Private Sector Housing Enforcement Policy 2021

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1.0 Introduction

1.1 The Private Sector Housing Enforcement Policy contains information on how the enforcement tools, provided by the Housing Act 2004, the Housing and Planning Act 2016 and other general legislation, can be

used fairly and consistently to achieve improvement to housing, health and the environment within the District.

1.2 The primary function of the Private Sector Housing (PSH) Team is to protect the health and safety of residents within the district through ensuring that they have safe and decent housing to live in.

1.3 Enforcement means action carried out in the exercise of statutory powers or duties. This is not limited to formal enforcement action such as prosecution or the issue of notices, but includes inspecting premises for the purpose of checking compliance with regulations and the provision of advice to aid compliance.

1.4 We recognise that most people and most businesses want to comply with the law. We will therefore take care to help them meet their obligations by giving advice in the first instance where possible.

2.0 The Team's objectives

- To monitor and improve standards and reduce the risks to health and safety within homes in the Private Sector.
- To improve energy efficiency in the home and help to tackle fuel poverty.
- To help bring empty homes back into use.
- To license Houses in Multiple Occupation under the mandatory HMO licensing scheme.
- To work closely with private sector landlords to help them achieve and maintain good standards within private rented accommodation.
- To assist and take enforcement action where necessary in the cleansing and clearing of filthy and/or verminous residential premises.
- To ensure that residential properties are compliant with fire safety legislation and provide adequate protection and warning in the event of a fire.

3.0 Powers and duties

3.1 The principle pieces of legislation used by the Private Sector Housing team are the Housing Act 2004 and the Housing and Planning Act 2016. However, there are circumstances where other pieces of legislation may be more appropriate in dealing with the problem. In some cases, a combination of the enforcement tools are used. Also over the last 5 years or so there have been many specific regulations covering specific aspects such as smoke and carbon monoxide alarms, electrical safety, and energy efficiency.

3.2 The officers of the Private Sector Housing Team are authorised to exercise executive functions through delegation in accordance with the Council's constitution. Each officer's delegation of powers can be viewed upon request. Delegation level is in accordance with qualifications and levels of experience of each officer.

3.3 Section 239 of the Housing Act 2004 states that a person authorised by the local authority may enter the premises in question at any reasonable time, for the purpose of carrying out a survey or examination of the premises. Before entering the premises in exercise of this power, the authorised person must give at least 24 hours notice of his intention to do so, to the owner (if known) and the occupier (if any). No inspection will take place without reason. Each officer within the team is authorised under section 239.

3.4 Where the Council needs to enter a property for the purpose of ascertaining whether an offence has been committed in relation to HMO licensing or HMO management, prior notice of entry does not need to be given. The Council can enter the property at any reasonable time.

3.5 If access is refused or if the giving of prior notification would defeat the purpose of entry the authorised officer can apply to the Justice of the Peace for a warrant to enter.

3.6 A person who obstructs a relevant person in the performance of their duties commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

3.7 The Housing Health and Safety Rating System

The Housing Act 2004 prescribes the methodology by which a residential premises must be assessed. This is called the Housing Health and Safety Rating System (HHSRS). The aim of the HHSRS is to identify deficiencies which may lead to a hazard. Each hazard is assessed and given a score and band. The bands determine whether it is a category 1 or category 2 hazard. There are 29 different types of hazard which can be assessed (a full list of these can be found in Appendix 1).

3.8 The Act places a mandatory duty on the Council to take action where category 1 hazards are present. If category 2 hazards are identified, the Council has a discretionary power to take action to deal with these.

4.0 Eligibility for service

4.1 The following situations may lead the Council to withdraw the service or not provide the service:

- Where a complainant has not taken reasonable steps to resolve the problem prior to contacting the council. e.g. liaising with their landlord.

- Where service requests are anonymous.

- Where tenants of their own free will move out of the property shortly after requesting service and before we can arrange a visit.

- Where tenants unreasonably or repeatedly fail to allow entry to the council's staff, the landlord, landlord's agent or builder, making it difficult to arrange or carry out the required works.

4.2 Service requests will receive a response within an appropriate timescale but the council's involvement will not automatically lead to legal proceedings.

4.3 Due to levels of service requests being extremely high, the PSH team operate a waiting list system. All non-urgent enquiries (i.e. situations that are not likely to cause immediate risk of serious harm) will be given a priority level and the service request will be placed on a waiting list. Priority is given based on seriousness of potential health effects of deficiencies reported. The customer will receive a letter explaining that there is a waiting list and that they will be expected to wait for their complaint to be investigated further. They will be encouraged to try and resolve the issues themselves by liaising with their landlord in the meantime. Any services requests deemed to be imminently dangerous will be visited within 24 hours.

4.4 Service requests from Leaseholders

The PSH team often receive complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. PSH team assistance will be limited to;

- Contraventions of the Management Regulations (this may necessitate action being taken against the leaseholder themselves).

- Category 1 and high category 2 hazards where the leasehold flat is tenanted.

- Statutory nuisances (as defined by the Environmental Protection Act 1990).

- Lack of or defective means of escape in case of fire or fire precautions in certain types of building.

4.5 In all other situations the leaseholder will be re-directed to the Leasehold Advisory Service email info@lease-advice.org.uk or to contact a solicitor who specialises in leasehold law.

5.0 Investigation of complaints and proactive work

5.1 When a member of the public makes a complaint about the conditions within their property, an officer from the PSH team will react to the complaint by visiting and carrying out an inspection. This may or may not result in any of the types of action set out in section 8 below.

5.2 The PSH Team carry out proactive work alongside reacting to complaints. This includes Temporary accommodation inspections (for the Housing Options Team), Immigration inspections (for which we charge a fee), planned multi-agency action days, targeted energy efficiency work, proactive project work through dataset interrogation and the Landlord Forum events run jointly with Dover District Council or the Folkestone & Hythe Housing Options Team. The team also give advice to landlords about all aspects of complying with housing standards and managing their properties.

5.3 Temporary Accommodation Inspections

The Housing Options Team lease properties from private landlords to provide temporary accommodation to homeless people. Where a tenant is due to move into a privately rented property an HHSRS trained member of the Housing Options Team will initially visit and assess the property. If hazards are identified which need a second opinion or further action to be taken the PSH team will then carry out an inspection.

5.4 The tenant would not be prevented from moving in to the property unless the hazards would cause an imminent risk of serious harm.

5.5 The landlord will be required to remedy any deficiencies which cause category 1 and/or high category 2 hazards. If the landlord fails to do this within a reasonable period of time, an enforcement notice may be served.

5.6 Immigration inspections

The Private Sector Housing team offer a service (chargeable by fee) to persons wishing to sponsor a person from another country to come and stay in the United Kingdom. As part of the visa application, the High Commission Office require a letter or report from the Local Housing Authority to confirm that the accommodation the applicant wishes to stay in is suitable for the number of persons living there and that it is free from hazards.

5.7 Any hazards found within the property would need to be remedied before a report can be issued to the visa applicant. This would involve contacting the owner of the property and asking for remedial works to be carried out. Enforcement notices may therefore be served if the responsible person fails to carry out the required remedial works.

5.8 Planned Multi-Agency Action Days

From time to time the PSH team will take part in planned and targeted multi- agency action days. Other agencies likely to be taking part would include the Kent Fire and Rescue Service, Kent Police, UK Border Agency, Trading Standards, Environmental Health, the Planning Enforcement Team, Housing Benefits Fraud Investigation, and other Community Safety Unit partners.

5.9 Any street or area targeted would be chosen because of an accumulation of intelligence from the relevant partners, which would suggest particular concentrations of problems in that area. For example this may relate to poor housing conditions, street cleansing issues, unusually high incidences of fire in a concentrated area, anti-social behaviour or high levels of crime.

5.10 The operation would consist of officers from each partner agency visiting door to door in a team in the specified area and where access is allowed, inspecting the premises and talking to the occupants to offer assistance and give advice where necessary. The PSH team can offer advice on housing problems and investigate any deficiencies through the normal procedure at a later date. Information gathered during these exercises can be used to inform where the PSH team need to target their resources and re-visits can be scheduled accordingly where assistance is required. If any category 1 hazards presenting an imminent risk of serious harm are found during an action day, emergency enforcement powers may be used on that day.

5.11 Landlord Forums

The team organises a Landlord Forum in conjunction with Dover District Council and Landlord Associations, which is held at Dover or Folkestone & Hythe offices on an alternating basis. The meetings are designed to give landlords information and raise awareness of important or new issues, by inviting guest speakers from various organisations and setting up stalls with posters and leaflets to give further information and advice. The PSH team also give support to the Housing Option Team's landlord events.

6.0 Our General Approach to Enforcement

6.1 We commit to good principles of enforcement which are in compliance with the statutory powers and all other relevant legislation including the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the General Data Protection Regulations (GDPR) 2018 and in accordance with any formal procedures and codes of practice made under the legislation in so far as they relate to our enforcement powers and responsibility.

6.2 The Council regards enforcement as encompassing all the actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful there will be cases where formal action will be necessary, which may ultimately lead to prosecution, penalty charges or other summary action.

6.3 PSH officers take a consistent approach to enforcement and only deviate from standard procedures where there is good reason.

6.4 It is important that property owners feel able to seek our advice and assistance without fear of inviting unnecessary or unwarranted enforcement action against themselves.

6.5 However, there may be circumstances, such as when there is an imminent risk to health, in which it may be necessary to take formal action in the first instance.

6.6 To avoid our resources being wasted on action that no one wants or needs us to take, we will only progress a case beyond the informal stage where there is clear benefit to the occupier or to neighbouring occupiers or to the public at large in doing so.

6.7 We will only take prosecutions in cases or serve financial penalties where it is in the public interest to do so and in accordance with the associated guidance and policies. We ensure that we have regard to the anticipated effects of the resulting publicity.

6.8 Works will only be required to be carried out if the cost and disruption caused by carrying out the works is in proportion to the harm arising from the hazard.

6.9 Before considering taking any action in tenanted properties, we will usually require the tenant to have contacted their Landlord. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Any copies of correspondence between the tenant and landlord should be provided to officers upon request.

6.10 Tenants will be expected to keep officers informed of any contact they have with their landlord (or landlords agent, builder etc) that may have an effect on what action the Council takes.

7.0 Enforcement Concordat and the Regulator's Compliance Code

7.1 The Council is signed up to the Enforcement Concordat and in general any enforcement action will be taken in line with the concordat document. The main principles of the concordat are openness, proportionality and consistency.

7.2 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances, we may conclude that a provision in the code is either not relevant or is outweighed by another provision. The Council will ensure that a decision to depart from the code will be properly reasoned, documented and based on material evidence.

8.0 Types of action and when appropriate to take action

8.1 In general, the following types of action will be taken, but any action taken will always depend on the circumstances of the individual case. The person requesting our help will be informed when our involvement has been concluded and given the reason(s) for this.

Action	Circumstance
No action	Complaints or allegations of housing conditions or statutory nuisances are unsubstantiated. Formal action is inappropriate in the circumstances.
Verbal advice	There is insufficient evidence of breaches of legislation. Immediate action is taken by the responsible person to comply with failures.
Informal letter	There is insufficient evidence of breaches of legislation. Immediate action is taken by the responsible person to comply with failures. Past history of dealing with the relevant parties allows confidence that informal action will achieve compliance. Conditions are not serious enough to justify formal action straight away. To notify the responsible person that action is required prior to taking formal action.
Formal notices	There are significant failures of statutory requirements. There is a lack of confidence in the individual or management particularly

Action	Circumstance
	in the willingness to respond to an informal approach. There is obstruction or assault. There is a history of non-compliance or informal action has not secured compliance. The Council is required to serve a statutory notice. The defect presents an imminent risk to health.
Works in Default – Emergency remedial action	There is an imminent risk to health and safety to the public. Prosecution would not adequately protect the public interest. The responsible person is unable or unwilling to take remedial action immediately.
Works in Default – non compliance with a notice	The Council may choose to carry out works required by a notice if they have not been completed within the permitted time. This may be taken in conjunction with or followed by a prosecution.
Revocation of HMO licences	Licence holder or Manager is no longer a 'fit and proper person'. The premises concerned ceases to be an HMO.
Formal Caution	A formal caution will be considered for less serious offences where to person committing the offence agrees to accept a caution.
Prosecution	There is sufficient and reliable evidence that an offence has been committed. There is a realistic prospect of conviction and the prosecution is in the public interest.
Rent Repayment Orders	Made by the first tier tribunal and grant to either tenant or local authority (where benefits have been used to pay rent). The Housing and Planning Act 2016 extended the range of offences that these can be awarded for.
Proceeds of Crime	Power under the Proceeds of Crime Act 2002 will be considered in appropriate cases with the Head of Legal and the relevant Director

Action	Circumstance
Civil Penalties	Annex 1 to this policy sets out the decision making process regarding whether to use a civil penalty and at what level it should be charged
Penalty Charge Notices	The Redress Schemes for letting agency work and property management work (requirement to belong to a scheme etc.)(England)Order 2014 – the penalty charge for non-compliance will normally be £5,000 but on representation this charge may be reduced or even quashed. The Smoke and Carbon Monoxide (England) Regulations 2015 – penalty charges of up to £5,000 for non-compliance – see the council's Statement of principles on charging contained within Appendix 2 Policy. The Minimum energy Efficiency Standards Regulations – penalty charges of up to £5000. See appendix 3.
Banning Orders	The council may apply for a banning order at first tier tribunal. A list of Banning Order offences can be found in the Housing and Planning Act 2016 (Banning Order) Regulations 2018.
Rogue Landlord Database	The council can enter details of landlords considered to be "rogue" onto the government database. It is available to all Local Authorities to enable them to share information about criminal landlords who operate in multiple areas.

8.2 Where formal action is required officers will provide;

• Clear information and advice to all relevant parties about the reasons for the type of action chosen (for Housing Act formal enforcement, this will be in the form of a section 8 statement accompanying the notice).

• Ensure an opportunity is given to discuss what is required before formal action is taken (unless urgent action is required).

• Advise the relevant parties of the named officer responsible for dealing with their case.

• Give a written explanation of any rights of appeal at the time the notice is served.

• Notify the relevant parties about any financial charge that the Council may apply and seek to recover the charge as part of the enforcement process.

8.3 Types of Enforcement Notices

Action which can be taken under the Housing Act 2004 includes:-

8.3.1 Hazard Awareness Notice – This is used when a hazard has been identified but is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. The notice cannot be enforced or appealed against.

8.3.2 Improvement Notice – This is used where reasonable remedial works for a specified period of time or until a specified event occurs.

8.3.3 Prohibition Order – This may prohibit the use of part or all of the premises for some or all purposes or for occupation by a particular number or description of people. This type of action may be appropriate where remedial action is unreasonable or impractical. It can also be used to limit the number of people occupying a dwelling or prohibit the use of the premises by specific groups (e.g. children or the elderly). This can be suspended for a specified period of time or until a specified event occurs.

8.3.4 Emergency Prohibition Order – this type of action is only used where there is at least one category 1 hazard which presents an imminent risk of serious harm and where it is not practical to carry out remedial works. It can prohibit the use of all or part of the property with immediate effect.

8.3.5 Emergency Remedial Action – this type of action is only used where there is a category 1 hazard which is an imminent risk of causing of serious harm. The remedial works to eliminate the immediate risk will be carried out by the Council and the cost of the works will be recovered from the responsible person. Emergency remedial works will only be carried out once all attempts to contact the responsible person have failed or when the responsible person fails to respond immediately.

8.3.6 Demolition Order – this can only be served where category 1 hazards exist (but not for listed buildings). When deciding whether to use this type of action the views of all interested parties, the availability of accommodation, and the possible use of the cleared site must be taken into account.

8.3.7 Clearance Area – All of the residential buildings within a declared clearance area must have at least one category 1 hazard. The availability of the accommodation and the potential use of the cleared site must be considered.

8.4 Other legislation

The PSH team can use various other pieces of legislation if the Housing Act 2004 is not appropriate or does not sufficiently deal with the problem. This includes:-

8.4.1 Environmental Protection Act 1990 – Notices can be served under section 80 if there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.

8.4.2 Building Act 1984 – There are a few provisions under this act, which include:-

- Section 59/60 can be used to deal with defective drainage
- Section 64/65 is used where sanitary conveniences are insufficient or are in need of replacement and are considered to be prejudicial to health or a nuisance
- Section 76 can be used where the property is so defective as to be prejudicial to health. This notice tells the responsible person of the Council's intention to remedy the problem (like works in default).

8.4.3 Public Health Act 1936

- Section 45 is used where there are defective sanitary conveniences due to repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance.
- Section 84 is used to cleanse and disinfect a property and remove and destroy vermin.

8.4.4 Public Health Act 1961 – section 17 can be used to repair any drain, private sewer, water closet, waste pipe or soil pipe (where the cost of works in default are £250 or less).

8.4.5 Local Government (Miscellaneous Provisions) Act 1976

- Section 16 is used to formally request information about a property and who are the interested parties.
- Section 33 can be used to re-instate service supplies (such as water, electricity or gas) where they have been disconnected in a domestic property.

8.4.6 Prevention of Damage by Pests Act 1949 – section 4 can be used to deal with harbourage of pests

8.4.7 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – this means that, since 1 April 2018, private landlords may not let domestic properties on new tenancies to new or existing tenants if the Energy Efficiency Certificate (EPC) rating is F or G (unless an exemption applies).

- From 1 April 2020 the prohibition on letting F and G properties will extend to all relevant properties, even where there has been no change in tenancy.
- If a local authority believes a landlord has failed to fulfil their obligations under the MEES Regulations, they can serve the landlord with a compliance notice. If a breach is confirmed, the landlord may receive a financial penalty. See Appendix 3 for more details of levels of penalty likely to be imposed.

8.4.8 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 – there is a penalty charge of up to £5,000 for not having a smoke alarm on every level of a premises used as a private rented dwelling and for not having a Carbon monoxide alarm fitted in rented dwellings where there are solid fuel appliances. The council has published a statement of principles regarding its fine structure. See Appendix 2 for more details.

8.4.9 The Redress Schemes for letting agency work and property management work (requirement to belong to a scheme etc.) (England) Order 2014 – the penalty charge for non-compliance will normally be £5,000 but on representation this charge may be reduced or even quashed. This decision would be made in consultation with the council's legal team and the relevant director.

8.5 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – from 1 July 2020, all new private tenancies in England will need to ensure that electrical installations are inspected and tested by a qualified person before the tenancy begins. The landlord will then need to ensure that the installation is inspected and tested at least every five years – and more often if the most recent safety report requires it.

- For existing tenancies, an electrical safety test will need to be carried out by 1 April 2021, with regular tests following this as outlined above.

- Local authorities can impose a financial penalty of up to £30,000 for a breach of the regulations. The existing financial penalties policy at Annex 1 will be used to determine the level of penalty.

9.0 HMOs and HMO licensing

9.1 What is an HMO?

In order to determine whether a property is an HMO, the following four tests must be applied.

- **The Standard Test** – Any building which consists of one or more units of accommodation which are not self-contained and where two or more households share one or more basic amenities, or where the accommodation is lacking basic amenities.

- **The Self-contained flat Test** – Any part of a building which is a self-contained flat, which consists of one or more units of accommodation, in which two or more households share one or more basic amenities or where the accommodation is lacking in basic amenities.

- **The Converted Building Test** – Any building which has been converted and contains one or more units of accommodation, which are not self-contained (whether or not the building also consists of some self-contained units).

- **Certain converted Blocks of Flats** – Any building which has been converted and consists of self-contained flats only, and it does not comply with appropriate building standards (e.g. Building Regulations 1991) and less than two thirds of the flats are owner-occupied (i.e. more than one third are on short tenancies).

9.2 HMOs requiring a Mandatory licence

From 1st October 2018 HMO licences are required for all HMOs of any storey height that are occupied by five or more persons, who form two or more households and share facilities (such as kitchens, living rooms and bathrooms).

OR

Purpose built flats where there are up to two flats in the block and one or both of the flats are occupied by 5 or more persons in 2 or more separate households. This will apply regardless of whether the block is above or below commercial premises. This will bring certain flats above shops on high streets within mandatory licensing as well as small blocks of flats which are not connected to commercial premises.

9.3 Exemptions

- Any properties managed by a public sector body

- Student accommodation which is managed or controlled by an educational establishment

- Buildings occupied by religious communities

- Buildings occupied by owners (long leaseholders or freeholders)

- Buildings occupied by two persons (who form two households)

9.5 The property will be inspected fully at some time within the five year licence period. This may be carried out during the licence application processing stage (if a visit is necessary to verify certain details). Otherwise the visit will be carried out as and when resources allow, within the five year period.

9.6 Penalties

- A person commits an offence if he manages or is in control of an HMO which should be licensed but does not have one or if he allows the property to be occupied by more than the agreed number of households or persons authorised in the licence conditions. Prosecution can result in unlimited fines and court costs or instead of prosecuting, the council can issue penalty charges of up to £30,000.

- Rent re-payment orders – if a person has committed the offence of operating as an HMO without having an HMO licence, the Council or the tenants can apply for a rent repayment order. The First Tier tribunal (FTT) can award the order, which requires the appropriate person to repay all rents, periodical payments and housing benefits for the period up to a licence being issued. The order would state the amount to be repaid.

- Termination of Tenancies – Landlords will <u>not</u> be able to issue any section 21 notices under the Housing Act 1988 (termination of a shorthold tenancy and possession of the property), whilst a licensable HMO is unlicensed.

9.7 Licence Fees and review of fees

Folkestone and Hythe District Council has determined the fees for HMO licence applications in accordance with Section 63(3) of the Act. The fees have been set taking into account the level of work required by an officer to process the licence application. The fees will be reviewed annually to reflect any rise in costs incurred in this process.

9.8 Selective and Additional licensing

The Council may introduce Selective or Additional Licensing Schemes if there is a need to deal with a specific problem area, low housing demand, poor housing conditions or anti-social behaviour.

9.9 HMO Management Regulations

The Management of Houses in Multiple Occupation (England) Regulations 2006 place certain duties on the manager and occupiers of all kinds of HMO with the exception of 'Certain converted blocks of flats' otherwise known as 'Section 257 HMOs' (section 257 Housing Act 2004 defines certain converted blocks of flats).

9.10 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 place similar duties as in the above mentioned management regulations on the managers and occupiers of 'certain converted blocks of flats' (257 HMOs).

9.11 Penalties

A person who fails to comply with these Regulations commits an offence under section 234(3) of the Act, punishable by unlimited fine or a penalty charge of up to £30,000.

9.12 Where an offence is suspected in an HMO, the PSH officer will bring the Management Regulations and their suspected breach to the attention of the responsible persons first. If an opportunity to comply has not been actively taken by the responsible person and the failure continues, a prosecution case will be taken or penalty charge will be issued, as the responsible person would then be knowingly contravening these regulations.

9.13 Folkestone and Hythe District HMO Amenity Guidelines

The Council has a set of guidelines for amenity standards in HMOs. These set out what is expected in relation to the number and positioning of kitchens and bathrooms, the sizing of bedrooms, bed-sitting areas and living areas, guidance on testing of electrical and gas installations, furniture safety and fire precautions. These guidelines are reviewed at appropriate intervals. Owners of HMOs should have regard to these guidelines, copies of which can be obtained from the PSH team.

9.14 Fire safety in HMOs and the Fire Safety Protocol

The Housing Act 2004 (Section 10) places a duty on Councils to consult with the Local Fire Authority where they intend to take action to remedy a fire safety hazard found in any HMO or common parts of a building containing one or more flats.

9.15 The PSH team have developed a close working relationship with the Kent Fire and Rescue Service's (KFRS) Fire Safety Officers. A working protocol is in place to ensure that both the KFRS and PSH team are aware of who should take the lead within specified properties.

9.16 The introduction of the Housing Act 2004 (the PSH team's primary piece of legislation) and the Regulatory Reform (Fire Safety) Order 2005 (KFRS primary legislation) imposed similar duties on the two statutory authorities to enforce certain fire safety provisions within housing. The protocol helps to promote efficient use of resources, identify specific areas for inspection and enforcement and allow for appropriate monitoring and reviewing arrangements. It also provides for urgent or complex requests for assistance from either party.

9.17 Fire safety guidance

Both the PSH team and KFRS refer to the LACORS (Local Authorities Co-ordinators of Regulatory Services) guidance document on fire precautions called 'Housing – Fire Safety, Guidance on fire safety provisions for certain types of existing housing' which was published in July 2008. This guidance can be used by landlords to help them understand what is required in relation to fire safety risk assessment in their properties.

9.18 When an officer from the PSH team is considering what advice to give or action to take in relation to a fire hazard within an HMO (or a single dwelling), they will always refer to this document for guidance (or any guidance written to supersede this document in future). The officer will only deviate from the recommended guidance where there is a sound reason for doing so and in agreement with a fire safety officer and the PSH team leader.

10.0 Empty Homes

10.1 What is an Empty Home?

A property which has been empty (un-occupied) for six months or more is considered to be a long term empty home. Central government encourages Councils to take action to bring empty homes back into use and use their powers under the Housing Act 2004 as well as other legislation to achieve this.

10.2 Bringing empty properties back into use not only prevents the negative impact on the neighbourhood but also reduces the need to build more new homes. The re-use of existing buildings is generally more environmentally sustainable than building new homes. Bringing empty homes back into use can act as a catalyst for wider regeneration by building confidence in the housing market.

10.3 How will the PSH team tackle empty homes?

The PSH team will identify properties within the district which are empty and take steps to bring them back into use.

10.4 The Housing Act 2004 (section 237) allows the Council to use information provided for the purpose of Council Tax to identify properties that are registered as empty. All processing of personal data will be in accordance with the Council's data protection policy and the rights of data subjects contained in the General Data Protection Regulations 2018.

10.5 An officer from the PSH team will contact the owners of empty properties and offer advice and support to those wishing to bring the property back into use. Advice on any available government funded loans (Empty Homes Loans through the Kent wide 'No Use Empty' campaign) will be given where appropriate.

10.9 If the owner does not want to bring the property back into use, enforcement action will be considered. There are a range of powers that can be used, but these will only be used when all other avenues have been exhausted and for those properties which are dangerous and pose a threat to the public, or are most in need by those unable to access the housing market, or have the biggest impact of the surrounding neighbourhood. The action taken will be proportional to the circumstances of each individual case and the extent and impact of empty homes in the district at the time.

10.10 In addition to the standard powers under the Housing act 2004, the Council can take the following types of enforcement action:-

- **Empty Dwelling Management Orders (EDMOs)** – which enable the Council to take control of and manage a property which has been empty for some time. There are conditions which must apply before an EDMO can be sought. These include that the dwelling has been empty for at least six months, that there is no reasonable prospect of the dwelling becoming occupied in the near future, that there is a reasonable prospect of the dwelling becoming occupied once the EDMO is made and that the Council has complied with its duties in seeking an EDMO. Interim and Final EDMOs can be made by approval from the First–tier Tribunal. Interim EDMOs are usually for a maximum of 12 months and Final EDMOs can be made for up to 7 years.

  The Council would only consider making an EDMO as a last resort when all other actions have failed and after considering whether financial costs associated with maintaining the property can be recovered through the rent. A decision to apply for an EDMO would be taken through Cabinet first.

- **Local Government (Miscellaneous Provisions) Act 1982** – Section 29 allows the Council to secure a property that is open to access

- **Buildings Act 1984** – Sections 77 and 78 require an owner to make a property safe or allow emergency action to make it safe

- **Town and Country Planning Act 1990** – section 215 enables the Council to take action to address unsightly external appearance of a property

- **Housing Act 1985** – Section 265 enables the Council to demolish a property that cannot be repaired (i.e. derelict properties)

- **Building Act 1984 -** Section 79 enables the Council to take action to deal with ruinous and dilapidated buildings that unsightly in external appearance and are seriously detrimental to the amenity of the area.

- **Enforced sale procedure** – the Council can force the sale of a property via auction to enable costs incurred during dealing with an empty property to be recovered. When works are carried out in default of a notice a legal charge for the cost of the work is added to the title of the property (at Land Registry). The Council can then make an application to the Land Registry to enforce the sale of the property under the Law of Property Act 1925.

- **Compulsory Purchase Orders (CPOs)** – The Council has the power under the Housing Act 1985 to apply to compulsorily purchase empty homes. This option may be pursued where owners are reluctant to take action to bring their property back into use, where an owner cannot be traced, or where a property has been empty for a long time and is causing a danger or nuisance to the public. A compulsory purchase order will only be sought as a last resort or where other actions have failed. The CPO procedure is very lengthy especially if objections are received.

11.0 Publicity

11.1 Publicity will normally be sought in the following cases:-

• The offence is widespread in the area and coverage will assist in securing compliance by others

• To draw attention to particularly serious hazards

• The offence is serious and/or was committed wilfully and the Council wishes to draw attention to their willingness to take a hard line in such cases

• Coverage is in the public interest

• A press release will also be issued about convictions where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements.

12.0 Covid 19 working practises

12.1 The government have produced guidance in relation to working practices during the covid 19 pandemic. Although not termed as statutory guidance, the council will follow the advice contained within it or any amended version of it.

12.2 The guidance sets out how and when the council should conduct investigations and inspections and how to approach taking enforcement action when there is likely to be a shortage of contractors to carry out work or the occupants are not allowing access to the property due to their own health concerns or because they are self-isolating or shielding.

12.3 During covid 19 periods of lockdown, internal inspections will only be carried out where the reported issues are deemed to be imminently dangerous and would cause serious harm to the occupants. Where possible, video calling or photographs taken by the tenant will be used to make an assessment instead. Where internal inspections must take place, the occupants will be advised of the inspection procedure prior to the visit, and the occupants will be questioned on their state of health with regard to covid 19 at the point of making the appointment to visit and on the doorstep before entering the property. If there are occupants within the household who have symptoms or who are self-isolating due to being in contact with someone who has covid 19, the visit will be rearranged to a time after the self-isolation period has ended or video calling/photograph methods will be attempted instead. All staff will wear appropriate PPE and follow government covid 19 guidance for visiting people's homes.

12.4 Enforcement action which is non-urgent or not legally required may be delayed until restrictions ease. Legal notices served under the Housing Act 2004 may, if the notice provides for this, be suspended for a period due to difficulties in completing the works. Work in default may be deferred. Other forms of enforcement action may be considered for the most serious hazards, e.g. a Prohibition Order covering part of a property may be used instead of Emergency Remedial Action. Steps may be taken to isolate or contain rather than remedy hazardous conditions

12.5 We will work closely with landlords and tenants to ensure standards in rented properties are maintained. We may consider contacting landlords

and using communications and marketing to emphasise the importance of keeping properties free from hazardous conditions, but also reassure them that a pragmatic, risk-based and common-sense approach will be used when enforcement decisions are taken.

12.6 Electrical and Gas Safety - Both regulations are clear on the issue of compliance. With regards to the Electrical Safety Regulations, a landlord would not be in breach of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply. With regards to a landlord's duties under the Gas Safety Regulations, a landlord would not be liable for an offence if the landlord can show they have taken all reasonable steps to prevent the contravention. A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with electricians as they tried to arrange the work, including any replies they have had. Landlords may also want to provide other evidence they have that the installation, appliance or flue is in a good condition while they attempt to arrange works. This could include the servicing record and previous landlord gas safety check record.

12.7 In regard to Mandatory HMO licensing we will contact landlords who are waiting for licences to be determined to explain potential delays. We will take individual landlords' circumstances into account where licence fee payments may have been delayed due to the current situation. We will prioritise high-risk licensable properties if this is necessary to protect vulnerable tenants and target imminent risks to health. We will take a pragmatic and common-sense approach to enforcement action.

Appendix 1 - List of Hazards which can be assessed using the Housing Health and Safety Rating System (HHSRS)

1) **Damp and Mould Growth**
2) **Excess Cold**
3) **Excess Heat**
4) **Asbestos (and MMF)**
5) **Biocides**
6) **Carbon Monoxide and fuel combustion products**
7) **Lead**
8) **Radiation**
9) **Uncombusted fuel gas**
10) **Volatile Organic Compounds**
11) **Crowding and Space**
12) **Entry by Intruders**
13) **Lighting**
14) **Noise**
15) **Domestic Hygiene, Pests and Refuse**

16) **Food Safety**
17) **Personal Hygiene, Sanitation and Drainage**
18) **Water Supply**
19) **Falls associated with baths**
20) **Falls on level surfaces**
21) **Falling on stairs**
22) **Falling between levels**
23) **Electrical Hazards**
24) **Fire**
25) **Flames and Hot Surfaces**
26) **Collision and Entrapment**
27) **Explosions**
28) **Position and Operability of amenities**
29) **Structural collapse and falling elements**

Appendix 2

Statement of principles for determining financial penalties

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1.0 Introduction

1.1 This statement sets out the principles that Shepway District Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

2.0 Purpose of the Statement of Principles

2.1 The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

2.2 The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

2.3 When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

3.0 The legal framework

3.1 The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015.

3.2 The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

3.3 The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of a premises used as living accommodation, which contains a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

3.4 Where the Council believes that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

3.5 If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations

3.6 A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

3.7 Folkestone & Hythe District Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

4.0 The purpose of imposing a financial penalty

4.1 The purpose of the Council exercising its regulatory powers is to protect the interests of the public.

4.2 The aims of financial penalties on landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to do so, under notice

- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

5.0 Criteria for the imposition of a financial penalty

5.1 A failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge.

5.2 In considering the imposition of a penalty, the authority will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.

5.3 For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

5.4 Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

5.5 In deciding whether it would be appropriate to impose a penalty, the authority will take full account of the particular facts and circumstances of the breach under consideration.

5.6 A financial penalty charge will be considered appropriate if the Council is satisfied, on the balance of probabilities that the landlord who had been served with remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

6.0 Criteria for determining the amount of a financial penalty

6.1 The Regulations state the amount of the penalty charge must not exceed £5,000.

6.2 The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council’s contractors.

6.3 The penalty charge is payable within 28 days beginning with the day on which the penalty charge notice is served.

6.4 The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served.

6.5 The charges are as follows:

	Penalty Charge	Early payment reduction (50%) if paid within 14 days
1st breach	£2500	£1250
Subsequent breaches	£5000	£2500

7.0 Procedural matters for Penalty Charge Notices

7.1 The Regulations impose a number of procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.

7.2 When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within 6 weeks.

7.3 Where a review is requested within 28 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

7.4 A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review.

7.5 If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

7.6 However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 28 days from the date of the notice served giving the Council's decision to vary

or confirm the penalty charge notice. Where landlords make an appeal to the First-tier Tribunal, recovery will commence after 28 days from when the appeal is finally determined or withdrawn.

8.0 Remedial Action taken in default of the landlord

8.1 Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

8.2 Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats,
- having an unsafe internal layout where fire escape routes pass through living rooms or kitchens, or
- is 3 or more storeys high.

8.3 A full fire risk assessment will subsequently be undertaken, with regards to the Housing Health and Safety Rating System and LACORS Housing - fire safety guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertaken though informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

8.4 Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance. This includes where useable open fire places are present.

9.0 Contractors used for Works in Default

9.1 The Council will obtain three quotes from local handyperson services to ensure value for money. The alarms required to be installed through works in default of a remedial notice will be provided and installed by the Handy Person Service. All handypersons will be authorised in writing by the Council to carry out this work on the Council's behalf. A copy of the invoice for carrying out works can be obtained by the landlord upon request to the address below.

9.2 All communications for representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be sent to:

Private Sector Housing
Folkestone & Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY Or by email to: privatesector.housing@folkestone-hythe.gov.uk

Appeals against a decision by the Council to confirm or vary a penalty charge notice can be made to the First Tier Tribunal.

Appendix 3 - Penalties Policy for non-compliance with the Minimum Energy Efficiency Standards

1.0 Introduction

1.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018.

1.2 The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated in June 2018; *Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.* The council have had regard to this guidance in formulating this policy.

2.0 Purpose of this policy

2.1 In accordance with Regulation 33 and 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. The purpose of this policy is to describe how officers of Folkestone & Hythe District Council will enforce the Regulations.

2.2 In the first instance the council will informally notify Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice on how the standards can be met and request Landlords to register an exemption if appropriate.

2.3 Landlords will be given an appropriate time to make the necessary changes but will be warned that if they continue to be in breach after the

time given, an investigation will follow and formal enforcement action will be considered.

2.4 The council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

2.5 The Council has discretion to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. The council will serve Compliance Notices where the additional information is required. The Council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice.

2.5 The Council will check the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial penalty.

2.6 If offences under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This policy is a framework for officers to follow in how to determine the appropriate penalty.

2.7 Under regulation 39 the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The council will place the information on the register at the appropriate time, for a minimum of 12 months.

2.8 The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion

3.0 Framework of Penalties for non-compliance with the Minimum Energy Efficiency Standards.

Breaching the ban on letting a property with an F or G rating for less than 3 months (statutory maximum £2000)

- First offence - £1000 (or £750 if paid within 21 days)
- All other offences - £2000 (or £1500 if paid within 21 days)

Breaching the ban on letting a property with an F or G rating for more than three months (Statutory maximum: £4,000)

- First offence: £2,000 (or £1,500 if paid within 21 days)
- All other offences: £4,000 (or £3,000 if paid within 21 days)

Registering false or misleading information on the PRS Exemptions Register (Statutory maximum: £1,000)

- First offence: £500 (or £375 if paid within 21 days)

- All other offences: £1,000 (or £750 if paid within 21 days)

Failing to provide information to the council demanded by a Compliance Notice (statutory maximum £2,000)

- First offence: £1,000 (or £750 if paid within 21 days)
- All other offences: £2,000 (or £1,500 if paid within 21 days)
-

Annex 1

Civil Penalties Policy

Contents

1.0 Introduction

1.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“the 2016 Act”) amended the Housing Act 2004 (“the 2004 Act”) to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences.

1.2 Under section 249A of the 2004 Act, a local housing authority may now impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person's conduct amounts to a “relevant housing offence”.

1.3 The relevant housing offences are offences under the 2004 Act, namely:

- Failing to comply with an Improvement Notice (section 30);
- Failing to licence a house in multiple occupation ("HMO") under Part 2 (section 72(1));
- Knowingly permitting the over-occupation of an HMO licensed under Part 2 (section 72(2));
- Failing to comply with the condition of an HMO licence issued under Part 2 (section (72(3));
- Failing to licence a house subject to selective licensing under Part 3 (section 95(1));
- Failing to comply with the condition of a selective licence issued under Part 3 (section (95(2));
- Failing to comply with the condition of a selective licence issued under Part 3 (section (95(2));
- Failing to comply with HMO management regulations (section 234(3));
- Failing to comply with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

1.4 A person who commits any of the above-mentioned offences without reasonable excuse is liable on summary conviction to a fine of any amount in the Magistrates' Court. A financial penalty imposed by a local housing authority as an alternative must not exceed £30,000.

1.5 Breaches of banning orders

The 2016 Act also introduced banning orders under Chapter 2 of Part 2. A local housing authority may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a "banning order offence". A banning order offence is an offence set out in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 Acts of Parliament are listed, including those listed above as relevant housing offences.

1.6 A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:

- Letting housing;
- Engaging in letting agency work;
- Engaging in property management work

1.7 A person who breaches a banning order commits an offence under section 21(1) of the 2016 Act and is liable on summary conviction to imprisonment, or to a fine, or to both. However, a local housing authority may instead impose a financial penalty under section 23 of the 2016 Act of an amount not exceeding £30,000.

1.8 A local authority cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate.

1.9 The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, a local housing authority must therefore be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

1.10 In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the 2016 Act. The Ministry of Housing, Communities & Local Government issued such statutory guidance in April 2018, namely: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities.*

1.11 The guidance requires local housing authorities to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty; and the level of financial penalty it should impose in each case.

1.12 The guidance states that local housing authorities should consider the following factors to help ensure that any financial penalty is set at an appropriate level:

- Severity of the offence;
- Culpability and track record of the offender;
- The harm caused to the tenant (actual and potential);
- Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact);
- Deter the offender from repeating the offence;
- Deter others from committing similar offences;
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

1.13 This policy sets out how Folkestone and Hythe District Council ("the council") will impose financial penalties in accordance with relevant legislation and statutory guidance.

1.14 This policy takes effect from 21st January 2021 and applies to all relevant offences ("relevant housing offences" and breaches of banning orders) committed on or after this date.

2.0 When a financial penalty is to be imposed

2.1 The Government announced the introduction of financial penalties for relevant housing offences with a press release entitled: "*Tougher measures to target rogue landlords - New rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters."* The Government is obviously keen to see more enforcement action taken against the small minority of rogue landlords who neglect their responsibilities.

2.2 Significantly, these new powers allow local housing authorities to retain the income received from financial penalties to fund private sector housing enforcement activities. This is clearly intended to help local housing authorities take more enforcement action.

2.3 The council will use the new powers robustly whenever it is appropriate to do so.

2.4 Each offence will be assessed on a case-by-case basis. However, the starting position is that the council will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

2.5 The Council may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If the council is of the opinion that an offence is of such serious nature that it warrants a more significant financial sanction than that which could be imposed by this policy, it will normally seek to prosecute the offender(s).

2.6 The breach of a banning order under the 2016 Act is a serious offence, and the council will give careful consideration to the option of prosecution in such cases, as the courts have the power to impose a prison sentence as a punishment.

2.7 Prosecution may also be an appropriate course of action when an offender has committed the same offence on more than one occasion in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.

2.8 Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by the council and local media. Such publicity in respect of an offender may be in the public interest in certain circumstances. Naming and shaming also helps to deter others from committing similar offences. If an offender is subject to a financial penalty, their personal information will not be available in the public domain.

2.9 There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, the council will carefully review the merits of prosecution for every offence before making a final decision as to an appropriate sanction.

3.0 Determining the starting point for a financial penalty

3.1 A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.

3.2 Having due regard to the statutory guidance published by Government, the council has developed the Table of Financial Penalties set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following factors:

- Culpability
- Track record
- Portfolio size
- Risk of Harm

3.3 The following paragraphs set out how each determinant is assessed.

3.4 Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:

- Very high
- High
- Medium
- Low

3.5 Very High – This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium.

3.6 High – This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take appropriate and/or timely action. This category is subject to an 80% culpability premium.

3.7 Medium – This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit.

Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium.

3.8 Low – This category applies to offences where there was a fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This is category is subject to a 40% culpability premium.

3.9 The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are some landlords and agents who are subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.

3.10 The second step in determining the amount of financial penalty relates to the offender's track record. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

3.11 The council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:

- Any previous convictions for housing related offences;
- Whether previously subject to a financial penalty for a housing related contravention;
- Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

3.12 Following the review, the offender's track record will be classed as one of the following categories:

- Significant;
- Some;
- None or negligible.

3.13 Significant - Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together

with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

3.14 Some - This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

3.15 None or negligible - This category will be used if, following a review of the council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales.

3.16 The descriptor "Negligible" has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in Folkestone and Hythe, this category will be used.

3.17 Portfolio size - The size of an offender's portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay.

3.18 Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

3.19 The third step in determining the amount of financial penalty requires the council to allocate a portfolio size. There are four size categories which relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:

- One unit of accommodation;
- Two to four units of accommodation;
- Five to 19 units of accommodation;
- 20 or more units of accommodation.

3.20 A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation ("HMO").

3.21 The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

3.22 Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.

3.23 The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment.

3.24 If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

3.25 Risk of Harm - The fourth step in determining the amount of financial penalty concerns the risk of harm associated with the offence. The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence.

3.26 The council will make an assessment of the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. The offence will be placed into one of the following four categories:

- Level 1
- Level 2
- Level 3
- Level 4.

3.27 To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high.

3.28 Level 1 - This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories. Any offence associated with the operation of an unlicensed premises under the HMO and

selective licensing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

3.29 Level 2 - The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

3.30 Level 3 - The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

3.31 Level 4 - The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

3.32 Table of Financial Penalties - Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out on the next page.

Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,500
		20 +	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20 +	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,500
		20 +	£12,500	£15,000	£17,500	£25,000
High (80% Premium)	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20 +	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20 +	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20 +	£10,000	£12,000	£14,000	£20,000
Medium (60% Premium)	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20 +	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20 +	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20 +	£7,500	£9,000	£10,500	£15,000
Low (40% Premium)	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20 +	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20 +	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20 +	£5,000	£6,000	£7,000	£10,000

4.0 Determining whether adjustment of the financial penalty is appropriate

4.1 The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.

4.2 Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant.

4.3 Hardship (Landlord) - If at this stage of the process, the council is aware of the offender's personal situation and financial position, and is of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

4.4 Hardship (Tenant) - If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, the council may consider reducing the amount of financial penalty, but only in exceptional circumstances.

4.5 Previous offences - While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences require a more robust approach to punishment.

4.6 For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a *Significant* track record category is already in use for a certain offender, repeated offences where the *Culpability* is very high would be restricted owing to the *Risk of Harm* categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, the council may consider increasing the amount of financial penalty.

4.7 Scale of Exposure - The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons exposed is higher than average, the council may consider increasing the amount of financial penalty.

4.8 A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

4.9 Actual Harm - If actual harm has occurred, the council may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely the council will seek to review the financial penalty upwards.

4.10 Adjustment range - The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500.

4.11 The council will not, under any circumstances, vary the financial penalty by more than 50%, and is restricted by the statutory maximum of £30,000.

4.12 Decision making - If the council decides to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, it will make a record of its decision and notify the offender of the reasons for that decision.

4.13 To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager of the council. In the first instance, the variation will be proposed by the Private Sector Housing Team Leader. The proposal will be reviewed by the Lead Specialist for Housing, or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the council and any reference to the Private Sector Housing Team Leader or the Lead Specialist for Housing may be deemed to include a reference to any future equivalent post.

5.0 Right to make representations

5.1 Notice of Intent - Before imposing a financial penalty, the council must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a “Notice of Intent”.

5.2 The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased.

5.3 For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, the council may at any time while

the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, the council will still have the option to serve a Notice of Intent, but if it chooses to do so, it must serve the Notice of Intent within six months of the date the valid licence application was made.

5.4 The Notice of Intent must set out:

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the financial penalty, and
- Information about the right to make representations.

5.5 Any person served with a Notice of Intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served. Written representations may be made in respect of any matter.

5.6 The offender may wish to submit information as to their financial position. If the council was aware of the financial position of the offender before serving the Notice of Intent, the council may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make the council aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty.

5.7 It is important to note that any person who supplies information to the council that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates' Court to an unlimited fine.

5.8 The council will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but the council will seek to make a decision as to its proposed course of action as soon as possible.

5.9 The council will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
- Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
- Impose the financial penalty proposed in the Notice of Intent;
- Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.

5.10 If the council decides to withdraw the proposal to impose a financial penalty, it will confirm its decision in writing. If the council decides to

impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, it will serve a Final Notice.

5.11 If the offender has provided written representations that increase the severity of the offence committed, the council may seek to impose a higher financial penalty. If the council decides to take that course of action, it will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

5.12 A reduction in the amount of financial penalty to be imposed may arise from the council altering the starting point on the Table of Financial Penalties.

5.13 Whether the council decides to alter the starting point or not following any written representations, the council will not reduce the financial penalty by more than 50% of the finalised starting point.

5.14 If the council decides not to alter the starting point after its review of any written representations received, and it has already used its discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

5.15 To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager of the council. In the first instance, the imposition of a financial penalty will be proposed by the Private Sector Housing Team Leader, who will provide an assessment of any written representations received. The proposal will be reviewed by the Lead Specialist for Housing, or an officer of similar or higher seniority, and a final decision made by that senior manager.

6.0 Final Notice and right of appeal

6.1 If the council decides to impose a financial penalty following its review of any written representations received, it will serve a “Final Notice” on the offender.

6.2 The Final Notice will set out:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information about how to pay the penalty
- The period for payment of the penalty
- Information about rights of appeal
- The consequences of failure to comply with the notice.

6.3 The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date for the Final Notice being served.

6.4 A person on whom a Final Notice has been served may appeal to the First-Tier Tribunal against the decision to impose the financial penalty or the amount of the financial penalty.

6.5 Appeals should be made within 28 days of the date of the Final Notice being served.

6.6 Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn.

6.7 The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.

6.8 As of 21st January 2021, the address and contact details of the First-tier Tribunal (Southern Region) were:

First-tier Tribunal - (Property Chamber) Residential Property
Havant Justice Centre
The Court House
Elmleigh Road
Havant
Hampshire
PO9 2AL

Email: rpsouthern@justice.gov.uk | Tel: 01243 779 394 | Fax: 0870 7395 900

6.9 The address of the First-tier Tribunal changes from time to time, but the latest address will be detailed on any Final Notice served and can be found at:

Go to GOV.UK for first tier property tribunals

7.0 Reduction for early acceptance of guilt

7.1 As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

7.2 An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 21 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

7.3 A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.

7.4 If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal. If an offender makes an early payment at the reduced rate, but then decides to appeal at a later date, the council will seek the full finalised amount during the appeal proceedings.

8.0 Unpaid financial penalties

8.1 The council will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served.

8.2 An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to the 2004 Act (relevant housing offences) and Paragraph 11 of Schedule 1 to the 2016 Act (breaches of banning orders).

8.3 In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

8.4 If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

8.5 Court Bailiffs - A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

8.6 Charging order (Order of sale) - the council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

8.7 Attachment to earnings order - If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

9.0 Multiple offences

9.1 When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, the council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.

9.2 Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

9.3 Determining a just and proportionate punishment -The council will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. The council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.

9.4 If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each offence.

9.5 However, if the council considers the cumulative total to be unjust and disproportionate, it will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

9.6 Reduction of financial penalty - The council may use its discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether or not there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration.

9.7 Decision not to impose a financial penalty - The council may use its discretion to not impose a financial penalty in respect of every offence under consideration. If the council decides to take this course of action, the offence or offences disregarded will usually be of a lower severity.

9.8 Rent Repayment Orders – In consideration of totality, the council will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

10.0 Help and Advice

10.1 If you would like further advice or clarification, the Private Sector Housing Team can help. Please ring us on 01303 853660 and speak to one of our officers. We can also be contacted by email on: privatesector.housing@folkestone-hythe.gov.uk

Alternatively, you can write to us at:

Private Sector Housing
Folkestone and Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY

11.0 Making a complaint

11.1 The Private Sector Housing Team aims to provide the best possible service. However, if you are not happy with the service you receive you can make a formal complaint.

11.2 More information about how to make a formal complaint can be found on the council's website. Alternatively, you can call, email or write to us: Telephone: 01303 853660. Email: complaints@folkestone-hythe.gov.uk

Address: Complaints, Folkestone and Hythe District Council, Civic Centre, Castle Hill Avenue, Folkestone, Kent, CT20 2QY.

11.3 If, after having gone through the council's formal complaints process, you believe that the council has not handled your complaint properly, you have the right to request an independent investigation by the Local Government and Social Care Ombudsman. The Ombudsman Service will review your complaint and decide if it is appropriate to carry out an investigation. The service is free of charge.

11.4 You can make a complaint by phone or online at:

The Local Government and Social Care Ombudsman
Telephone: 0300 061 0614
: Go to the Local Government and Social Care Ombudsman website.