousing1@slough.gov.uk)**

## CONTENTS

No.	Item	Page
	Introduction	
	Aims and Objectives	
	General Principles of Enforcement	
	Authorisation of officers and powers of entry	
	Assessing property conditions	
	Enforcement Action	
	Informal action	
	Formal action- notices and orders	
	Works in Default	
	Cost Recovery	
	Formal Caution	
	Prosecution	
	Civil Financial Penalties	
	Rent Repayment Orders	
	Rogue Landlord Database	
	Banning Orders	
	Licensing of Houses in Multiple Occupation (HMOs)and other Houses	
	Management Orders	
	Regulations relating the management of Houses in Multiple Occupation	
	Smoke and Carbon Monoxide Alarm Regulations 2015	
	The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	
	Empty Properties	
	Minimum Energy Efficiency Requirements	
	Illegal Eviction and Harassment	
	Publicising Sentencing Outcomes	
	Proceeds of Crime (PoCA)	
	Other General Legislation	
	Referral to other Regulatory Bodies	
	Complaints Policy	
	Publicity and review arrangements	
	First Tier Tribunal Property Chamber details	
Appendix A	Policy and Protocol for Issuing Civil Penalties under the Housing and Planning Act 2016 (Revised)	
Appendix B	Smoke and Carbon Monoxide Alarm Regulations 2015 ‘Statement of Principles’	

## 1. Introduction

1.1. This policy sets out the Council's principles for exercising its duties as a Housing Authority in relation to the following functions:

- The Housing Act 1985
- The Housing Act 2004
- The Environmental Protection Act 1990
- The Public Health Act 1936
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Housing and Planning Act 2016
- Tenants Fees Act 2019

1.2. In devising this this policy, reference has been made to the following documents:

- Regulators' Code
- Housing Act 2004
- HHSRS Operating Guidance (ODPM, 2006)
- HHSRS Enforcement Guidance(ODPM, 2006)
- Local Government (Miscellaneous Provisions) Act 1976
- Police and Criminal Evidence Act 1984
- Police and Criminal Evidence Act 1984, Codes of Practice
- Crown Prosecution Service: The Code for Crown Prosecutors (CPS, 2000)
- Criminal Procedure and Investigations Act 1996 and Home Office Code of practice
- Human Rights Act 1998
- Regulatory Reform (Fire Safety) Order 2005
- Regulation of Investigatory Powers Act 2000
- Data Protection Act 1998
- Home Office Circular 30/2005 (Cautions)
- Housing Renewal (Financial Assistance) Policy 2008
- Protection from Eviction Act 1977
- Proceeds of Crime Act 2002
- Banning Orders under the Housing and Planning Act 2016 (Guidance for Local Housing Authorities)
- Rent Repayment Orders under the Housing and Planning Act 2016 (Guidance for Local Housing Authorities)
- Publicising Sentencing Outcomes

1.3. This Policy should be read in conjunction with Slough Borough Council's Regulatory and Enforcement Policy which sets out the general principles underpinning the

Council's Enforcement activities. A copy can be found at <https://www.slough.gov.uk/strategies-plans-policies/regulatory-services-enforcement-policy>.

**1.4.** All officers involved in regulation or enforcement in Slough Borough Council are expected to make their enforcement decisions in line with Paragraph 8 of the Regulatory and Enforcement Policy. The Housing Regulation Enforcement policy is designed to supplement the, Regulatory and Enforcement policy and officers who make regulatory decisions relating to private sector housing in Slough are required to consider both policies when making their decisions.

**1.5.** The term 'landlord' in this policy should be interpreted broadly to include letting agents, managing agents and any other person involved in letting of residential property, whether or not they are also the legal owner of the property.

## **2. Aims and Objectives of this Policy**

**2.1.** The Council aims to protect public health and safety, improve property conditions and management, and deter crime and anti-social behaviour; whilst recognising the needs of local business.

**2.2.** The objective of this policy is to ensure that in the discharge of its regulatory functions relating to private sector housing, the Council is robust but fair, transparent and consistent. The policy seeks to communicate to the public and those being regulated what they can expect from Council staff undertaking enforcement duties relating to non- social housing.

## **3. General Principles of Enforcement**

**3.1.** In deciding whether to commence criminal proceedings for a criminal offence the housing regulation team will use the guidance set out in the Code of Practice published by the Crown Prosecution Service (pursuant to Section 10 of the

Prosecution of Offences Act 1985) which is a public declaration under which its own service will exercise its functions

- 3.2. In line with the Regulators Code we will take an intelligence led approach and endeavour to use available data to profile levels of risk across the borough and will target resources where the risk to the public is greatest.
- 3.3. The Council expects landlords to understand their legal obligations and familiarise themselves with any local requirements that apply in their area. The Council does not accept ignorance of legal requirements as an excuse for failing to comply.
- 3.4. The Council expects landlords to manage and maintain their properties proactively and to carry out necessary repairs without the need for Council intervention.
- 3.5. Except in an emergency situation, private tenants who have not contacted their landlord to give them an opportunity to address disrepair or other problems shall be directed to do so. The Council may request evidence that this has been carried out before they will take any further action. Whilst the Council is empowered to take enforcement action against a Registered Social Landlord it will only do so in exceptional circumstances. For example, where there is a statutory requirement to act.
- 3.6. Owner occupiers will generally be forwarded to alternative schemes for assistance or encouraged to take their own action. However, the Council may decide to act in relation to an owner occupied property where there is a significant risk of harm or where the occupants are particularly vulnerable.
- 3.7. The Housing Regulation Team will, where possible, work jointly with other departments of the Council that have regulatory powers. In particular, we will where possible, work in harmony with those Council departments responsible for Trading Standards, Planning and Building control, anti-social behaviour and nuisance, public health and safeguarding; however some conflict between regulatory regimes may be unavoidable.

#### **4. Authorisation of officers and powers of entry**

- 4.1. Slough Borough Council is committed to ensuring that all officers are competent to carry out their functions in a professional way. Only Officers deemed to be competent will be authorised to carry out formal action under the Council's scheme of delegations.
- 4.2. Under the Housing Act 2004 and other legislative provisions, Council Officers have the power to enter premises in order to perform the Council's statutory functions. In certain circumstances Authorised Officers will have the power to enter land or

property without giving notice to interested parties. However, to force entry they will generally require a warrant to be granted by a Magistrate following an application to the Magistrates' Court.

- 4.3.** Officers will clearly identify themselves using Council issued Identification and where required will produce their authorisation when discharging the Council's enforcement functions.

## **5. Assessing property conditions**

- 5.1.** Part 1 of The Housing Act 2004 requires that the Council keep housing conditions within its area under review. It also requires that where the Council considers it appropriate to inspect a residential dwelling in the borough with a view to determining whether hazards exist on the premises; it must arrange the inspection.
- 5.2.** Officers inspect and assess property conditions for a number of different reasons but often inspections are carried out in response to complaints from tenants about their landlord's failure to repair and maintain their property. Other reasons might include a referral from another department within the Council, for example Social Services; a referral from another agency for example Thames Valley Police or Royal Berkshire Fire and Rescue Service; or where the Council believe an offence has been committed on the premises under the Housing Act 2004.
- 5.3.** When responding to complaints about a landlord's failure to repair, the Council will request evidence that the tenant has notified their landlord, in writing, about the disrepair in the property. The Council reserves the right to delay undertaking an inspection of a property where the tenant is unable to demonstrate that they have given their landlord reasonable time to complete the necessary work.
- 5.4.** The Council may in the first instance invite the occupant to undertake a video call or provide photographs of the alleged deficiencies. Where the risk is deemed to be low, the Council may simply write to the landlord requesting that they address the deficiencies.
- 5.5.** Where a physical inspection is deemed necessary one will be arranged. In line with Section 239 of the Housing Act 2004, both the owner and occupiers of the property will generally be given at least 24 hours' notice of the intended inspection. However, there are instances where notice may not be given i.e. where officers believe an offence may have been committed under the Housing Act 2004 e.g. the property requires a licence but doesn't have one.

- 5.6.** Following a physical inspection of the property, officers will undertake an assessment using the Housing Health and Safety Rating System (HHSRS). The HHSRS is a risk based assessment tool which categorises 29 common hazards into Category 1 hazards (highest risk) and Category 2 hazards. In carrying out an assessment under this system, Authorised Officers of the Council will follow the Operating Guidance published by the UK government a copy of which is available at: <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals>
- 5.7.** In cases where a category 1 hazard is identified the Council have a duty to take one of the courses of action set out in Part 1 of the Housing Act 2004. The Council must take the most appropriate course of action, taking into account all relevant circumstances as set out in the Housing Health and Safety Rating System Enforcement Guidance (ODPM, 2006), a copy of which can be accessed here: <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>
- 5.8.** In cases where category 2 hazards are identified the Council has the discretion to take one of the courses of action set out in Part 1 of the Housing Act 2004.
- 5.9.** The various courses of action available to the Council to deal with Category 1 and Category 2 hazards are explained in more detail in Section 6.

## **6. Enforcement Action**

There are several types of action that can be taken in relation to any given case, and in some instances, different action may be necessary at different stages of the regulatory process. Outlined below are the main enforcement options available to officers, and regardless of the circumstances, officers will always record the reasons for their choice of action and communicate those reasons to all those affected.

### **6.1. No action**

- 6.1.1. The following are examples of circumstances where it may be appropriate to take no action:
- Where there is insufficient evidence to support formal proceedings.
  - Where the non-compliance or failures do not pose a risk of harm to persons, the environment or the community.
  - Where taking action would be disproportionate and where there is a clear public interest case against taking formal action.
  - Where the responsible person has a reasonable excuse.

- Where a tenant or occupant of a property has unreasonably refused access to the property for work to be completed.

## **6.2. Informal Action**

6.2.1. Where an inspection of a property is undertaken, whether in response to a complaint or proactively, and only minor deficiencies are identified the Council may choose to provide written or verbal advice to the responsible person.

6.2.2. Where more substantial deficiencies are identified the Council may write to the responsible person specifying works that should be completed, giving a timescale for completion. In their correspondence the Council will differentiate between what is required by law and what is good practice. The Council will also communicate the consequences should the informal action not achieve the improvements required.

6.2.3. The use of informal action prior to enforcement is discretionary and the Council reserves the right to take formal action immediately if it deems appropriate.

6.2.4. Where Housing Regulation Officers are repeatedly identifying the same or similar deficiencies or hazards in properties which are owned or managed by the same person or persons; they may dispense with the informal stage and move directly to one or more of the enforcement options below.

## **6.3. Formal Action (Statutory Notices and Orders)**

6.3.1. There are a range of enforcement options available to Housing Regulation Officers to deal with hazards in residential properties and officers will choose the most appropriate course of action having regard to the Council's Regulatory Services and Enforcement Policy and the HHSRS Enforcement Guidance.

6.3.2. Notices and orders issued by the Council will be served in accordance with the requirements of the relevant legislation and statutory guidance. The person on whom the notice or order is served will be informed of the reason for the enforcement action, any rights to appeal, and of the consequences of failing to comply with the requirements of the Notice or Order.

6.3.3. Appeals against notices and orders under the Housing Act 2004 should be made to the First Tier Tribunal (Property Chamber). In the case of Abatement Notices under the Environmental Protection Act 1990 appeals are made to the Magistrates Court. The details of the relevant Regional First Tier Tribunal are listed on page 33

6.3.4. The following is a summary of the main enforcement options available to the Council to deal with poor property conditions:

- **Hazard Awareness Notices (HAN)** are notices that are designed to draw attention to the existence of a hazard and to recommend a course of remedial action. However HANs do not require any further action by the person issued with the notice. HANs can be issued in response to Category 1 or Category 2 hazards. Officers may choose to issue a HAN where the hazard identified does not pose a serious risk, or where they have confidence that the person issued with the HAN will carry out the required remedial action. Officers may also choose to issue a HAN where the hazard is relatively minor and where occupants of the property containing the hazard unreasonably obstruct the completion of the works, or express for some other reason that they do not wish for the works to be completed.
- **Improvement Notices** require the recipient(s) of the notice to carry out work to address hazards within a specified timescale. They can be issued on the owner of the premises or the person having control; depending on the circumstances. Improvement Notices can be used to address either Category 1 or Category 2 hazards. Improvement Notices will be issued by officers where, given the circumstances of the case it is reasonably practicable for the works to be completed and there is a lack of confidence that informal action will achieve compliance; or where warnings or advice have already been given but have been ignored.
- **Prohibition Orders and Emergency Prohibition Orders** prohibit the use of dwellings for a particular purpose. They can also be used to restrict the use of a dwelling to a particular type of person. For example the Order might prohibit the dwelling being used by a person in the vulnerable age group as defined by the HHSRS. Prohibition orders can be used to deal with Category 1 or Category 2 hazards and will generally only be used where the work required to remediate the hazards cannot reasonably be completed with the occupants in situ and where no alternative to the issuing of the Prohibition order can be found. Emergency Prohibition

Orders have the same effect as Prohibition Orders, however they come into force immediately and can only be used to deal with Category 1 Hazards that pose a significant and imminent risk of harm. As the effect of making a Prohibition Order or an Emergency Prohibition Order may be to make the occupants of the property homeless, the Council will, with the occupants consent share their details with other departments including our Housing Needs department who are best placed to provide housing advice.

- **Emergency Remedial Action (ERA)** involves the Council using its own contractors to carry out the work required to remove an imminent risk to the occupants of a residential property. ERA can only be taken by the Council where they are satisfied of the existence of a Category 1 Hazard which poses a significant and imminent risk of harm AND where it is practical and safe to carry out the works required to remediate the hazard. Prior to commencing ERA the Council are required to give reasonable notice of intended entry to carry out the work to the occupiers. The Council is then required to give notice of the work to all interested parties (e.g. landlord, owner, mortgage lender, occupiers) within 7 days. The Council will seek to recover all expenses incurred in carrying out ERA in the same way it would for works in default following non-compliance with an improvement notice (see paragraph 6.5 below).

#### **6.4. Statutory Nuisance Abatement Notices (issued under S80 of the Environmental Protection Act 1990)**

6.4.1. It may on occasion be appropriate to use legislation other than the Housing Act 2004 for achieving improvements in residential dwellings, particularly in cases where a deficiency in one dwelling is having a detrimental impact on a neighbouring dwelling e.g. a water leak occurring in one flat but damaging another. Officers may use the Environmental Protection Act 1990 to deal other matters that may be prejudicial to health including defective boilers, pest infestations or drainage issues. Officers are obliged to issue an Abatement Notice if they are satisfied of the existence of Statutory Nuisance.

#### **6.5. Works in Default**

6.5.1. Where a notice requiring works has not been complied with within the specified timescale, the Council may itself undertake those works and do whatever is required by the notice. In most cases works in default will only be undertaken following the expiry of the Notice. However, in the case of Improvement Notices issued under Sections 11 and 12 of the Housing Act 2004 the Council may, with the agreement of the recipient of the notice, execute the works required by the

notice in advance of its expiry, but the work must be done at the expense of the notice recipient.

6.5.2. Works in default will be considered as an option in most cases of non-compliance with a statutory notice. The factors that will be considered in deciding whether to carry out works include but are not limited to:

- The risk posed to the occupants from the deficiencies
- The practicability of carrying out the work while the property is occupied
- Cost of the work
- The views of the occupant

6.5.3. In most circumstances a person will be given notice of the Council's intention to carry out works in their default. In many cases it will be an offence for any person to obstruct the Council or any of its contractors in carrying out works in default.

6.5.4. In the majority of cases the Council will seek to recover the complete cost of the works and all additional expenses from the person(s) subject to the enforcement action, in accordance with the relevant statutory provisions. The Council will serve a demand for payment notice on the person(s) from whom it is entitled to recover costs, which will specify the amount it is seeking to recover. The Council will clearly specify where there is a right of appeal to a demand for payment and the timescales for making such an appeal.

6.5.5. Where the person on which a notice was served fails to pay expenses incurred by the Council for default works, it will pursue the matter through the County Court which may result in further costs to the recipient of the notice. Also, the Council may consider serving a Recovery Notice on the tenant under Part 3, Paragraph 12, Schedule 3 of the Housing Act 2004, requiring all rent be paid to the Council until the costs incurred by the Council in carrying out the work have been recovered.

6.5.6. Until such time expenses for works in default undertaken in accordance with the Housing Act 2004 are recovered by the Council, they shall be a Local Land Charge. The expenses will attract interest at a rate of 8% per annum. The Council may pursue the outstanding sum as if the charge were a mortgage, for purposes of enforcing the charge and in line with the provisions of the Law of Property Act 1925. The Council has 12 years to enforce the local land charge.

6.5.7. It should be noted that the decision to undertake works in default does not exclude the option of also undertaking a prosecution or issuing a civil penalty.

## **6.6. Recovering costs relating to enforcement action under Part 1 of the Housing Act 2004**

6.6.1. The Housing Act 2004 allows the Authority to recover certain expenses incurred in relation to enforcement action under the Housing Act 2004. Section 49 of the Housing Act 2004 sets out specifically the expenses that can be recovered.

6.6.2. When calculating the expenses incurred by the Council in taking relevant enforcement action, the Council will consider the time taken by officers in completing relevant tasks, administrative costs like printing and postage, travel costs and any costs incurred by the Council in employing experts to assist in drafting technical requirements. Officers will keep records of such calculations and make them available on request.

6.6.3. The charge will be accompanied by a 'demand for payment' notice which will set out the amount due and the timescale for payment.

6.6.4. Where there is a power to charge for enforcement action the Council will generally do so, however the Council reserves the right to waive the charge in exceptional circumstances.

6.6.5. Where payment of the expenses is not received, and no appeal is brought within 28 days of the demand for payment, the outstanding expenses will be registered as a Local Land Charge until the sum is paid. The Council may pursue the outstanding sum as if the charge were a mortgage, for purposes of enforcing the charge and in line with the provisions of the Law of Property Act 1925. The Council has 12 years to enforce the local land charge.

6.6.6. The recovery of costs incurred by the Council in undertaking Works in Default are dealt with separately in section 6.5 of this policy.

## **6.7. Simple Cautions**

6.7.1. A simple caution is a mid-point between prosecuting and not pressing charges at all. A simple caution may be used to influence any future decision on whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Subject to relevant data protection requirements the Council reserves the right to share information

regarding simple cautions with other Local Authorities where the information may be relevant to the Authorities' regulatory functions.

6.7.2. Simple Cautions may also be referred to in subsequent court proceedings as rebuttal evidence should the defendant assert good character and will be relevant to any penalty made after a finding of guilt in any such future proceedings. It is therefore vital that the offender gives their informed consent to being cautioned.

6.7.3. The Council will consider a simple caution where there is sufficient evidence to prosecute but:

- the offending did not result in actual or potential harm to residents or the community;
- where the offender has admitted the offence and made the effort to address their non-compliance;
- The offender has fully cooperated with the investigation; and
- There are factors weighing against prosecution or a civil financial penalty e.g. the offender suffers from serious ill health, the offender is a carer for someone who suffers with serious ill health.

6.7.4. Offences which the Council consider present a low or no risk of harm to residents or the community, and therefore may justify the issuing of a simple caution (assuming the other criteria are met) are:

- Offences under sections 72 and 95 of the Housing Act 2004; operating an HMO or Part 3 House which requires licence without a licence.
- Offences under Section 235 of the Housing Act 2004 or Section 16 of the Local Government (Miscellaneous Provisions) Act 1976; relating to furnishing the Council with information.
- Breaches of Regulation 3 of the Management of HMOs (England) Regulations 2006; failing to provide information to occupiers of an HMO with certain information.

6.7.5. However if these offences are accompanied by other more serious offences which confer a risk of harm it is unlikely that a simple caution will be appropriate, even for the lesser offences.

6.7.6. Persons with previous cautions, penalties or convictions for related offences are unlikely to respond positively to a further caution and therefore simple cautions will not be appropriate in these cases.

6.7.7. The process of issuing Simple Cautions is set out in Paragraph 8.4 of the Council's Regulatory and Enforcement Policy.

## **6.8. Prosecutions**

6.8.1. The housing regulation team investigates a range of criminal offences for which prosecution is a possible sanction. Offences include but are not limited to:

- Failing to comply with an Improvement Notice (Section 30 of the Housing Act 2004)
- Failing to comply with a Prohibition Order (Section 32 of the Housing Act 2004)
- Operating an HMO which is required to be licensed, without a licence (Section 72 of the Housing Act 2004)
- Failing to comply with conditions of an HMO or Part 3 licence (Sections 72 and 95 Housing Act 2004)
- Operating a Part 3 House which is required to be licensed without a licence (Section 95 of the Housing Act 2004)
- Failing to comply with HMO management regulations (section 254 of the Housing Act 2004)
- Breach of a Banning Order (Section 21 of the Housing and Planning Act 2016)
- Failing to Comply with an Abatement Notice issued under Section 80 of the Environmental Protection Act 1990 (Section 81 of the Environmental Protection Act 1990)

6.8.2. In deciding whether to take a prosecution in relation to any offence deemed to have been committed under any relevant legislation, officers must consider the following, in accordance with the Code for Crown Prosecutors:

- The Evidential test: is there sufficient and reliable evidence that an offence has been committed
- Public interest test
- Whether there is a realistic prospect of conviction
- Reasonable excuse

6.8.3. In all instances, an officer's decision to proceed with a prosecution must be approved by the Housing Regulation Manager and Group Manager, taking into account legal advice as appropriate.

## **6.9. Civil Penalties**

6.9.1. The Housing and Planning Act 2016 introduced a new power to issue financial penalties as an alternative to prosecution for certain offences under the Housing

Act 2004. The Maximum penalty that can be issued for an offence is £30,000. Slough Borough Council has devised a protocol which sets out the offences that may attract a Civil Financial Penalty, the process the Council will follow in deciding whether or not to issue a civil penalty and the level at which any penalty will be set. The protocol is attached as **Appendix A**

6.9.2. In addition, The Council is empowered to issue Civil Financial penalties in response to breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. The protocol in **Appendix A** will also be used to determine the level of penalty to be applied for breaches of these regulations.

## **6.10. Rent Repayment Orders (RRO)**

6.10.1. The Council can apply to the First Tier Tribunal for a rent repayment order (RRO) where a landlord has committed a relevant offence (as set out in Section 40 of the Housing and Planning Act 2016 <https://www.legislation.gov.uk/ukpga/2016/22/section/40#section-40-4>) to recover housing benefit or universal credit paid in respect of a tenancy for up to 12 months.

6.10.2. The Council may make this application irrespective of whether the landlord has been convicted of one of the relevant offences. However, the First Tier Tribunal must be satisfied beyond reasonable doubt that an offence has been committed. Therefore the Council must be satisfied that there is a realistic prospect of conviction before making an RRO application.

6.10.3. The Council is obliged to *consider* applying for a rent repayment order where a landlord has been convicted of a relevant offence and that offence was committed on or after 06<sup>th</sup> April 2017; and the offence took place in their area.

6.10.4. Factors that will be considered when deciding whether or not to apply for an RRO; and the amount they will seek to recover include but are not limited to:

- The amount of universal credit or housing benefit paid to the landlord
- Risk of harm associated with the offending
- The impact of the offending on the occupants of the property and the wider community
- Conduct of the landlord
- History of offending
- Culpability of the offender
- Financial circumstances of the offender
- Will the RRO deter the offender or others from committing further offences

- What other actions have been/ will be taken in relation to the offences e.g. financial penalties

6.10.5. Where tenants are considering making an application for an RRO the Council may provide advice and signpost tenants to support services that might assist them in making their application. However there is no statutory duty on the Council to support a tenant's claim and the Council does not currently provide a discretionary Tenancy Relations Service.

## 6.11. Banning Orders

6.11.1. The Housing and Planning Act 2016 introduced a new power for Local Authorities to apply to the First Tier Tribunal for a banning order where a relevant offence has been committed. Relevant offences include: failure to comply with an Improvement Notice or Prohibition Order, offences relating to the licensing of HMOs and fire safety offences.

6.11.2. A Banning Order prohibits a person or entity from letting a house, engaging in letting agency work or engaging in property management work in England for the period specified in the order. Banning Orders must be made for a minimum of 12 months but there is no statutory maximum duration.

6.11.3. Banning orders are applied for by the Council but made by the First Tier Tribunal.

6.11.4. In deciding whether to apply for a banning order the Local Authority will have regard to the Statutory Guidance issued by the Secretary of State. A copy of the guidance can be found at <https://www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

6.11.5. It is expected that applications for banning orders will be made only in relation to the most serious offences and/or where the offender has a history of committing similar offences.

6.11.6. The following matters will be taken into account when deciding whether to apply for a Banning Order:

- Seriousness of the offence
- Previous convictions or entries onto the rogue landlord database

The Local Authority will also consider what impact making the banning order will have on anyone affected by the Order, including;

- Harm caused to the tenant
- Punishment of the offender
- Deter the offender from committing the same offence
- Deter others from committing the same offence
- 

## 6.12. Rogue Landlord Database

- 6.12.1. The Rogue Landlord database was introduced by the Housing and Planning Act 2016 and provides a means for Local Authorities to keep track of known rogues, particularly where they operate across local authority boundaries.
- 6.12.2. Where a person or body is subject to a banning order the Council **MUST** enter their details on the Rogue Landlord Database. The entry will remain on the database until the banning order expires or is revoked.
- 6.12.3. The Council **MAY** enter a person's or organisation's details on the database where they have been convicted of a banning order offence or received two civil penalties in the previous 12 months.
- 6.12.4. Statutory guidance available at: [Database of rogue landlords and property agents guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/424242/database-of-rogue-landlords-and-property-agents-guidance.pdf) stipulates that the Local Authority must consider certain criteria when deciding whether to make an entry on the database and in deciding the length of time the entry will remain in the database.
- 6.12.5. The Council will *consider* making an entry in the Database in every case of a conviction for a banning order offence or where 2 civil penalties have been issued in 12 months.
- 6.12.6. Prior to an entry being made on the database the investigating officer will discuss the proposal with colleagues at a regular enforcement panel meeting. The proposal to make an entry must be agreed by a second housing regulation officer before being presented to the housing regulation manager for approval.
- 6.12.7. The Council will issue a Decision Notice on the subject prior to the entry being made on the database and will comply with all statutory requirements in issuing the notice.
- 6.12.8. There is a right of appeal to a Decision Notice relating to an entry on the Rogue Landlord Database. All appeals must be made to the First Tier Tribunal Property Chamber who may confirm, vary or cancel the decisions notice. The time limit for an appeal to be made is 21 days.

6.12.9. The minimum duration for any entry made by the Council will be 2 years as required by the Housing and Planning Act 2016. The Council has not set a maximum duration for any entry into the database, however the Council will ensure the duration is reasonable in the circumstances and proportionate to the offending

6.12.10. The Council will have regard to the following criteria in making decisions relating to the Rogue Landlord database:

- The severity of the offence- The more serious the offence the more likely the Council will make an entry into the database. Serious offences are those that pose a risk of harm to residents or the community. However, multiple less serious offences that cumulatively pose a significant risk to the health and well-being of residents or the community will also make an entry on the database more likely. The duration of time the information remains on the database will increase with the increasing risk posed by the offending, the persistence of the offending and the number of offences.
- Mitigating factors- the Council consider relevant mitigating factors may include but are not limited to physical or mental health problems or bereavement. Where Mitigating factors are present the Council will consider whether they outweigh the public interest in making an entry into the database. The presence of relevant mitigating factors may not automatically deter the Council from making an entry, instead the Council may make an entry but reduce the amount of time the information remains on the database. The Council may request evidence from the offender if they assert the presence of relevant mitigating factors.
- Culpability– the Council will determine the level of culpability on a case by case basis however the Council generally expects professional letting agents and large portfolio landlords to have a detailed understanding of their legal obligations and consequently the degree to which they are culpable for any offending will generally be deemed high. Furthermore such businesses are more likely to operate across local authority boundaries and consequently, there is likely to be a significant public interest in making an entry into the database where the offender is a professional agent or holds a large property portfolio (generally 6 or more properties). A higher degree of culpability will also be assumed where the offender has been the subject of an intervention or received advice from the Council in the past. For example, if the Council has issued an informal schedule of works or written to the offender about legal requirements in the past, there will be a strong justification for making an entry in the Database. Generally the higher the perceived culpability, the longer the entry will remain on the database.

- The Council must consider to what extent an entry on the database would act as a deterrent to further offending by both the offender themselves and others. Entry onto the database is likely to act as a significant deterrent to those operating across local authority boundaries as their information will become available to other Councils. An entry on the database is likely to act as a particular deterrent to those who operate licensed properties as they are subject to 'fit and proper' person checks prior to their licence application being determined. However, the entering of an offender's information into the database will not be reserved for those operating across boundaries and the Council will consider each case on its merit.

## **7. Licensing of Houses in Multiple Occupation (HMOs) and other Houses**

7.1. The Council has further powers to ensure adequate standards in HMOs and other houses are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence HMOs and Slough Borough Council has also introduced two discretionary schemes.

### **7.2. Mandatory Licensing**

7.2.1. Mandatory licensing applies only to larger HMOs occupied by five or more people, comprising two or more households. The mandatory scheme applies in Slough as it does across the rest of England. All persons operating HMOs that meet this prescribed description must ensure an application is made for a mandatory HMO licence.

### **7.3. Discretionary Licensing Schemes**

7.3.1. On 18<sup>th</sup> March 2019 Slough Borough Council introduced two discretionary Licensing Schemes:

- A borough wide *Additional Licensing Scheme* under Section 56 of the Housing Act 2004; which requires ALL HMOs (properties with three or more occupants, comprising two or more households, with shared kitchens bathrooms or toilet facilities) and
- A *Selective Licensing Scheme* under Section 80 of the Housing Act 2004; which requires all rented accommodation within a designated area to be licensed.

7.3.2. The discretionary schemes will run for a minimum of 5 years. If the schemes are to be continued beyond 5 years, further approval will be required. Further

information concerning these schemes can be found on our website <https://www.slough.gov.uk/licences-permits/property-licensing-1/2>

7.3.3. The licensing regime provides procedures to assess the fitness of a proposed licence holder, the adequacy of the management arrangements and suitability of the property for the number of occupants; including the provision of relevant and adequate equipment and facilities at the property.

7.3.4. Before granting a licence the Local Authority must be satisfied that the proposed licence holder and manager are 'fit and proper' and that the management arrangements for the property are satisfactory. The Council's Licensing Decisions Policy sets out in detail the matters the Council will consider in determining licence applications and reviewing existing Licences. **Persons subject to a banning order are prohibited from holding licence.**

7.3.5. Licences will normally be granted for five years. However, the Council may reduce the length of the licence in certain circumstances, such as:

- to remove any advantage over those licence holders who applied at the appropriate time; or
- where the property has not been satisfactorily managed; or
- Where the proposed licence holder has a history of non-compliance with relevant legal provisions, but the non-compliance was not serious enough to warrant a licence being refused.

7.3.6. It is the responsibility of any person having control of or managing a property in Slough to ascertain whether or not they are required to apply for a Licence under any one of the Schemes. A person commits an offence if they operate a property that ought to be licensed without one.

7.3.7. A person also commits an offence if they fail to comply with any condition of the Licence or if they allow the property to be occupied by a greater number than is permitted by the Licence.

7.3.8. Where evidence of any offence relating to Licensing is identified the Council may take one or more of the courses of action described in Section 6 of this policy. Each case will be considered on its own merit and decisions will be taken in line with all relevant legislation and statutory guidance.

7.3.9. In response to any contravention of a Licence condition(s) the Local Authority may decide to reconsider the assessment of a Landlord as 'fit and proper'. Any Landlord found not to be fit and proper may have their Licence varied or revoked and may be considered as not fit and proper in relation to any future applications. The Local Authority will consider whether it is appropriate to inform other Local Authorities if such a decision is taken.

## **8. Interim and Final Management Orders**

**8.1.** Part 4 of the Housing Act 2004 gives Councils powers to make Interim and Final Management Orders in respect of privately rented properties in their jurisdiction. Where properties ought to be licensed but aren't, and there is no realistic prospect of a licence being granted, the Council is obliged to make an Order. However the Council also has discretionary powers to make Special Interim Management Orders (SIMOs) in respect of properties that are not required to be licensed. Such orders are subject to an approval process at the First Tier Tribunal (Property Chamber).

### **8.2. Interim Management Orders**

**8.2.1.** The Council is obliged to make an IMO where: a property ought to be licensed but isn't and there is no reasonable prospect of a licence being granted; a licence is going to be revoked and there is no realistic prospect of a new licence being granted in the near future or; where a property is being let in breach of a Banning Order. The Council's licensing Decision Policy found in Appendix B sets out in detail the matters considered relevant to the granting or refusal of licences; and to the review of existing licences.

**8.2.2.** Where the Council is minded to refuse to grant, or minded to revoke a licence it will first seek to engage with the proposed licence holder/ licence holder to identify a suitable alternative fit and proper person to have control. The Council will only resort to making an IMO where it has been unable to agree with the person having control, suitable alternative management arrangements; and there is no reasonable prospect of them being agreed in the near future. The Council's Licensing Decisions Policy sets out in detail the criteria for determining whether someone is suitable to hold an HMO or Selective Licence.

**8.2.3.** IMOs are a temporary measure designed to allow time for a more permanent management solution to be found and therefore cease to have effect after 12 months, unless they are revoked earlier. The Local Authority can revoke an IMO when: the property ceases to require a licence; the banning orders ceases to have effect; satisfactory management arrangements have been agreed and the Council intends to issue a licence.

**8.2.4.** An IMO gives the Council most of the rights and responsibilities of the landlord including the right to possession (subject to the rights of the existing occupants). The Council is permitted to collect rent and to spend the receipts to cover expenditure incurred by them in carrying out the role of 'landlord'. If there is any surplus income at the expiry of the IMO, this is passed to the landlord.

- 8.2.5. An IMO gives the Council the authority to create new tenancies subject to the owner of the property giving their consent.
- 8.2.6. On making an IMO the Council will take any action necessary to ensure the safety and wellbeing of the occupants and those in the vicinity of the property. This may include but is not limited to tenancy action, or the carrying out of works to the property.
- 8.2.7. In order to ensure the proper management of any property subject to an IMO, the Council may employ a suitably qualified and competent person or agent to manage a property on their behalf.
- 8.2.8. An IMO is a local land charge and the Council will be entitled to recover any costs they incur in excess of the rent receipts when the IMO expires.
- 8.2.9. In making an IMO, and at all times while the IMO is operative, the Council will comply with the provisions of the Housing Act 2004, particularly schedule 6; as well as all associated regulations.

### **8.3. Final Interim Management Orders**

- 8.3.1. The Council must make an application to the First Tier Tribunal for an FMO where, on the expiry of an IMO, a property still requires a licence but there is no prospect of a licence being granted.
- 8.3.2. If agreed by the First Tier Tribunal an FMO will generally be made for 5 years, however the order may specify an earlier expiry date, where for example the owner has provided evidence that the property is to be sold.
- 8.3.3. If the circumstances that justified the making of the FMO still exist when it expires, i.e. that the property requires a licence but there is no prospect of one being granted, the Council will be duty bound to make a further FMO application.
- 8.3.4. In making the FMO the Council will comply with the process prescribed in schedule 6 to the Housing Act 2004 and will explain to all relevant parties, in full, its reasons for making the order. The Council will consider, any relevant, representations made in relation to a proposed order; and in accordance with the requirements of section 115 of the Housing Act 2004, will periodically review any

FMO in order to determine whether there is any justification for variation or revocation.

8.3.5. The effect of an FMO is similar to that of an IMO in that the Council takes over management of the property and can use rent receipts to cover their costs. However, under Section 119 of the Housing Act 2004 the Council must develop and implement a 'Management Scheme' detailing how the Council proposes to manage the property. If the Council fails to follow its own Management Scheme the landlord or a relevant 3<sup>rd</sup> party can apply to the First Tier Tribunal to make an order to ensure the Council complies with the plan. The First Tier Tribunal may also revoke the FMO if it deems appropriate. The Management Scheme is divided into 2 parts and must contain the following information:

8.3.6. Part 1- Financial Matters covering:

- Carrying out works
- Estimates of expenditure to be incurred
- Amounts of rent to be sought
- Amounts and provision of compensation to effected persons
- Payments to the landlord
- Financial arrangements with the landlord when the FMO ends

8.3.7. Part 2:

- Steps to be taken to ensure occupiers comply with their obligations e.g. tenancy management arrangements
- Description of any repairs

8.3.8. In order to ensure the proper management of any property subject to an FMO, the Council may employ a suitably qualified and competent person or agent to manage a property on their behalf.

#### **8.4. Special Interim Management Orders (SIMOS) for non- licensable single household properties**

8.4.1. In limited circumstances the Council may consider the use of Special Interim Management Orders to deal with non-licensable, single household properties where the property is the source of persistent anti-social behaviour. The Council considers this measure to be a last resort to be used when other tools to tackle anti-social behaviour have failed to elicit improvements and where the landlord is persistently refusing to take appropriate action. For example, where a temporary closure order has been made under the ASB Crime and Policing Act 2016 but on its expiry there is a recurrence of criminal or anti-social behaviour.

8.4.2. Where the Council is considering making a SIMO it will inform the landlord in writing to give them an opportunity to make representations and to find an alternative solution.

8.4.3. SIMOs must be approved by the First Tier Tribunal and in the event an application for a SIMO is made by the Council it will be accompanied by a draft order which may be approved with or without modifications, or refused by the FTT. SIMOs have the same effect as IMOs and expire after 12 months if they are not revoked earlier. At the expiry of the SIMO the Council has discretion to apply for a FMO. The Council will only apply to the FTT to make an FMO for a non-licensable property where the evidence indicates there is a high likelihood of a recurrence of the problems that led to the making of the SIMO.

8.4.4. During the term of the SIMO the Council will engage with the landlord and attempt to find alternative management arrangements for the property so that the making of an FMO can be avoided if possible.

## **9. Management Regulations for HMOs**

9.1. Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (whether or not subject to licensing). Any breach of these regulations is a criminal offence under section 234 of the Housing Act 2004 and the Council may prosecute or issue a civil penalty in response to a breach.

9.2. The duties include:

- The duty to display managers contact details in the common parts of the HMO
- The duty to periodically test the gas and electrical installations and to maintain them in a safe condition
- The duty to take safety measures including measures to reduce the risk associated with fire
- The duty to keep common parts including bathrooms and kitchens in good clean, decorative repair and working order
- The duty to provide adequate facilities for the storage of waste

9.3. The Management regulations also impose requirements on the occupiers of HMOs to, amongst other things; conduct themselves in a way that does not frustrate the manager in the performance of their duties; take care not to cause damage to the property, provide information the manager may need to perform their duties and comply with the instructions of the manager in respect of the means of escape from the building or in the use of any firefighting equipment.

9.4. There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations or issue a financial penalty as an alternative to prosecution.

9.5. The Council is more likely to take formal action in relation to management regulations where there are multiple breaches and the breaches confer a risk of harm to the occupants or those in the vicinity. Other factors that will be considered include, but are not limited to any history of offending by the person having control or managing the property, and any reasonable excuse the landlord may put forward.

## 10. **Smoke and Carbon Monoxide Alarm Regulations 2015**

10.1. These regulations require Private sector landlords to have at least one smoke alarm installed on every floor of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

10.2. As required by the regulations Slough Borough Council *must* issue a Remedial Notice where it identifies any breaches of the above regulations. In cases of non-compliance, the Local Authority will carry out works in default to install appropriate alarms and will charge the landlord all reasonable costs incurred in doing so.

10.3. The Local Authority may also issue a financial penalty charge of up to £5,000 for non-compliance with a remedial action notice. There is a 6 week time limit on the service of any financial penalty. In deciding whether to issue a financial penalty, we follow all relevant statutory guidance and have regard to the 'Statement of Principles' which are attached in **Appendix B**.

## 11. **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

11.1. These regulations impose on the landlords of privately rented properties a number of duties relating to the safety of the electrical installations in their property. The duties are as follows:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671.

- Ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local authority with a copy of this report within 7 days of receiving a request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.

**11.2.** Where the Council identifies breaches of any of the duties but there is no urgent work required in the property, they **MUST** issue a remedial action notice within 21 days. The Notice will specify the nature of the breach and the action required to remedy it. The recipient of the notice has 21 days to make representations in relation to the Notice and the Council will clearly specify where such representations should be submitted. The Council must consider the representation and respond in writing within 7 days. The effect of the remedial notice is suspended until the Council provides a response. The Council may confirm or withdraw the remedial notice.

**11.3.** Any representation made by the landlord regarding lack of cooperation from tenants should be accompanied by evidence for example, copies of written notices given to tenants regarding access.

**11.4.** If the recipient of the remedial notice fails to comply with its requirements, the Council may, with the consent of the tenants carry out remedial work specified in the notice. The Council is more likely to take this discretionary action where there is a significant risk to the occupants of the property or where the property is occupied by particularly vulnerable individual's e.g. young children. The Council reserves the right to take no remedial action if the risk of harm arising from the breach is deemed to be low.

- 11.5.** In instances where a report issued by an authorised person indicates urgent remedial action is required the Council may, with the consent of the tenants carry out the work at any time. The Council will only take this action where they are satisfied that the occupants of the dwelling, or other residents are at imminent risk of significant harm. If such a course of action is taken the Council will comply with the notice requirements in regulation 10, however there is no requirement to give advance notice to the landlord in the case of urgent work.
- 11.6.** The Council will communicate with all interested parties the reasons for taking its chosen course of action and if remedial action is to be undertaken the Council will comply with the notice requirements set out in Regulation 6 of the regulations.
- 11.7.** There is a right of appeal if the Council give notice of their intention to carry out remedial action. Any appeal must be made to First Tier Tribunal (Property Chamber) within 28 days beginning with the day notice is given. The Grounds of appeal are that all reasonable steps had been taken to comply with the remedial notice, or reasonable progress had been made towards compliance with the remedial notice.
- 11.8.** As with works in default carried out under other legislation, the Council is entitled to recover costs incurred in carrying out remedial action and urgent remedial action. The Council will issue a demand for payment of expenses and in the absence of an appeal the demand will become payable within 21 days beginning with the day the notice is served. The Council will seek to recover any unpaid expenses through the civil court, including any interest.
- 11.9.** Where the Council is satisfied that a landlord has breached one or more of the legal duties set out in the regulations it can issue a financial penalty of up to £30,000. The Council will apply its Regulatory Services Enforcement Policy, this policy, and the Council's Civil Penalties Policy in determining whether to issue a penalty and the level of penalty.

## **12. Empty properties**

### **12.1. What is a 'long term empty property'**

Long term empty properties are those that have been empty for at least 6 months The Council recognises that long term empty properties represent a missed opportunity to provide much needed housing for the residents of Slough. The Council wishes to encourage those responsible for long-term empty properties to bring them back into

occupation. There are several options available to officers to deal with long-term empty properties, including:

- Empty Dwelling Management Orders (EDMOs)
- Enforced sale
- Compulsory Purchase Orders

12.1.1. The Council will adopt the most appropriate course of action in each circumstance and will usually endeavour to engage with the property owner before taking any action.

12.1.2. The Council may choose to take no action if the property is in a good state of repair and is not a source of nuisance or risk. The Council will generally only resort to enforcement action if the property poses a risk to public health or safety; or if it is causing a nuisance. For example, if the property is subject to unauthorised entry and there is an accumulation of waste.

12.1.3. The council will generally reserve the use of EDMOs and Compulsory Purchase Orders for cases where the property owner has persistently failed to cooperate or where the empty property is causing an imminent and significant nuisance or risk to the public.

### **13. Minimum Energy Efficiency Standards for Private Rented Dwellings**

**13.1.** The Minimum Energy Efficiency Standard (MEES) Regulations prohibits the letting of relevant properties that have an Energy Performance Certificate rating of F or G, unless they have registered a valid exemption. Relevant properties are those that are required to have an EPC.

**13.2.** The Council regularly utilises domestic EPCs when assessing hazards such as excess cold and damp and mould in privately rented accommodation, however the Council has not to date carried out any enforcement of the MEES regulations.

**13.3.** The Council recognises the importance of MEES regulations to tackling fuel poverty and reducing carbon emissions and therefore the Council will develop a specific policy and protocol on this matter in due course.

### **14. Illegal Eviction and Harassment**

- 14.1.** The Protection from Eviction Act 1977 makes it a criminal offence to evict a tenant without first obtaining a court order under most types of tenancies. It is also an offence to harass a tenant with the intention of depriving them of their home.
- 14.2.** In consultation with legal services we will consider legal proceedings against landlords who do not comply with this legislation. Landlords who unlawfully evict or harass their tenants are unlikely to be deemed fit and proper for the purposes of Licensing under the Housing Act 2004.
- 14.3.** It will not be necessary for a landlord to have been convicted of the offence of unlawful harassment or eviction for the Council to consider their actions relevant in assessing whether or not they are 'fit and proper' for the purposes of Licensing, However, the Council must be satisfied that there would be a realistic prospect of conviction in the event proceedings were initiated.

## **15. Publicising Sentencing Outcomes**

- 15.1.** In 2011 the Home Office produced guidance for public authorities regarding publicising information (including via the internet) about individual sentencing outcomes within the current legal framework. In general verdicts and sentences in criminal cases are given out in open court and are a matter of public record.
- 15.2.** The guidance states that there should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:
- Reassure the public;
  - Increase trust and confidence in the Criminal Justice System (CJS);
  - Improve the effectiveness of the CJS;
  - Discourage offending and/or re-offending.
- 15.3.** The service will work with the relevant communications and legal teams to ensure that we comply with this guidance.

## **16. Proceeds of Crime (PoCA)**

- 16.1.** The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity.

**16.2.** The service will use this legislation where appropriate and in consultation with legal services.

## **17. Other General Legislation**

**17.1.** Officers in the Housing Regulation Team are empowered to use various other pieces of legislation to deal with specific issues related to property conditions. Officers will always use the most appropriate legislation in line with Government Guidance.

## **18. Referral to Other Regulatory Bodies**

**18.1.** The Regulatory Reform Fire Safety Order (2005) provides for the joint enforcement of fire safety in certain buildings such as blocks of flats and HMOs. The Local Authority has committed to adhering to the Draft Memorandum of Understanding between Royal Berkshire Fire and Rescue Service and Berkshire Local Authorities which sets out which agency will take the lead in specific circumstances.

**18.2.** Where it is necessary i.e. in the case of a wider regulatory interest, relevant information will be referred to other regulatory bodies' e.g. the Health and Safety Executive in the case of gas safety within residential private sector dwellings, and the Fire Authority in the case of high risk HMOs

**18.3.** Subject to the appropriate subject access or disclosure request and in line with General Data Protection Regulations and guidance, information may be shared with other regulatory agencies such as Thames Valley Police, HMRC and Home Office Immigration Enforcement

## **19. Complaints Policy**

- 19.1.** We are committed to providing ready access to those wishing to appeal or complain about enforcement action, in accordance with the Council's corporate complaints procedure.
- 19.2.** All appeals in relation to enforcement action taken should be made via the statutory appeals process outlined in the relevant legislation.
- 19.3.** Complaints about the conduct of officers should be made via the Council's corporate complaints procedure. For more information and details of how you can make complaint, please follow the link below:  
<http://www.slough.gov.uk/council/complaints-and-feedback/complaints-procedure.aspx>

## **20. Publicity and Review Arrangements.**

- 20.1.** The enforcement policy and associated policies and protocols will be readily available via the Council's website.
- 20.2.** The policy shall be reviewed after 12 months and every 2 years thereafter. Where amendment to the policy are appropriate they will be made, subject to the appropriate corporate approval process.

## **21. Contact details for relevant First Tier Tribunal (Property Chamber)**

Slough falls within the Jurisdiction of the Eastern Region of the Property Chamber. Details can be found below or at: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Cambridge County Court  
197 East Road  
Cambridge  
CB1 1BA  
United Kingdom

Email: [rpeastern@justice.gov.uk](mailto:rpeastern@justice.gov.uk)

Telephone: 01223 841 524  
Fax: 01264 785 129

Appendix A	Protocol for issuing Civil Penalties
Appendix B	Smoke and Carbon Monoxide Alarm Regulations 2015 'Statement of Principles'

DRAFT

This page is intentionally left blank

**Slough Borough Council- Housing Regulation**

**Revised Housing Regulation Policy and Protocol for issuing Civil Penalties  
under the Housing and Planning Act 2016**

<b><u>Document number</u></b>	
<b><u>Version number</u></b>	<b><u>Draft- Version 3</u></b>
<b><u>Date approved</u></b>	
<b><u>Approved by</u></b>	
<b><u>Effective</u></b>	
<b><u>Author</u></b>	Rhian Richards, Housing Regulation Manager

**If you have any further questions about this policy please contact:  
privatesectorhousing1@slough.gov.uk**

## **Housing Regulation and Trading Standards Policy and Protocol for issuing Civil Penalties under the Housing and Planning Act 2016**

### **1. Introduction**

- 1.1.** The Government has made it clear that they wish to support good landlords and agents who provide decent well maintained homes. However they also wish to clamp down on those landlords and agents that rent out unsafe and substandard accommodation and to tackle Rogue Landlords; disrupting their activities and their business model.
- 1.2.** The power to impose civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004 was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“HPA 16”) which came into force on 1<sup>st</sup> April 2017.
- 1.3.** The Ministry of Housing Communities and Local Government (“MHCLG”) (now Department of Levelling Up, Housing and Communities) published Statutory Guidance for Local Housing Authorities in implementing the legislation called “Civil Penalties under the Housing and Planning Act 2016”. The Council must have regard to this guidance when issuing civil penalties. The Guidance requires Local Housing Authorities to develop and document their own policy on when to prosecute and when to issue a civil penalty.
- 1.4.** Furthermore regard has been given to The Ministry of Housing, Communities & Local Government (“MHCLG”) statutory guidance for enforcement authorities in relation to the Tenants fee Act 2019 (April 2019).
- 1.5.** This policy describes how the Council will decide on the most appropriate sanction for relevant offences under the Housing Act 2004 and other legislation which tackles residential letting. It includes a protocol for determining the level of financial penalty to be imposed, as well as a summary of the procedure to be followed when issuing a financial penalty. This policy was original devised in November 2017 and reviewed in June 2022
- 1.6.** This protocol was devised with reference to the following documents:
- i. Department for Communities and Local Government (DCLG) (April 2017) ‘Civil Penalties under the Housing and Planning Act 2016- Guidance for Local Authorities’
  - ii. Sentencing Council (2015) Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences- Definitive Guidelines
  - iii. Sentencing Council (2014) Environmental Offences- Definitive Guidelines

### **2. Housing Offences Covered by Civil Penalties**

- 2.1.** A civil penalty is a financial penalty or ‘fine’, which is imposed by a local housing authority as an alternative to prosecution for specific housing offences under the Housing Act 2004; a breach of a banning order under the HPA 2016; or offences or breaches under the Tenant Fees Act 2019 and other relevant letting agency legislation. It is not applicable to a breach of a Prohibition Order under the Housing Act 2004.
- 2.2.** Where there is evidence of an offence or breach, the Council will consider whether it is appropriate to issue a civil penalty as an alternative to prosecution through the Courts. The following offences under the Housing Act 2004, Tenants Fees Act 2019 and relevant letting agency legislation can be considered for a civil penalty:
- I. Failure to Comply with an Improvement Notice under section 30 of the Housing Act 2004;
  - II. Offences relating to licensing of Houses in Multiple Occupation (“HMO”) under section 72 of the Housing Act 2004:
    - Section 72 (1) being in control or managing an HMO which is required to be licensed but is not so licensed;
    - Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence;
    - Section 72 (3) being a licence holder who fails to comply with any condition of a licence.
  - III. Offences in relation to licensing of houses under Part 3 of the Act (Selective Licensing):
    - Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed;
    - Section 95 (2) being a licence holder who fails to comply with any condition of a licence.
  - IV. Offence of contravention of an overcrowding notice under section 139 of the Housing Act 2004;
  - V. Failure to comply with management regulations in respect of HMOs under section 234 of the Housing Act 2004.
  - VI. Breach of a banning order section 21 of the HPA 2016;
  - VII. The council may also apply a financial penalty in response to breaches of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
  - VIII. Failure of Letting Agents to publicise their relevant fees as required by s83 of the CRA 2015

- IX. Failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 of The Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work).
- X. Failure by a Property Agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- XI. Failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- XII. Failure to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- XIII. Breach of Sections 1 and 2 of the Tenants Fee Act 2019 in respect of the requirement to make Prohibited payments. A second or subsequent breach under s12 of the TFA 2019 within 5 years of the previous breach
- XIV. Breach of Schedule 11 of The Tenants fee Act 2019 in respect of the requirement to repay the Holding Deposit.

**3. General approach to issuing civil penalties for Housing Act Offences, Tenants Fee Act, and breaches of other relevant legislation**

**3.1.** All of the Teams’ enforcement activity will be consistent with the general principles of regulation and enforcement outlined in the Regulators’ Code <https://www.gov.uk/government/publications/regulators-code> and reiterated in the Council’s general corporate Enforcement Policy and the Council’s Housing Regulation Enforcement Policy.

**3.2.** A civil penalty can only be used as an alternative to prosecution. They are intended to be used against individuals or organisations in breach of the one or more of sections of the Housing Act 2004 and the HPA 2016 listed above in paragraph 2.2. The Council is not permitted to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the Council cannot issue a civil penalty in respect of that same offence. Equally, if a civil penalty has been issued for an offence, the individual cannot then be convicted for that same conduct.

- 3.3.** The Council can issue civil penalties as an alternative to prosecution for *each separate* breach of the House in Multiple Occupation management regulations. A person commits an offence if they fail to comply with a regulation (s.234(3) of the Housing Act 2004). Therefore, each failure to comply with the regulations amounts to a separate offence whereby a civil penalty can be issued.
- 3.4.** However, in respect of improvement notices, only one civil penalty can be issued per notice. It is not possible to issue separate civil penalties for each hazard specified on an improvement notice. Furthermore, only one civil penalty can be issued for a single offence regardless if the landlord persistently fails to carry out the work specified in the improvement notice.
- 3.5.** Where the same offence has been committed by the landlord and letting/managing agent, a civil penalty can be issued against both as an alternative to prosecution. The financial sum of the penalty may differ depending on the circumstances of the case.
- 3.6.** Both the letting agent and landlord can be prosecuted for failing to obtain a licence for a licensable property. A civil penalty can also be issued against both as an alternative to prosecution. The financial sum of the penalty may differ depending on the individual circumstances of the case.

#### **4. Determining whether to take action when offence or breach is committed**

- 4.1.** The criminal standard of proof is applicable to issuing a civil penalty. Therefore, before deciding to issue a civil penalty, the Council must be satisfied that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
- 4.2.** The Council must be able to show beyond reasonable doubt that the offence has been committed. Equally where a civil penalty has been issued and is subject to an appeal in the First-tier Tribunal, in order for the appeal to be dismissed, the Council must show beyond reasonable doubt that the offence had been committed.
- 4.3.** In determining whether there is a realistic prospect of conviction the Council will have regard to the Crown Prosecution Service's 'Code for Crown Prosecutors'. This is a two stage test: (i) evidential and (ii) public interest. It must be applied to each case being considered for both prosecution and civil penalty. The Council will apply the test to all cases where offences are alleged to have been committed.
- i. The evidential test**  
The Council must be satisfied that there is sufficient evidence to support a realistic prospect of conviction. Furthermore, the Council must consider what the defence may be and the impact it may have on the prospects of conviction.  
When deciding if there is sufficient evidence you must ask yourself the following:

- a. Can the evidence be used in Court?  
Are there any questions about the admissibility of the evidence? Having regard to how the evidence was gathered and by whom the Council must consider whether the evidence could be successfully challenged and therefore excluded if the case was prosecuted.
- b. Is the evidence reliable and credible?  
Consider whether there is any reason to question the reliability of the evidence. This includes whether it is accurate and honest. Are there any reasons to doubt the credibility of the evidence? For example is there any reason not to believe the evidence to be true.
- c. Are there any other issues that may affect the adequacy of evidence?  
The Council must, at this stage and throughout the case, consider whether there is any information that may affect the quality of the evidence.

The evaluation of the evidence requires an objective, impartial and reasonable assessment of all available evidence taking into consideration all of the above.

ii. The public interest test

Where there is sufficient evidence to justify issuing a civil penalty or prosecution, the Council must also consider whether it is in the public interest to do so. This involves an examination of the seriousness of the offences, the level of culpability of the offender, the impact of the offence on victims and the community, the age of the offender and whether a prosecution is a proportionate response. When deciding whether the civil penalty or prosecution is in the public interest the Council must consider the following:

- a. How serious is the offence committed?  
The Council must determine the landlord and/or managing/letting agent's culpability and the harm caused by considering c and b below. This includes looking at who is responsible for the offence.
- b. How culpable is the landlord/managing/letting agent?  
Responsibility for the offence is likely to be determined by:
  - i. The landlord and/or managing/letting agents level of involvement;
  - ii. The extent of premeditation and/or planning of the offence;
  - iii. How much the landlord and/or managing/letting agents have benefitted from the conduct;
  - iv. Previous convictions and/or out of court disposals and any other relevant offending;
  - v. Whether the offending is likely to continue, repeated or escalated;

Whether the landlord and/or managing/letting agent was compelled, coerced or exploited will impact their level of culpability. Furthermore, the Council should have regard to the landlord's and/or managing/letting agent's significant mental or

physical ill health or disability both now and at the time of the offence. In certain circumstances this will mean that prosecution or civil penalty is required. Nevertheless the Council should consider the seriousness of the offence and whether the landlord and/or managing/letting agents are likely to reoffend together with the need to safeguard the public. The greater the landlord and/or managing/letting agent's culpability the more likely a civil penalty will be issued or prosecution commenced.

c. What are the circumstances of and harm caused?

The circumstances of the occupants are highly relevant. Where occupants are vulnerable or perceived to be vulnerable the more likely it is that a civil penalty should be issued or prosecution commenced. This includes circumstances where there is a position of trust or authority between the landlord and/or managing/letting agents and the occupants.

d. What is the impact on the community?

The greater the impact of the offence on the community, the more likely the landlord and/or managing/letting agents should face a civil penalty or prosecution.

e. Do sources of information require protection?

Where public immunity does not apply, consideration should be given where details may need to be made public that could be detrimental to sources of information, ongoing investigations or national security. Such cases must be kept under continued review.

f. Is prosecution/civil penalty a proportionate response?

The Council should consider whether prosecution or civil penalty is proportionate to the outcome, i.e. the cost of such action. Although it is a relevant factor it should not be the sole basis for deciding on the public interest element. The Council must have regard to a. to e. above.

**4.4.** The case officer will present an investigation file for each case to the relevant team manager and group manager for review. The case will not be considered for *either* prosecution or a civil penalty unless the relevant manager and group manager are satisfied that both stages of the Code for Crown Prosecutors, have been satisfactorily met. A case which does not satisfy the evidential test must not proceed, regardless of its seriousness or sensitivity.

## **5. Deciding on the appropriate sanction**

**5.1.** If the Council believes that it has a reasonable prospect of securing a conviction in a particular case, it will always consider a civil penalty in the first instance.

- 5.2. In general, prosecution will be the most appropriate course of action for particularly serious cases or where the landlord and/or managing/letting agent has committed similar offences in the past. This approach sends out a strong message that the Council will take a robust approach in dealing with rogue landlords; and publicising convictions acts as a deterrent to other potential offenders.
- 5.3. However, a civil penalty of up to £30,000 can be imposed where a landlord and/or managing/letting agent has committed a serious offence and the Council believes that a substantial financial penalty instead of prosecution is the most effective sanction for a particular case. The appropriate sanctions are determined on an individual case by case basis and in accordance with this policy.
- 5.4. In deciding whether prosecution or a civil penalty is an appropriate sanction the Council will consider the following and document their decision:
- I. The seriousness of the offence or the severity of the breach- will the Council consider applying for a banning order?
  - II. The track record of the offender- Has the offender committed similar offences in the past?
  - III. Will a financial penalty remove any financial gain achieved from the commission of the offence?
  - IV. Would a financial penalty be an adequate deterrent to future offending?
  - V. Would prosecution be a fair and proportionate response?

## 6. Determining the level of financial penalty

- 6.1. Where the Council has decided to issue a civil penalty as an alternative to prosecution, the Council has the power to issue a financial penalty of up to £30,000. This maximum penalty should be reserved for the worst offenders. There is no statutory minimum. The amount imposed should be reflective of the seriousness of the offence as well as the landlord and/or managing/letting agent's history of offending. To ensure that the penalty is fixed at an appropriate level, the Council should consider the following factors:
- I. **The Severity of the offence**  
The more serious the offence, the higher the penalty should be.
  - II. **The landlord/managing/letting agents culpability and track record**  
Where the offender has a history of failing to comply with their obligations and/or they knew, or ought to have known, that they were in breach of their legal obligations and/or their actions were deliberate, a higher penalty will be appropriate. Landlords are running a business, therefore there is an expectation that they are aware of their legal responsibilities.

**III. The harm caused to the tenant**

This is an important consideration when determining the amount of the penalty. The greater the harm or the potential for harm (as may be as perceived by the tenant), the higher the financial penalty.

**IV. Punishment of the offender**

A civil penalty should not be regarded as a more lenient punishment in comparison to prosecution. The penalty should be proportionate and reflective of both the severity of the offence and previous offending of the landlord and/or managing/letting agent. However, it is important that the penalty is high enough to ensure that it has actual economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

**V. Deterring the offender from repeating the offence or breach**

Ultimately the aim of civil penalties is to prevent any further offending and ensure the landlord and/or managing/letting agent complies with all of their legal responsibilities in future. The level of the penalty should be significant so that it is likely to deter the offender from repeating the offence.

**VI. Deterring others from committing similar offences or breaches**

The issuing of civil penalties is not published in the public domain. However, it is highly likely, through informal channels, that other landlords in the local area will become aware of the penalty. Deterrence is effective when offenders realise that (i) local housing authorities are proactive and consistent in issuing civil penalties where the need arises and (ii) that the financial level of the penalty is appropriate to both punish the offender and deter repeat offending.

**VII. Removing any financial benefit to the offender**

The offender should not financially benefit from committing an offence. It should not be cheaper for a landlord to offend than to ensure a property is managed and well maintained properly.

**6.2.** The Council will also need to consider and assess the financial resources of the offender, including their assets and income. The above list is not exhaustive. Care must be taken not to penalise the landlord/managing/letting agent twice for offences arising from the same conduct.

**6.3.** Appendix 1 sets out in detail what must be considered when determining the level of civil penalty that should be imposed. This should ensure that as far as practicable, the Council's approach to the use of civil penalties is consistent and transparent.

**7. Procedure for issuing civil penalties**

- 7.1.** The procedure for issuing civil penalties is prescribed by Schedule 13A of the Housing Act 2004 and Schedule 9 to the Housing and Planning Act 2016. The Council's procedure will mirror this process.
- 7.2.** Before imposing a civil penalty the Local Authority must issue a Notice of Intent. This is notice of the authority's proposal to impose a civil penalty. This must be issued before the end of 6 months beginning with the first day on which the Council has sufficient evidence of the conduct of the offence *Schedule 13A, 2004 Act, paragraph 2(1)*.
- 7.3.** If the conduct is continuing on that day, then the Notice of Intent can be issued on any day the conduct is continuing or within the period of 6 months, beginning on the last day on which the conduct occurs.
- 7.4.** The Notice of Intent must state the following:
- I. The amount of the proposed financial penalty;
  - II. The reasons for proposing to impose the financial penalty; and
  - III. Information about the right to make representations within 28 days beginning with the day after the notice was given.
  - IV. The date on which the notice in intent is issued
- 7.5.** The Notice of intent must provide sufficient detail of the reasons why it is proposing a financial penalty so that the recipient clearly understands what conduct or omission amounts to the offence or breach. The Council will set out a concise statement of the facts of the offence and will not simply direct the recipient to a link to this online policy explaining the penalty amount. The notice will clearly explain the reasons for the financial penalty and why the Council deems it appropriate in the circumstances.
- 7.6.** A person who is given a notice of intent may make written representations to the appropriate team manager about the proposal to impose the financial penalty. These representations must be made within the 28 day period as detailed above. The recipient of the Notice of Intent will be advised that any representations they make should be accompanied by supporting evidence, including information on their financial circumstances.
- 7.7.** Once the period for representations expires, the relevant manager must, in consultation with the Group Manager and where appropriate legal services, decide whether to impose a financial penalty and if so, the level of the penalty.
- 7.8.** If it is decided to impose the penalty, the Council must issue a Final Notice. The final Notice must state:
- a. the amount of the financial penalty,
  - b. the reasons for imposing the penalty,
  - c. information about how to pay the penalty,

- d. the period for payment of the penalty,
  - e. information about rights of appeal, and
  - f. the consequences of failing to comply with the notice.
- g. The final notice must state that the penalty is to be paid within 28 days of the notice, beginning with the day after notice was given. In the case of Tenants Fee Act breaches require repayment of the prohibited payment, holding deposit or amount paid under a prohibited contract within 7 – 14 days.

**7.9.** The Council may, at any time, withdraw the Notice of Intent or Final Notice, or reduce the amount stated in said notice by giving notice to the person to whom the original notice was given. The council may in the case of the Tenants Fee Act 2019 amend a notice to remove a requirement to repay a prohibited payment or holding deposit. The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

## **8. Appeals**

- 8.1.** Any person issued with a final notice can appeal to the First Tier Tribunal (FFT), within 28 days of the date the notice was issued, against the decision to impose the penalty or the amount of the penalty. Where a recipient appeals, the final notice is suspended until the appeal is determined or withdrawn and no payment is required during this period.
- 8.2.** An appeal is a re-hearing of the Council's decision and may have regard to matters of which the Council was not aware. The starting point for the FFT is this policy and it should consider any arguments as to why it should depart from this policy. The onus is on the appellant to persuade the FFT to depart from this policy. In considering whether to depart from this policy, the FFT must look at the objectives and consider whether they would still be met if it departs from the policy. It must also consider the requirement for consistency between offenders, the fundamental purpose for having a policy (*Waltham Forest LBC v Marshall and Ustek [2020] UKUT 35(LC).*) The FFT must afford considerable weight to the Council's decision.
- 8.3.** On appeal, the First-Tier Tribunal can increase or decrease the size of the penalty, cancel or confirm the final notice. However, it cannot increase the final notice to impose a penalty of more than the maximum, £30,000.
- 8.4.** The First Tier Tribunal can dismiss an appeal if satisfied that the appeal has no prospect of success, is vexatious, an abuse of process or is frivolous.

## **9. Enforcement**

- 9.1.** Where the recipient fails to pay the civil penalty or any part of it, the Council can enforce it in the County Court. The penalty, or such part that is unpaid, can be recovered as if it were payable under a Court order (*Schedule 13A, 2004 Act, paragraph 11*).

- 9.2.** In order to do so, a certificate, signed by the Council's Chief Finance officer, stating that the amount due has not been received by a date specified in the certificate, will be accepted by the Court as conclusive evidence of failure to pay, unless proved otherwise (*Schedule 13A, 2004 Act, paragraph 11*).
- 9.3.** The Council may use the financial penalty recovered under a civil penalty to meet its costs and expenses, either administrative or legal, incurred in or associated with carrying out its enforcement function in the private rented sector. Any amount not utilised for this purpose must be paid into the Consolidated Fund (*Regulation 4, Rent Repayment Orders and Financial Penalties (Amounts Recovered)(England) Regulations 2017*).
- 9.4.** The Statutory Guidance issued by the Department of Communities and Local Government (now the Department of Levelling Up Housing and Communities) states that if necessary, the Local Authority should use County Court Bailiffs to enforce the order. The Housing Regulation and Trading Standards Teams will liaise with HB Public Law before commencing any claim through the County Court.

#### **10. Other consequences of receiving a Civil Penalty**

- 10.1.** The Council can take into account any civil penalties issued when considering whether a person is fit and proper to hold an HMO Licence or any other Licence issued under the Housing Act 2004.
- 10.2.** Where a landlord receives two or more civil penalties within a 12 month period, the Council can submit that person's details on a rogue landlord and property agent database. Whilst this is not a compulsory requirement, the Council is strongly encouraged to do so to make other local authorities aware that formal action has previously been taken against a Landlord.

## **Appendix 1**

### **Determining the starting point for a civil penalty**

The Council will determine the level of penalty to be imposed based on 4 stages. The Council will document its decisions at each stage of the protocol.

The Council will also use this protocol to determine the level of financial penalty to be applied in response to breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

No Financial Penalty shall be determined or issued until it has been reviewed and agreed in writing by the Housing Regulation Manager or in the case of Tenant Fees Act and relevant letting agency legislation, the Trading Standards Manager.

#### **Stage 1 – Determining the offence category**

**This stage of the process will determine the starting point for the penalty based on the culpability of the offender and the harm or potential harm associated with the offences. The Council has created three offender categories for which the penalty starting points differ, reflecting the different circumstances of small and large scale operators.**

#### **Culpability**

The Council has identified 3 levels of culpability. When deciding the level of culpability of the offender, the Council will have regard to the following:

<b>High (deliberate)</b>	<b>Where the offender has intentionally breached or flagrantly disregarded the law.</b> For example where warnings have been issued but no action has been taken; where the offender has deliberately concealed or attempted to conceal their offending; where the offences have been committed over a prolonged period; where the offender has failed persistently to cooperate with Council; where there has been wilful blindness to the risk, or where offender was aware of the risk but risk none the less taken.
--------------------------	---

**Medium (negligent)**      **Where an offence has been committed through an act or omission which a person exercising reasonable care would not commit.**  
For example in cases where an offender could reasonably have been expected to be aware of their legal obligations; where offenders have failed to implement a system for managing their properties; where warnings have been issued or advice given but no action taken; where the offender has only partially complied with their legal requirements or there was an unacceptable delay in compliance.

**Low (little Fault)**      **Offence has been committed but with little fault;**  
For example when the offending was an isolated incident and the offender has no history of non-compliance; where efforts were made to address risks but efforts were inadequate on this occasion; where the offender has subsequently taken steps to address breach and prevent further breaches; Where occupants substantially contributed to the breach; where the offender has cooperated with the Council throughout the investigation.

## Harm

When deciding the level of harm whether actual or potential, resulting from the commission of the offence the Council will have regard to the following:

- Level 1      Serious adverse effect (potential or actual) on individuals or the wider community. Risk of serious injury or fatality, risk of long term significant adverse impact on health and wellbeing. Actual or potential for harm to particularly vulnerable groups.
- Level 2      Significant adverse effect (actual or potential) which does not amount to Category 1 harm. Relatively low risk of very serious harm or fatality
- Level 3      Where there is an adverse effect (actual or potential) but low risk of long term or serious harm.

The relationship between the level of culpability and harm will then be used to determine which civil penalty band the offence falls into:

		Culpability		
		High	Medium	Low
Harm	Level 1	6	5	4
	Level 2	5	4	3
	Level 3	3	2	1

To assist the Council in meeting the requirement to consider the financial means of the offender three 'offender categories' have been identified. The first category, offender category 1 will include offenders operating 1 or 2 properties. The second offender category, will include those operating three, four or five properties and category 3 offenders will include portfolio operators responsible for 6 or more properties.

6 penalty bands have been created for each offender category. The middle of the band range will be chosen as a starting point for determining the Civil Penalty. This will then be adjusted according to factors included in **Stage 2 to 4** of the protocol.

Offender Category 1 (1 or 2 properties)	Band	Civil Penalty Range (£)	Starting point (£)
	1	1-500	250
	2	501 to 1000	750
	3	1001-4000	2500
	4	4001-8000	6000
	5	8001-12000	10000
	6	12001-18000	16000

Offender Category 2 (3, 4 or 5 properties)	Band	Civil Penalty Range (£)	Starting point (£)
	1	1-1000	500
	2	1001-2000	1500
	3	2001-5000	3750
	4	5001-10000	7500
	5	10001-15000	12500
6	15000-20000	17500	

Offender category 3 (6 or more properties)	Band	Civil Penalty Range (£)	Starting point (£)
	1	1 to 2500	1250
	2	2501 to 5000	3750
	3	5001 to 10000	7500
	4	100001 to 15000	12500
	5	15001 to 22500	18750
6	22501 to 30000	26250	

## Stage 2 – Assets and Income

The Statutory guidance published by MHCLG (now DLUHC) states that the penalty should not be regarded as an easy or lesser option compared to prosecution and must therefore be set at a high enough level to ensure it has an economic impact on the offender while being proportionate to the severity of the offence.

The Council will use all of its current powers to establish as far as reasonably practicable, the offender's financial means. The Council's investigations will not be limited to the offender's income from rental properties but will examine all of the offender's income and assets.

The Council may adjust the penalty upwards, to reflect the value of the offender's assets and any financial gain the offender may have derived from their offending

The Council may also adjust the penalty downwards, but this will not automatically be the case simply because an offender has, or claims to have a low income. If the offender wishes to make a representation in this regard it will be for them to disclose to the Council information relevant to their financial position.

### **Stage 3 – Aggravating and Mitigating factors**

The Council will consider a range of mitigating and aggravating factors in determining the level of penalty to be imposed. Other than in exceptional circumstances any upward or downward adjustment will not exceed a third of the value of the fine determined by the first two stages of this protocol.

The following factors will be considered in determining the level of penalty. Please note this is not an exhaustive list:

Mitigating factors:

- High level of cooperation with the investigation beyond that which will always be expected
- Acceptance of responsibility
- Measures put in place to reduce the risk of a further breach
- Serious medical condition requiring urgent, intensive or long term treatment
- Sole carer for dependent relatives
- Readiness to attend training or become accredited
- Good record of relationship with tenant

Aggravating factors:

- Previous convictions or breaches /fines for relevant offences or breaches
- Poor record of compliance
- Refusal to provide tenants with tenancy agreement or proof of rental payment
- Motivated by financial gain
- Breach of any court order
- Actual harm caused to occupants
- Tenant is vulnerable
- Evidence of intimidation or harassment of tenants
- Wider community impact e.g. anti-social behaviour or nuisance arising from failures in management
- Obstruction of investigation or deliberately providing false information
- Refusal of advice or training

#### **Stage 4- Proportionality and ‘the totality principle’**

The Council will ‘step back’ and review the determined penalty to ensure that it fulfils the objectives of the sanction and adequately considers all the factors listed in Statutory Guidance (listed on page 3 and 4 of this policy).

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

In cases where multiple offences have been committed the Council will apply the ‘totality principle’. The council will determine a penalty for each offence based on the above stages but impose a single combined penalty. Further adjustments to the fine may be made at this stage to take into account the ‘totality principle’ and to ensure that the fine is proportionate to the offending. The Council may also consider the costs incurred by them in investigating the offence and imposing the sanction.

The Council will also consider the potential impact of the financial penalty on the offender’s ability to fulfil their legal obligations and the potential impact on any third parties; for example employees or other customers.

If the combined total of all the penalties significantly exceeds £30,000 then the decision to issue a Civil Penalty will be reviewed. However a review at this stage will not necessarily result in the withdrawal of the decision to issue a CPN in favour of a prosecution. The Council may proceed with their decision to issue a CPN if it is satisfied that doing so is fair and proportionate and will achieve the objectives of the sanction.

This page is intentionally left blank

## Slough Borough Council- Housing Regulation

### Licensing Decisions Policy

Document number	
Version number	Draft v2
Date approved	
Approved by	
Effective	
Author	Rhian Richards, Housing Regulation Manager

**If you have any further questions about this policy please contact:**

## 1. Introduction

This policy sets out the Council's approach to delivering property licensing in Slough; including mandatory and additional licensing of houses in multiple occupation (HMOs) and selective licensing.

It is not designed to provide a detailed step by step guide to the licensing application process but reflects the broad principles underpinning the Council's approach to licensing and licensing decisions.

The policy will inform decisions made by members of the housing regulation team which relate to property licensing. The policy is supplementary to Council's Regulatory Enforcement Policy and Housing Regulation Enforcement Policy and will be read and applied alongside them.

## 2. The Requirement to license

An HMO is a house or flat occupied by 3 or more individuals who form more than one household and share either toilet, kitchen or bathroom facilities: or where any of the units of accommodation lack kitchen, toilet or bathroom facilities.

Buildings consisting of self- contained accommodation can also be classed as an HMO under section 257 of the Housing Act 2004, if the conversion did not comply with certain building regulations; so called '257 HMOs'.

In Slough all HMOs require a licence. The type of licence required will depend on the size and nature of the HMO.

- Mandatory Licensing includes HMOs of 5 or more occupants
- Additional Licensing includes HMOs not covered by the mandatory scheme as well as so called '257 HMOs' which are converted blocks of flats where more than 1/3 of the flats are not owner occupied and the conversion does not comply with relevant building regulations

In addition some privately rented properties which are NOT HMOs also require a licence in Slough. These are properties let under an assured short hold tenancy agreement or licence to occupy which are located in an area designated for Selective Licensing. The designated area includes most, but not all of the Chalvey and Central electoral wards. A map outlining the designated area can be found at: <https://www.slough.gov.uk/licences-permits/property-licensing-1/6>

Under both the HMO and Selective licensing schemes, certain properties are exempt from the requirement to licence. Including:

- Properties operated by registered providers of social landlords
- Properties operated by public sector bodies
- Properties operated by certain religious organisations

**It is the responsibility of all those operating a rented property in Slough to familiarize themselves with the licensing requirements and to make the appropriate application. If any person is unsure about whether their property requires a licence they should contact the housing regulation team.**

### **3. HMO Declarations**

Some buildings with shared facilities may have multiple uses. For example B&Bs or guest houses may have paying guests who have a permanent address elsewhere, as well as those who live in the property as their only or main residence. Where the occupation of a building by persons living there as their only or main address forms a significant use of that building, the Council may issue an 'HMO declaration' under section 255 of the Housing Act 2004.

There is no prescribed definition of the term 'significant use', however the Council considers one third or more would constitute 'significant use'

If no appeal is brought against an HMO declaration or if a declaration is confirmed on appeal, the property to which the declaration relates becomes an HMO and the person operating the property would be committing an offence if they continued to operate their property as an HMO without applying for a licence.

### **4. Making an application**

All applications must be made via the Council's online applications system and must be accompanied by the relevant application fee. A link to the application system is available on the Council's webpages or by following this link [Licensing for rented property | Slough Borough Council \(metastreet.co.uk\)](https://www.metastreet.co.uk/property-licensing)

Licence fees are set to cover the costs of setting up and implementing the licensing schemes. The relevant licence fee for each application can be found below and on the Council's web page at: [Property licensing – Slough Borough Council](https://www.slough.gov.uk/property-licensing)

Fees are paid in two parts:

- **Part A (processing and admin fees):** Taken when the application is initially submitted by the applicant.
- **Part B (enforcement fees):** taken automatically when the draft licence is issued.

**Please note that the licensing fees are non-refundable and the licences are non-transferrable.**

The current application fee for a selective licence is:

- Part A: **£200**
  - Part B: **£300**
- Total: **£500**

**The current application fee for both an additional and mandatory licence is**

- Part A: **£450**

- Part B: **£300**  
Total: **£750 (plus for houses that have more than six rooms: additional charge of £30 per room)**

If the application lacks any of the information required by the Housing Act 2004 (please see webpage: <https://www.slough.gov.uk/licences-permits/property-licensing-1/8> for information required for an application) or is not accompanied by the appropriate fee, the Council reserves the right to refuse the application as 'incomplete', and refund any fees paid up to that point. If the Council cancels an incomplete application, the property to which the incomplete application relates will be treated as an unlicensed property and officers will carry out an investigation accordingly.

If, when an application is received by the Council, the property to which the application relates is empty and likely to remain so for some time, the Council will contact the applicant and inform them that a licence is not required and refund any fee paid to the Council.

## 5. Determining the Licence application

When a complete and valid application with payment of the relevant fee, is made to the Council by the appropriate proposed licence holder (the person having control of, or the person managing the property, the person who lets the property and collects the rent) under sections 63 or 87 of the Housing Act 2004, the Council will aim to grant or refuse the application for a licence within 3 months. Where there is likely to be a delay in an application being determined applicants will be informed of the reasons for the delay.

Before granting a House in Multiple Occupation (HMO) or Selective Licence the Council must be satisfied that any person who is proposed to be the licence holder or manager of the HMO or Part 3 House meets certain criteria (including the Fit and Proper Test, satisfactory Management arrangements) which are set out in the s.64 (3) and s.88 (3) of the Housing Act 2004. Furthermore, properties proposed to be used as houses in multiple occupation must be suitable for use by a maximum number of persons. The maximum number of persons permitted is decided on the basis of published space standards which can be found in our 'Standards in Licensable Properties' document at [HMO amenity standards – Slough Borough Council](#)

### 5.1. The Law

The Housing Act 2004, Sections 64(3) and 88 (3) require that the Council be satisfied of certain matters before granting a licence for an HMO or part 3 house respectively. The matters of which the Council must be satisfied are broadly similar under each section, however there is an additional test that must be applied to HMOs.

*The following applies to HMOs only (Section 64 (3) (a)):*

- a) The council must satisfy itself that the house is reasonably suitable for occupation by no more than a specific number of individuals; or that it can be made suitable by the imposition of conditions. In considering the suitability of the property for a particular number of persons the Council must consider prescribed standards relating to the availability of amenities such as toilets, washing facilities and kitchens; as well as safety provisions and space. The Council will determine the number of persons an HMO is licensed for in

accordance with its relevant HMO space standards and room sizes which can be found here: [HMO amenity standards – Slough Borough Council](#)

*The following tests apply to applications made under both the HMO and selective schemes The Council must be satisfied that:*

- b) No banning order under s.16 Housing and Planning Act 2016 is in force against an owner or lessor or licensor of any part of the house
- c) Any proposed licence holder is a fit and proper person to be the licence holder and the most appropriate person to be the licence holder;
- d) That the proposed manager of the house is either the person having control, an agent or representative of the person managing house; and that they are fit and proper; and
- e) That the proposed management arrangements for the house are otherwise satisfactory.

‘Fit and proper person’

Sections 66 and 89 of the Housing Act 2004 sets out the evidence to which the Council must have regard (amongst other things) when determining whether a person is fit and proper to be involved in the management of a licensed property. The evidence is within scope if it shows that the proposed licence holder/manager;

- a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
- b) practiced unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
- c) contravened any provision of the law relating to housing or of landlord and tenant law; or
- d) Acted otherwise than in accordance with any applicable code of practice approved under section 233.
- e) Have been subject to legal proceedings for breaches of planning, environmental legislation or other relevant legislation by a local authority
- f) Any other relevant considerations (please also see section 6 and Appendix)

Applicants and prospective licence holders are required to include information relating to these matters in their application and to declare any relevant convictions including spent convictions (see 6A below). A failure to declare a relevant matter or conviction in a licence application will be considered relevant to any licence decision and may result in the refusal of the licence.

When deciding if an applicant is fit and proper, each case will be decided on its own merits, where the Council will give consideration to the number and/or severity of offence, when committed, circumstances around them, mitigation, rehabilitation, evidence of good practice.

## **5.2. Licence duration**

The maximum duration of a licence issued under section 64 or 88 of the Housing Act 2004 is 5 years, however, where the Council has concerns about a person involved in the management of the property or about the property itself, a licence may be issued for a duration of less than 5 years. For example where the HMO or Part 3 house has been identified by the Council and this has led to the application, the condition of property is poor, it requires review of management arrangements, it's planning status.

The Council is also empowered under sections 69 and 92 of the Housing Act 2004 to vary an existing licence to a shorter duration if it becomes aware of a matter of concern of which it was not aware when the licence was granted.

Where a shorter term licence is deemed appropriate it will generally be for 1 year and will reflect the finding that although there is a cause for concern, the concern is not so serious as to warrant a full refusal or revocation of the licence.

### **5.3. Overview of the Licence Decision Process**

On receipt of an application property licensing coordinators review the application to ensure that all the required information has been provided and that the application has been properly made. It is the applicant's responsibility to ensure that all sections are completed in full and the Council reserves the right to deem an application has not been properly made if all the information prescribed by the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 has not been provided; or the associated licence fee has not been paid.

Following receipt of a full and valid application, Property licensing coordinators undertake a desktop review of the information contained within the application. The property licensing coordinators use Council databases and other sources of information to verify the accuracy of the information provided by the applicant and to identify matters which may be relevant to the determination of the licence application.

Where matters of concern are identified by the property licensing coordinator, they will communicate those concerns to a housing regulation officer who will then undertake an investigation. The investigation will involve one or more of the following activities:

- a) An Inspection of the property which is the subject of the application or already licensed. *Not all properties subject to an application will be inspected prior to the determination of the licence. Pre-licensing inspections will generally only be undertaken if a cause for concern has been identified during the desktop assessment phase or if there is a particular concern about the design or layout of the property. The Council aims to inspect ALL HMOs at least once during the term of the licence. Inspections will generally include an assessment using the housing health and safety rating system (HHSRS).*
- b) An inspection of other properties managed by the prospective licence holder/ manager.
- c) A request for documentation from any person involved in the management of the property, for example (not an exhaustive list):

- i. certificates concerning the safety of installations (gas, electrical etc.) within the property
  - ii. tenancy agreements or documents relating to the protection of tenant's deposit
  - iii. waste transfer notes or agreements
  - iv. maintenance records
  - v. certificates or notices relating to planning or building control
  - vi. floor plans of the property
  - vii. Leasehold agreements, land registry documents or similar that demonstrate a legal interest in the property
- d) An invitation to the licence holder and/or manager to attend an in person (or virtual meeting) to discuss the matters of concern.

The Council, if it deems appropriate, may contact other agencies such as the Police, Royal Berkshire Fire and Rescue Service, Home Office Enforcement, HMRC or other relevant bodies to obtain further information which may assist in their deliberation. The Council will consider the information provided in the licence application alongside evidence held by the Council or other agencies when making decisions relating to Licensing.

On completion of their investigation the housing regulation officer will determine the licence application. The decision is made having regard to this policy and the Housing Regulation Enforcement Policy; as well as the Housing Act 2004 and any associated regulations and guidance. The possible outcomes of the determination are:

- a) Licence is granted for 5 years and will specify the maximum number of occupants or households who may occupy the property. The licence may include 'be- spoke' conditions which reflect the circumstances of the property, licence holder or manager.
- b) Licence granted but for a reduced term (usually 1 year) reflecting concerns that do **not** warrant out-right refusal. The licence may include 'be- spoke' conditions which reflect the circumstances of the property, licence holder or manager.
- c) Licence refused on the basis that the Council is not satisfied that the proposed licence holder and/or manager are fit and proper AND/OR in the case of HMOs, the property is not suitable for use as an HMO and cannot be made suitable by the impositions of conditions. The Housing Regulation Enforcement Policy explains the repercussions where a licence application is refused or revoked.

In all cases officers will record the reasons for their decisions and communicate those reasons to the applicant, proposed licence holder, manager and any other interested parties.

Where the Council is minded to refuse a licence, the applicant will be invited to propose an alternative, competent, fit and proper person to hold the licence. The proposed licence holder would need to be an appropriate person having control of, or the person managing the property. Any alternative proposed licence holder would be subject to the same fit and proper person checks as the person originally proposed. The provisions relating to 'associated persons' will be borne in mind when assessing the suitability of proposed alternative licence holders.

Where the Council becomes aware of bankruptcy proceedings against a proposed licence holder, or any other information which suggests a lack of available funding for the management of the property e.g. CCJs or significant debt, officers will contact the proposed licence holder for further discussions. Where evidence of a lack of funding is accompanied by a failure to manage or maintain a property in a safe condition the Council will carefully consider whether the licence holder can realistically achieve compliance with the licence conditions and will determine the licence application accordingly.

#### **5.4. Review of an existing licence**

If the Council becomes aware, by any means, that the matters of concern listed in Appendix 9 of this policy, or any other relevant concerns apply to an address that is already licensed, they may, having regard to the general principles set out in section 7, decide to review the licence. The review may include any of the activities described in paragraph 4.5, and where appropriate the Council may vary or revoke a licence.

Prior to a review being conducted the Council may decide to write to those involved in the management of the property, including the licence holder and manager, inviting them to make representations to the Council that might be relevant to the review of the licence; for example the licence holder may wish to make the Council aware of the uncooperative conduct of one their tenants which has prevented essential maintenance etc. The Council will consider any representations made by relevant parties in deciding what, if any action should be taken in relation to the licence.

#### **5.5. Associated Persons**

The Housing Act 2004 stipulates that the conduct of ‘persons associated or formerly associated’ with the proposed licence holder or manager is relevant to the assessment of whether the proposed licence holder or manager is ‘fit and proper’. The legislation does not offer a clear definition of ‘associated persons’ but non- statutory draft government guidance ‘A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004’ (Department for Communities and Local Government, 2010) states the following: ‘it would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a “front” for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder’.

The Council will therefore consider the conduct of relatives, professional associates and any other associates of the proposed licence holder/ manager in making their licensing decisions, but only where:

- a) There is evidence of actual wrong doing on the part of the associated person; and
- b) That wrong doing is relevant to whether the proposed licence holder or manager is fit and proper.

## **6. Licensing Decisions- relevant matters**

The matters that are considered relevant to licensing decisions are listed in section 65/66 and 89 of the Housing Act 2004 and are further explained in the attached appendix. However in deciding the level of importance that should be attached to those matters, officers will have regard to the following general principles:

*A. Time that has elapsed:*

The extent to which matters detailed in the Appendix to this policy are relevant to licensing decisions will depend on the length of time that has elapsed since the failures occurred. For example, more weight will be applied to contraventions that were committed in the preceding 5 years than those committed prior to that. Where an historic contravention has been followed by a period of consistent compliance the original contravention is less likely to be considered relevant to any new application. It is important to note that spent offences can be considered relevant to licensing decisions, as long as the underlying conduct is in itself relevant (Hussain Vs Waltham Forest [2020] EWCA Civ 1539)

*B. Seriousness of failures/contraventions:*

The seriousness of any identified failures will determine the extent to which they effect licensing decisions. Contraventions that confer a risk to the occupants of a property or to the community, are considered more serious than technical offences which do not confer a direct risk of harm. For example breaching an Improvement Notice is considered more serious than the failure to comply with a notice under section 16 of the Local Government Miscellaneous Provisions Act 1976, requesting information be provided to the Council.

*C. Extent of failures/contraventions*

Multiple contraventions MAY be considered more important to licensing decisions than individual ones depending on the nature of the contravention. Similarly, repeated contraventions, particularly where warnings or advice have been given, will be afforded greater weight in licensing decisions than one off incidents; unless the isolated incidents are particularly serious.

*D. Conduct following the identification of failures/contraventions:*

The existence of a past contravention(s) does not automatically preclude a person being involved in the management of a licensed property. Where a proposed licence holder has proactively rectified a failure without the need for intervention from the Council, the Council is more likely to be satisfied of their fitness to manage the property.

In cases where the Council has had cause to intervene to deal with a matter of concern, the persons response to that intervention will be an important factor in determining the licence application. Proposed licence holders or managers that demonstrate a cooperative approach, and a willingness to undertake training or carry out remedial work are more likely to be considered 'fit and proper' than those who are uncooperative or demonstrate a reluctance to address health and safety hazards.

## **7. Temporary Exemption Notices**

Under Sections 62 and 86 Of the Housing Act 2004, a person operating an HMO or Part 3 House which is required to be licensed may notify the Council that they intend to take steps to secure that the property no longer requires a licence. If the Council deems appropriate they may issue a Temporary Exemption Notice in relation to the property.

If a TEN is served the property in question will not require a licence for three months. A second TEN can be issued but only in exceptional circumstances.

Those letting a property which is required to be licensed can apply to Slough Council for a TEN via the online application system. In response to the application the Council will determine whether or not to grant a TEN. The Council's decision will be communicated to the applicant via written notice as per the requirements of the Housing Act 2004. A decision to refuse a TEN can be appealed at the First Tier Tribunal.

To reduce the risk of TENs being used to unreasonably avoid or delay the requirement to licence, the Council will need to be satisfied that the operator genuinely intends to take steps to secure the property is no longer required to be licensed. Consequently the Council may request the provision of additional information or evidence before granting a TEN. Depending on the measures being proposed by the applicant evidence may include, but is not limited to;

- a) tenancy or licence agreements
- b) copies of any dated written correspondence between landlord and tenant demonstrating the intention to reduce or change occupation of the property
- c) copies of any written notices to quit
- d) copies of notices from tenants surrendering their tenancy
- e) evidence that the property is on the market or has been sold

It is important to note that a second TEN can only be issued in exceptional circumstances. No further guidance exists to define 'exceptional circumstances', so each application for a second TEN will be considered on its own merit and the reasons for granting or refusing will be fully communicated to the applicant.

## **8. Appeals**

If an applicant disagrees with the Council's decision to issue, refuse, revoke or vary a licence; or with the decision to impose one or more licence conditions, or with the decision to refuse to vary a licence; they may make representations to the Council. Instructions on how to make a representation accompany all 'Notices of Intention' relating to licensing decisions. Representations relating to the imposition of certain conditions are determined by the Housing Regulation Manager. Representations relating to the refusal to grant or vary a licence; or the decision to revoke a licence are decided by the Housing Regulation Manager in consultation with the Group Manager- Community Safety, Housing Regulation and Enforcement.

If a relevant person wishes to appeal a 'Notice of Decision' relating to the granting of a licence; the variation of a licence; the revocation of a licence; the refusal to grant a licence; or the refusal to vary a licence a, they must make their appeal to the First Tier Tribunal (Property Chamber).

## **9. Enforcement**

The licensing system creates a number of criminal offences including:

- Operating an HMO without a licence
- Failing to comply with licensing conditions
- Failing to comply with Management Regulations
- Failing to comply with a Notice or Order served under Part 1 of the Housing Act 2004

Further information about the Council's approach to the enforcement of these and other offences under the Housing Act 2004 can be found in the Housing Regulation Enforcement Policy and the Council's Enforcement and Regulatory Services Enforcement Policy which are available on Slough Borough Council's website.

DRAFT

## Appendix

The following lists the matters the Council considers relevant to its decisions in respect of Selective and HMO Licensing. These matters are considered alongside those specifically set out in sections 66 and 89 of the Housing Act 2004.

**Please Note:** This is not an exhaustive list and the Council reserves the right to consider matters other than those listed here if they are relevant to decisions regarding the fitness of a person to be involved in the management of property; or to whether the property itself is suitable for use as an HMO.

### **Matters considered relevant to ‘fit and proper’ person determinations**

#### ***Failure to maintain or manage a property***

- Taking account of the general principles set out in section 7, any indication that a licence holder/ manager has failed to maintain or manage a property for which they have responsibility, will be a relevant consideration in any fit and proper decision.
- The Council will have regard to cases where category 1 hazards have been identified, especially where those hazards have arisen due to a lack of care and/ or maintenance of a property for which the proposed licence holder/ manager has responsibility. Instances which resulted in formal action e.g. the service of an Improvement Notice (S 11 and 12 of the Housing Act 2004) will be afforded more weight than cases that were resolved without the need to resort to formal action.
- Of particular concern will be cases that have resulted in the undertaking of works in default (WID) especially where the works have been necessary to deal with significant property hazards. The fact that WID have become necessary indicates that the responsible person has failed to grasp the seriousness of any enforcement notices or the risk posed to the safety of their tenants. Where the proposed licence holder/ manager has failed to pay the Council any monies owed for WID, the Council will consider whether this may be indicative of a lack of sufficient funds to adequately manage a licensed property.
- Breaches of licence conditions or HMO management regulations will be afforded considerable weight in determining whether a person is suitable to hold a licence or manage a licensed property. Similarly, if a person has been refused a licence in the past the Council will have regard to the reasons for refusal, taking into account the general principles set out earlier in this policy.
- Where an inspection of the subject property is carried out prior to the application being determined, the findings of the inspection will inform any fit and proper person decision. In line with the general principles in section 7 of this policy, the seriousness and extent of any hazards or contraventions will be taken into consideration, as will the conduct and level of cooperation shown to the licence/holder manager in dealing with hazards. Where conditions are found to be poor, but an outright refusal of the licence is not reasonable the Council may issue a reduced term licence.

### ***Failure to fulfill obligations e.g. electrical certificates, gas safety records, smoke detection***

- Any failure by a licence holder/manager to meet a minimum legal requirement relating to safety will be considered a highly significant matter in licensing decisions. Examples of matters considered relevant are a failure to provide a landlords gas safety record, or electrical installation condition report, as required by The Gas Safety (Installation and Use) Regulations 1988 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, respectively.
- Repeated failure to provide a landlords gas safety record when requested by the Council is considered so serious that it is likely to result in the refusal of the licence; or if the property is already licensed to the revocation of the licence.
- Contraventions of the Regulatory Reform (Fire Safety) Order 2005, which is enforced by the Fire Service will also be considered relevant.

### ***Formal Action***

- Contraventions necessitating a formal intervention (e.g. the issuing of a statutory notice or order or the issuing of a civil financial penalty) will be considered relevant; however, there may be occasions where formal action is undertaken to deal with unforeseen events that could not have been prevented by a licence holder / manager; for example 'acts of God' like flooding, or accidental fires. Formal action undertaken by the Council in response to such events e.g. Emergency Prohibition Orders, are likely to be of limited relevance to licensing decisions.
- Civil penalties and prosecutions will be considered significant factors in licensing decisions.

### ***Protection from Eviction Act 1977***

- Evidence indicating the licence holder/ manager has been involved in unlawful eviction or harassment of a tenant, even in the absence of a conviction, is a significant concern for the housing regulation team. However, where there has been an allegation of unlawful eviction or harassment but no conviction, the allegation will only be considered if there is evidence suggesting an offence has been committed.

### ***Failure to protect tenancy deposit in Tenancy deposit protection scheme.***

- A failure to protect a tenancy deposit, or any related failure under the Localism Act 2011, section 184 will be considered relevant to the decision about whether a person is fit and proper to be involved in the management of a licensed property.

### ***Breaches of Tenant Fees Act 2019 or Relevant Consumer Protection Requirements***

- Breaches of the tenant fees act are generally enforced by Trading Standards but they are considered relevant to Licensing decisions.

- Breaches of the Tenant Fees Act, and of the requirement to protect a deposit will be considered especially significant where the perpetrator is a letting agent or portfolio landlord who can reasonably be expected to have a greater understanding of legal requirements than an individual landlord of one property.
- Failure by a letting agent to register with a Redress scheme or Client Money Protection Scheme will be considered relevant conduct.

***Notices/ Orders relating to ASB Crime and Policing Act 2014***

- Where a licence holder/manager has failed to engage with the Council or its partners (e.g. Thames Valley Police) to deal with ASB or criminal activity in their rented properties, this will be considered relevant to licensing decisions. Cases involving formal action under the above legislation e.g. the making of Closure Orders will be of particular concern.

***Planning breaches***

- Where breaches of planning control are identified the Council will consider reducing the term of the licence to one year to allow a pending planning application to be determined. Similarly, where an application relates to an occupied outbuilding which does not benefit from planning permission the Council will consider issuing a one year licence to allow a pending planning application to be determined.
- In any case where a planning breach leads to the issuing of a one year licence, the proposed licence holder (and applicant if different) will be strongly encouraged to contact Slough Borough Council's planning department at the earliest opportunity. On the expiry of the one year licence and when any subsequent licence application is processed, if no attempt has been made to address the planning breach, the licence may be refused. If planning permission has been sought but refused this may also lead to the refusal of a licence.
- Other planning breaches including failure to comply with a statutory notice, will also be considered relevant; subject to the general principles set out in Section 7.

***Offences relating to waste from privately rented properties***

- The Waste Duty of Care Code of Practice (November 2018) clearly states that waste generated on a domestic premises that is used for commercial purposes is not household waste. Licence holders/managers are therefore obliged to comply with the relevant duty of care provisions when storing, transporting, transferring and disposing of waste. Furthermore the Management of Houses in Multiple Occupation (England) Regulations 2006 (as amended) also requires that those operating HMOs provide to the occupants of any HMO, sufficient waste storage facilities. Accumulations of waste can have a detrimental impact on the visual amenity of an area, as well as causing a public health risk. Consequently records of contraventions relating to management of waste from a rented property will be considered relevant in any fit and proper person or licensing decision.

## **Matters Relevant to the Assessment of Management and Funding Arrangements**

In order to grant an HMO or Selective licence the Council must be satisfied that the management arrangements for the property are suitable. The following should be in place to ensure satisfactory management of any rented property.

- Occupants of the property, whether tenants or licensees, are issued with written terms of occupation of the property;
- Where applicable licence holders protect tenancy deposits in one of the Government approved schemes and the prescribed information is provided to tenants within the appropriate timescales as specified in the Localism Act 2011;
- Where rent is paid in cash, occupants are issued with receipts or provided with a rent book for recording rental payment;
- Inspections of the property are carried out at a frequency commensurate with the type of dwelling
- An effective process for dealing with anti-social behaviour and nuisance.
- Occupants are provided with a contact to which they can report repairs or problems; including a 24 hour contact for emergencies.
- In cases where the manager is not the licence holder, the manager is authorized to fund repairs and to deal with any risks arising at the property.
- The licence holder has sufficient funds available to manage and maintain the property; in particular to respond to the need for urgent works to protect the health and safety of the occupants.

This page is intentionally left blank

## EQUALITY IMPACT ASSESSMENT

The Equality Act 2010 requires all public bodies, including local authorities, to show “due regard” to the impact their policies and procedures have on people from different groups. This includes gender, race, religion, age, disability, sexual orientation and gender identity. We also have a responsibility to foster good community relations. Although they are not a legal requirement, conducting a basic assessment will allow you to look at the possible implications of a policy or procedure, and take any mitigating action if appropriate.

Remember:

- Equality Impact Assessments (EIAs) should be carried out on **relevant** policies and procedures. Not all policies or procedures will require them. If you are unsure if one is required, please contact the Equality and Diversity Manager on 01753 875069 for advice.
- Assess any potential impacts, positive and negative, in a proportionate way and with relevance
- Make decisions that are justified, evidenced, relevant and identify any mitigating proposals
- Prioritise expenditure in an efficient and fair way
- Have a record showing that the potential impacts have been considered and that decisions are based on evidence

It is important the EIA is carried out at the earliest opportunity to ensure that you have the time to undertake any additional work that will inform your decisions, for example community engagement.

*All relevant committee reports should include an equalities impact assessment. This will ensure that equalities considerations are available for members to consider as part of the formal decision-making process. If your EIA is part of a Cabinet Report, please forward it to Democratic Services, along with your other committee paperwork. It is usual to publish the EIA with the other public papers in advance of a committee meeting. Please also remember to complete the EIA section of the report checklist and the EIA summary section on the report itself.*

**If you have any questions or concerns, please contact the Equality and Diversity Manager on 01753 875069.**

# Equality Impact Assessment

<b>Directorate: Place and Community</b>	
<b>Service: Housing Regulation</b>	
<b>Name of Officer/s completing assessment: Rhian Richards</b>	
<b>Date of Assessment: 25/05/2022</b>	
<b>Name of service/function or policy being assessed: Housing Regulation Enforcement Policy , Licensing Decisions policy and Revised Policy for Civil Financial Penalties</b>	
1.	<p><b>What are the aims, objectives, outcomes, purpose of the policy, service change, function that you are assessing?</b></p> <p>Slough Borough Council enforces a wide range of legislation across its many regulatory functions and in doing so the Council is required to have regard to the principles set out in the Regulators Code. The Council has a high level Cabinet approved Enforcement Policy which adheres to these principles; and officers across the Council’s regulatory and enforcement services utilise this policy when making their enforcement decisions. The Council’s regulatory and enforcement policy is available here:</p> <p>It is recognised however that due the variety of legislation enforced across the Council, service specific enforcement policies which provide a more detailed explanation of how the Council interprets legislation, may be necessary in some areas.</p> <p>The housing regulation team implement and enforce a range of legislation relating the regulation of private housing in Slough including Part 1 of the Housing Act 2004 which relates to housing conditions and Part 2, 3 and 4 which relate to HMO and selective property licensing. The vast majority of the team’s work is focussed on the private rented sector however some functions, for example the requirement under the Housing Act 2004 to assess hazards in domestic dwellings, applies to other private housing, including owner-occupied homes.</p> <p>In carrying out their functions officers from the housing regulation team are required to take regulatory decisions which involve interpreting legislation, statutory and non- statutory guidance and codes of practice. There is always a risk of inconsistency where individuals take decisions based on their interpretations of the legislation alone and consequently written policies are often a requirement where new legislation or enforcement tools are introduced by the Government.</p> <p>The policies to which this EIA relates are designed to provide a framework for consistent decision making in matters relating to the regulation of private housing, particularly privately rented housing in Slough. The Policy and its appendices are also designed to provide</p>

	<p>to the public, information about how they can expect their cases to be dealt with by the housing regulation team. It is hoped that these policies will help the Council to demonstrate its commitment to transparency and accountability. Finally the policies meet the requirements set out in a range of statutory guidance to publish and maintain written policies or statements of principle concerning the use of certain enforcement tools introduced under the Housing and Planning Act 2016.</p> <p>The policies do not encompass a wide ranging change in approach by the housing regulation team to their enforcement functions, but rather provide clarity around the decision making process and reflect the need for existing policies to be recorded. The policies will provide officers with a decision making framework, giving them the confidence to be robust but fair. Crucially, the policies will increase the public's understanding of the rationale behind individual decisions and improve their ability to hold officers to account for those decisions and to challenge them through the appropriate legal channels should they wish to do so; appealing a notice at first tier tribunal for example.</p>
2.	<p><b>Who implements or delivers the policy, service or function? State if this is undertaken by more than one team, service, and department including any external partners.</b></p> <p>The policies relate primarily to the activities of the housing regulation team. However increasingly the housing regulation team relies on colleagues in the resilience and enforcement team to assist in the delivery of functions, particularly relating to property licensing. The Revised Civil Financial Penalties protocol which is an appendix to the main enforcement policy is also utilised by Trading Standards in determining the appropriateness and level of financial sanction levied for breaches of relevant consumer protection legislation relating to letting agents.</p> <p>There is a significant element of multi-agency working involved in the delivery of the housing regulation teams functions including for example working with Royal Berkshire Fire and Rescue Service and Thames Valley Police and other agencies may be consulted prior to enforcement decisions being made (this is reflected in the policy) however ultimately the decisions are made by the Council in accordance with its scheme of delegation.</p>
3.	<p><b>Who will be affected by this proposal? For example who are the external/internal customers, communities, partners, stakeholders, the workforce etc? Please consider all of the Protected Characteristics listed (more information is available in the background information). Bear in mind that people affected by the proposals may well have more than one protected characteristic.</b></p> <p>The policy has the potential to affect any person who lives in, owns or manages any private domestic property in the borough of Slough. However, the policies are of greatest relevance to those living in, owning, letting or managing privately rented accommodation in Slough. The private rented sector makes up about 30% of the housing in Slough which is above the English average of around 21%.The Council</p>

does not routinely collect data on the demographic characteristics of these groups however there is national data available relating to some protected characteristics. Of course, it cannot be assumed that the situation in Slough reflects the national picture exactly, but in the absence of local data it provides a reasonable evidence base for this assessment. Furthermore, where observations and anecdotal evidence indicates the Slough picture may deviate from the national picture it is noted below.

**Age:** According to Data published by MHCLG based on the 2018 English Housing Survey data the percentage of persons who rented their home (versus other forms of tenure) was highest in young adults [renting from a private landlord - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](#). The percentage of persons from each age group (16-24, 25 to 34, 35 to 34, etc.) that rent their home generally decreases with age, however the 25-34 represents the largest group. However the ONS published data in 2017 indicating that households in the 45 to 54 years age group saw the biggest percentage increase in proportion of persons renting between 2007 and 2017 so the picture may be shifting with time.

In 2017, 35% of one adult households with children, lived in private rented sector which is similar to the proportion in social housing. However in 2007 15% of the same group lived in private rented housing.

Conversely, on average landlords tend to be older than the general population with 59% aged 55 years or older.

The average age for a Slough resident is 33. Assuming the demographic characteristics of private tenants in Slough match those of the UK it is likely that the introduction of these policies will have a largely beneficial impact on residents in Slough, who are on average younger than in the rest of England. Some landlords may be disadvantaged by the policies as they will improve the efficiency of the regulatory process, resulting in a possible increase in enforcement activity. However, compliant landlords may actually benefit from this as it will create a fairer playing field for all those operating in the sector.

**Disability:**

An online search of publicly available data found an ONS report from 2019, based on its Annual Population Survey, which indicated that 14.9% of disabled people lived in privately rented housing. This is below the English average for non-disabled people. One report by the charity Mencap found that 3% of people with learning disabilities known to social services lived in privately rented accommodation in England. There is no reason to believe that the policies will impact disabled people more than the general population.

**Gender Reassignment:**

An online search found little evidence relating to this protected characteristic and its relationship to private housing to be scant but it is not anticipated that the policies will impact those who have undertaken or will undertake gender reassignment more than any other individual.

**Marriage and Civil Partnership:**

The housing regulation team anticipates that the impact on those in a civil partnership or married will not be significantly different from those not in those relationships. However, single people and those in relationships living in HMOs are likely to be positively impacted by improved regulation of the private rented sector as it is these properties that are regulated through the licensing schemes and licensing decisions policy to which this assessment relates.

**Pregnancy and maternity:**

The policies will affect pregnant women and women with young babies in the private rented sector positively as better enforcement will ultimately result in improved housing conditions and health outcomes for this group and for their children.

**Race:**

Data gathered by MHCLG in their English Private Landlord Survey in 2018 [English Private Landlord Survey 2018: Main report \(publishing.service.gov.uk\)](#) indicates that the majority of landlords in England and are White (89%). It is likely that the picture in Slough differs from the the national picture as the ethnic makeup of the population in Slough is more diverse than the English population generally and consequently it would be reasonable to assume that there is also greater diversity in the landlord population.

Ethnicity data for Slough from 2011 census is as follows:

	White ethnic groups	Mixed ethnic groups	Asian ethnic groups	Black ethnic groups	Arab ethnic group	Other ethnic group	Non-white ethnic group
Slough	45.7	3.4	39.7	8.6	0.7	1.9	54.3
Baylis and Stoke	26.9	2.4	61.1	7.3	0.3	2.0	73.0
Britwell and Northborough	64.1	5.2	15.8	13.8	0.6	0.5	35.9

Central	34.0	3.1	50.5	9.8	0.9	1.7	66.0
Chalvey	32.0	3.2	49.3	12.6	1.0	2.0	68.0
Cippenham Green	63.6	3.6	25.1	5.9	0.9	1.3	36.8
Cippenham Meadows	49.3	3.6	34.8	9.9	1.0	1.3	50.7
Colnbrook with Poyle	58.8	4.0	28.2	6.8	0.8	1.3	41.2
Elliman	30.1	3.0	54.4	9.5	0.5	2.3	69.9
Farnham	39.3	3.4	44.2	10.3	0.5	2.4	60.7
Foxborough	53.3	4.1	25.9	14.7	0.5	1.6	46.7
Haymill and Lynch Hill	69.0	4.2	18.7	6.3	0.3	1.0	30.5
Langley Kederminster	49.5	3.5	36.2	8.0	0.7	2.2	50.5
Langley St Mary's	56.0	2.9	32.5	5.6	0.7	2.3	44.0
Upton	31.2	2.9	57.9	4.1	0.5	3.3	68.7
Wexham Lea	38.9	2.6	49.1	6.2	0.5	2.7	61.1

In 2019, when the property licensing schemes were proposed by the housing regulation team and approved by Cabinet, the accompanying EIA referenced anecdotal evidence that the landlords in the Chalvey and Central Wards where the Council's Selective scheme operates, were primarily from the Asian (particularly Pakistani) community. It is not clear whether the anecdotal evidence referred to was collected during the various consultation events that were run at the time, or whether they were observations made by officers from the team who were working in the area. The local census data indicates that the Chalvey and Central wards do indeed have a higher proportion of persons identifying as being from Asian ethnicity than for the slough population as a whole. It seems possible then, the elements of the policies that relate to Licensing will both negatively and impact this ethnic group more than others. It is important to note however that not all of the landlords operating in Slough live in the borough so the landlord population may not have the same demographic profile as the local resident population. Furthermore, the policies themselves cover the full range of enforcement functions carried out by the housing regulation team and therefore they affect all wards within the borough and all landlords irrespective of whether their properties are covered by the licensing schemes. Furthermore, the policies are designed to improve transparency in decision making and to make it easier for landlords of all ethnicities to understand regulatory processes; and to challenge the decisions of the Local Authority; therefore the policies will benefit landlords more generally.

Data published by MHCLG based on the English Housing Survey in 2018 indicates that those from BAME communities are over represented in the private rented sector compared to the general population [Renting from a private landlord - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://www.gov.uk/government/statistics/renting-from-a-private-landlord-ethnicity-facts-and-figures). Given the diversity of the population in Slough it is reasonable to assume that the local picture is similar to the national one, with BAME communities making up a significant proportion of private tenants. These groups will therefore receive a disproportionate benefit from these policies which will improve enforcement and ultimately conditions in the private rented sector. Furthermore the private rented sector is likely to be the only housing sector open to migrants moving to Slough, some of which may not understand their rights and entitlements as private tenants. Better enforcement will benefit these groups also.

### Religion and Belief:

Census data for Slough (2011) indicated that the population has the following characteristics in relation to religious beliefs:

Data on the religion of the population by electoral ward is as follows:

	Christian	Buddhist	Hindu	Jewish	Muslim	Sikh	Other religion	People with no religion
Slough	41.2	0.5	6.2	0.1	23.3	10.6	0.3	12.1
Baylis and Stoke	25.9	0.1	4.1	0.0	45.1	11.9	0.5	6.7
Britwell and Northborough	56.2	0.2	2.4	0.0	11.4	2.7	0.4	20.1
Central	33.1	0.8	6.8	0.1	36.4	7.1	0.5	9.5
Chalvey	32.9	0.5	6.4	0.0	38.6	6.6	0.3	8.9
Cippenham Green	51.1	0.6	4.6	0.0	13.6	7.3	0.4	16.4
Cippenham Meadows	42.6	0.5	7.1	0.0	19.9	9.6	0.3	14.5
Colnbrook with Poyle	49.0	1.1	5.6	0.0	11.6	11.0	0.4	15.9
Elliman	32.7	0.6	5.4	0.0	35.0	13.3	0.4	7.3
Farnham	39.3	0.8	5.6	0.0	25.9	14.7	0.3	8.0
Foxborough	50.6	0.8	5.6	0.0	14.7	6.1	0.4	15.1
Haymill and Lynch Hill	55.2	0.6	4.2	0.1	7.7	5.6	0.3	20.0

Langley Kedermister	43.2	0.5	8.9	0.1	15.3	12.7	0.4	13.9
Langley St Mary's	47.6	0.3	7.9	0.1	11.0	13.1	0.4	13.9
Upton	29.0	0.5	12.7	0.0	19.7	25.0	0.3	7.5
Wexham Lea	38.0	0.3	4.7	0.2	31.3	12.1	0.2	7.9

The data indicates that the wards affected by Selective Licensing have comparatively large proportions of their populations identifying as Muslim compared to the Slough population at large. Consequently, the Muslim population could be disproportionately affected by the introduction of the licensing decisions policy. The effects could be both positive and negative as Muslim residents living in the areas are likely to benefit from improved property management of rented property; along with residents of all religions and none. However, improved regulation and any increases in enforcement action that result from the policies might negatively affect some non-compliant landlords. Also it is important to note that the population data relates to those living in the area and not to the landlords or owners of the properties in the area. It is possible that the demographic characteristics of the landlords operating in Slough do not precisely reflect the demographic characteristics local residential population.

**Sex:** Anecdotal evidence suggests that young single males without dependents are more likely to live in HMOs than the general population therefore they are likely to benefit from these policies and their implementation. However, Landlords are also more likely to be male so there will be both a positive impact on them through improved transparency, information etc. (as described in previous sections); and a negative effect if there is an increase in the amount of enforcement leading to sanctions.

**Sexual orientation:**

There is limited data available on this characteristic and private rented housing. There is no reason to believe that there will be a disproportionate impact on persons of a specific sexual orientation.

**Other:**

4.	<p><b>What are any likely positive impacts for the group/s identified in (3) above? You may wish to refer to the Equalities Duties detailed in the background information.</b></p> <p>Tenants of privately rented properties are more likely to be younger, non-white, and lower paid therefore improved consistent regulation of the private rented sector, is likely to disproportionately benefit these groups.</p> <p>However, landlords, who are more likely to be from an older age group, white and from less deprived backgrounds will also benefit from a more transparent regulatory environment where legal requirements and expectations are communicated clearly in writing. It also gives all those subject to enforcement action information on which to make representations or legal challenges, therefore improving access to justice for everyone.</p>
5.	<p><b>What are the likely negative impacts for the group/s identified in (3) above? If so then are any particular groups affected more than others and why?</b></p> <p>The policies are designed to promote fair and transparent enforcement in the private rented sector. As the enforcement decisions guided by these policies will primarily, though not exclusively, relate to those who own or manage property there could be an inequitable negative impact on older age groups who are more likely to be landlords; particularly if the policies lead to an increase in enforcement action.</p> <p>However, this is acceptable as enforcement will be targeted at those that are breaching rules that are designed to protect the health and well-being of residents and the wider community and consequently, in the longer term, improved enforcement will benefit everyone, including compliant landlords. Furthermore, the publication of these policies benefits even those subject to enforcement action, providing them with a clear basis for legitimate challenge of enforcement decisions. It also allows the Council to be held to account for the principles of consistency, fairness and proportionality.</p>
6.	<p><b>Have the impacts identified in (4) and (5) above been assessed using up to date and reliable evidence and data? Please state evidence sources and conclusions drawn (e.g. survey results, customer complaints, monitoring data etc).</b></p> <p>The Data sources used to inform this assessment have been drawn from publicly available sources such as the Census, via the Council's online 'Insight Tool'..</p>

	<p>The housing regulation team does not routinely gather equalities monitoring data in the performance of their functions and therefore certain assumptions have been made about the demographic characteristics in Slough, based on publically available local data and trends at the national level. This may affect the reliability of the assessment.</p>
7.	<p><b>Have you engaged or consulted with any identified groups or individuals if necessary and what were the results, e.g. have the staff forums/unions/ community groups been involved?</b></p> <p>The specific policies have not been subject to consultation as they do not reflect a significant divergence from the current approach to decision making but rather seek to record in written form policies already being implemented; There are elements of the housing regulation team's functions that have been subject to extensive public consultation particularly the introduction of the Selective and Additional licensing schemes in 2019 and the results of that consultation were presented to Cabinet in March 2019.</p> <p>There is no legal requirement for the policies to be subjected to public consultation and there is no precedent for enforcement policies at Slough Borough Council to be subjected to public consultation.</p>
8.	<p><b>Have you considered the impact the policy might have on local community relations?</b></p> <p>As already stated the policies do not constitute a significant departure from current decision making processes but rather formalise and record them. Consequently it is unlikely that the policies will have an effect on community relations.</p>
9.	<p><b>What plans do you have in place, or are developing, that will mitigate any likely identified negative impacts? For example what plans, if any, will be put in place to reduce the impact?</b></p> <p>The policies themselves are designed to improve transparency and consistency in decision making and to encourage officers to reflect more deeply on the rationale for their enforcement decisions. Alongside the introduction of the policies the team are implementing procedures that improve scrutiny of enforcement decisions through peer review. For example, many licensing decisions relating to HMOs are now discussed at regular panel meetings made up of property licensing coordinators and housing regulation officers, to ensure that the decisions are balanced and proportionate. These meetings also involve consideration of the risks associated with taking certain enforcement decisions which should help to reduce the risk of unforeseen consequences.</p>

	<p>It is routine practice for enforcement decisions to include consideration of the potential impacts on vulnerable groups; indeed officers are legally required to provide a statement of reasons for taking their chosen course of action when enforcing certain elements of the Housing Act 2004.</p> <p>Where the housing regulation team is minded to take criminal proceedings for an offence or to issue a civil penalty there are a series of checks and balances built into the process including quality assurance and oversight by the housing regulation manager, group manager and in the case of criminal proceedings, HB law..</p> <p>;</p>
10.	<p><b>What plans do you have in place to monitor the impact of the proposals once they have been implemented? (The full impact of the decision may only be known after the proposals have been implemented). Please see action plan below.</b></p> <ul style="list-style-type: none"> <li>• Assuming the policies are approved, within the first 12 months regular governance and performance management discussions between the housing regulation manager and the group manager for community safety, housing regulation and enforcement will be used to monitor the impact of the policies; 12 months from the date of implementation the housing regulation team will conduct a formal review of the impact of the policies on the level of enforcement as measured by the number of formal actions; the success of the enforcement action as measured by the number of cases resolved and number of successful challenges; and the qualitative impact on residents, particularly in relation to hazards removed from properties etc. As part of this review the housing regulation team will undertake an analysis of a sample of cases in an attempt to identify any unintended impacts associated with the implementation of the policies. If necessary a further EIA will be completed and amendments made to the policies. The review will be recorded and escalated to the relevant Director/Associate Director in the first instance. Substantial changes will be subject to further member scrutiny and approval.</li> <li>• The housing regulation team will explore the possibility of gathering relevant demographic data from clients subject to all relevant data protection requirements and the Council's policies. The team will look at the benefits and risks associated with the collection of such data and the technical feasibility of collection using the current systems and processes.</li> <li>• In order to better understand the impacts of the property licensing schemes the housing regulation team, one option would be to collect equalities monitoring data from licence holders and the occupants of licensed properties via an anonymous survey which individuals will be invited to complete via an online form. This will be analysed to identify if there are any unintentional impacts associated with the schemes. The data will have certain limitations as respondents will be self- selecting, and many may choose not to respond</li> </ul>



<b>What course of action does this EIA suggest you take? More than one of the following may apply</b>	✓
<b>Outcome 1: No major change required.</b> The EIA has not identified any potential for discrimination or adverse impact and all opportunities to promote equality have been taken	
<b>Outcome 2: Adjust the policy</b> to remove barriers identified by the EIA or better promote equality. Are you satisfied that the proposed adjustments will remove the barriers identified? (Complete action plan).	
<b>Outcome 3: Continue the policy</b> despite potential for adverse impact or missed opportunities to promote equality identified. You will need to ensure that the EIA clearly sets out the justifications for continuing with it. You should consider whether there are sufficient plans to reduce the negative impact and/or plans to monitor the actual impact (see questions below). (Complete action plan).	
<b>Outcome 4: Stop and rethink</b> the policy when the EIA shows actual or potential unlawful discrimination. (Complete action plan).	

### Action Plan and Timetable for Implementation

At this stage a timetabled Action Plan should be developed to address any concerns/issues related to equality in the existing or proposed policy/service or function. This plan will need to be integrated into the appropriate Service/Business Plan.

Action	Target Groups	Lead Responsibility	Outcomes/Success Criteria	Monitoring & Evaluation	Target Date	Progress to Date

**Name:** \_\_\_\_\_

<b>Signed:</b> .....(Person completing the EIA)
<b>Name:</b> .....
<b>Signed:</b> .....( Policy Lead if not same as above)
<b>Date:</b> .....

**MEMBERS' ATTENDANCE RECORD 2022/23**  
**CUSTOMER & COMMUNITY SCRUTINY PANEL**

	<b>COUNCILLOR</b>	<b>6 July 2022</b>
1.	Begum (Chair)	P
2.	Muvvala (Vice-Chair)	P
3.	Ali	P
4.	Brooker	Ap
5.	Hussain	Ap
6.	Kaur	P
7.	M Malik	P
8.	S Malik	P
9.	Mohammad	P

P = Present for whole meeting P\* = Present for part of meeting Ap = Apologies given Ab = Absent, no apologies given

This page is intentionally left blank