



Department for  
Communities and  
Local Government

# Improving the Private Rented Sector and Tackling Bad Practice

A Guide for Local Authorities



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## **Foreword by the Housing Minister Brandon Lewis MP**

The private rented sector is an important and growing part of our housing market, housing 4.4 million households in England. The quality of housing in the sector has improved dramatically over the last decade. It is now the second largest tenure and this growth is forecast to continue growing.

I am proud of this growth as it shows increasing choice, improving standards whilst helping to keep rents affordable. The Government supports a bigger and better private rented sector and wants to see this growth continue. This can only be achieved by maintaining the reputation of the sector and continuing its improvement in standards. This has been achieved by good landlords working within the sector and is demonstrated by the fact that 84% of tenants are satisfied with their accommodation; underlining that the overwhelming majority of landlords are reputable and provide decent well maintained homes. We want to encourage and support these landlords to continue to provide a good service and safe, decent and well maintained homes for their tenants.

Whilst the majority of landlords are diligent and responsible, there are a small minority of landlords who ignore their obligations and knowingly rent out unsafe and overcrowded accommodation. These criminal landlords are exploiting vulnerable tenants, who just want a safe place to call home. In extreme cases, criminal landlords have links to organised crime, gangmaster activity and human trafficking. This cannot continue unchecked, as these activities undermine the work of good landlords and harm the sector's reputation. Approaches to tackling criminal landlords can be varied, this guidance draws on a wide a range of experience from local authorities; offering practical advice on how to identify and effectively prosecute criminal landlords.

This Government wants to create an environment that roots out and removes criminal landlords, allows good landlords to thrive and provides peace of mind for tenants seeking a place called home.

# Tackling Bad Practice

## Introduction and Purpose

1. This guidance is intended for local authority housing officers to help them effectively tackle poor and illegal practices by landlords and letting agents. It provides advice on the identification, prosecution and removal from the sector, the small proportion of landlords and letting agents who break the law, exploit tenants and provide a poor service to their customers.
2. This document updates and replaces the 2012 version.

## Context

3. The Government is determined to provide a bigger and better private rented sector that encourages investment and provides better choice for tenants. This growth provides a balanced range of housing tenure and helps boost economic growth.
4. The sector is already attracting investment through the £1 billion Build to Rent Fund will provide development phase finance to large-scale private rented sector developments, building up to 10,000 new homes for private rent.
5. Further interest is being developed through the Housing Guarantee schemes supporting up to £10 billion worth of investment in large scale private rented projects and additional affordable housing. To ensure the sector is attractive to investors, the Government is determined to improve the provision and professionalism of the sector. This work has so far included:
  - new regulations to force the remaining 3,000 letting and property management agents to join one of three approved redress schemes;
  - published the How to Rent guide, informing tenants about their rights and responsibilities;
  - published the model tenancy agreement, so that landlords and tenants can choose to use and support longer, family-friendly tenancies;
  - introduced a new code of practice, to improve the sector's professionalism, so all landlords and agents understand the clearly set standards;
  - made over £4 million available to 23 local authorities to help them tackle acute and complex problems with rogue landlords in their area – building on £2.6 million given to nine local authorities to support enforcement against 'Beds in Sheds';
  - so far, nearly 40,000 properties inspected and over 3,000 landlords are facing further action or prosecution;

- laid an amendment to the Deregulation Bill<sup>1</sup>, currently before Parliament, which would prevent retaliatory eviction, give tenants more security and smooth the eviction process;
- a further amendment to the Deregulation Bill<sup>2</sup>, which clarified the tenant deposit protection legislation in response to recent court cases;
- all letting agents will be required to publish a full tariff of fees, declare whether or not they are a member of a client money protection scheme and which redress scheme they have joined (both on websites and prominently in offices) to protect tenants from small minority who charge unreasonable, hidden fees; and is
- introducing legislation<sup>3</sup> where landlords will be required by law to install working smoke and carbon monoxide alarms in their properties.

## Why the guidance and what it's tackling

6. The private rented sector has rapidly grown in recent years, the number of private rented homes more than doubled from 2.0 to 4.1 million between 1996 and 2012, compared to a total of 3.8 million homes in the social housing sector<sup>4</sup>. The Government wants this growth to continue, as a bigger and better private rented sector will provide more choice for tenants.
7. The majority of landlords and letting agents provide decent accommodation, decent service as well as ensuring their properties are well maintained and that repairs are carried out promptly. This is reflected by the fact that 84% of tenants state they are satisfied with their accommodation<sup>5</sup>. Unfortunately, there are a small number of landlords who wilfully flout the law, by renting out overcrowded, dangerous accommodation, such as beds in sheds or by cheating their tenants. There is no place for these landlords in the sector. The Government is determined that these landlords either improve their service or leave the sector.
8. There are also inexperienced landlords who are unaware of their legal obligations and make little or no effort to understand their legal obligations. These landlords need support and direction delivered through a

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<sup>1</sup> Retaliatory Eviction [amendment to Deregulation Bill](#) tabled on 4 February 2015

<sup>2</sup> Tenancy Deposit; Section 32 [Deregulation Bill](#) 2015

<sup>3</sup> Smoke and carbon monoxide alarms; [The Energy Act 2013 \(Commencement No. 2\) Order 2015](#)

<sup>4</sup> English Housing Survey 2012 to 2013: [household report](#), Department for Communities and Local Government, 23 July 2014

<sup>5</sup> English Housing Survey 2012 to 2013: [household report](#), Department for Communities and Local Government, 23 July 2014

combination of advice and information to help them improve the way they operate. Where these landlords fail to engage with a local authority and improve the way they operate, formal legal action should be taken against them.

9. In addition to good landlords and a small minority of bad landlords, there are also good letting agents and a small minority of bad letting agents. An unscrupulous letting agent can make the tenant experience worse by being unclear about their fees, not protecting the client money they hold and not advertising how clients can complain about poor service. They can also frustrate landlords and tenants by generating an unnecessary churn of contracts to extract new tenant fees.

# Developing Knowledge of Extent and Scale of Private Rented Stock in the Area

10. A key problem for local authorities can be identifying the location and scale of the private rented sector in their area. This section describes what local authorities can do to obtain a better picture of the size of the sector locally.

11. **Cross-referencing data that local authority holds** – has enabled some authorities to build a tenure intelligence database for the whole of their borough. The information gathered can help pinpoint tenure information. Each home is given a unique property number for the mapping of tenure types which is cross referenced against a variety of data held by the local authority. These data elements can include:

- owner occupation, council tax names registered, council tax names liable, single person discount, student exemption;
- ex local authority property sold under right to buy, local authority housing placements, housing association owned property;
- planning applications;
- building regulation approvals and breaches;
- frequency of turnover of occupants;
- benefits - who has claimed against an address, number of claims against address;
- electoral roll data against an address;
- census data;
- police call outs against an address;
- Anti Social Behaviour Orders placed against an address; and
- large rubbish collections or removals against an address.

Local authorities will need to attribute appropriate weighting to this raw data to make it as accurate as possible.

12. The intelligence gathered can be cross-referenced for the checking of benefit fraud. For example the Housing Benefit database should contain details of properties licensed as Houses in Multiple Occupation. If a property is licensed for four occupants, but there are six claimants at the address, local authorities will want to investigate that property. Similarly, Council Tax data can sometimes highlight where outbuildings are being used illegally as dwellings. The database can also be used to support and corroborate other investigative activities.

13. **Sharing intelligence across the authority to identify hotspots** - in many authorities, problems are concentrated in small areas, sometimes individual streets. Various local government teams working on investigating complaints, planning enforcement and licensing of Houses in



Multiple Occupation will all have intelligence to share on hotspots and sometimes on particular landlords in the area.

- 14. Sharing intelligence between authorities** – those determined to break the law will have no regard for local authority boundaries and in some cases have multiple properties over several neighbouring authorities. In such cases officers from neighbouring authorities should discuss intelligence and whether there are any shared issues about a particular landlord.

### **Case Study – Pennine Lancashire**

**Pennine Lancashire has significant issues of low demand in the inner towns with bad landlords attracted to these areas due to low values, transient communities and lack of visibility where rogue activity can thrive.**

**Stamping out illegal landlord activity is resource intensive and requires proactive tracking and co-ordination to ensure inspections are carried out and landlords made to comply with the relevant legislation. The local authorities realised the need to co-operate on this matter and multi-agency working has enabled officers to identify, inspect and bring up to standard a number of houses in multiple occupation. Some of the properties have been closed and the occupation of others restricted to single occupation. This has resulted in a reduction of fraudulent benefit payments. In addition certain properties in single occupation have been proactively inspected which has identified serious hazards to the point where properties have had to be closed or enforcement notices served. This in turn has resulted in a number of prosecutions of landlords for failure to obtain a licence and resulting in rent repayment orders being obtained allowing local authorities to reclaim housing benefit and tenants to reclaim rent. It has also enabled the local authorities to share information on landlords who do not meet the fit and proper person criteria for licensing.**

- 15. Clear policies and processes for dealing with and triaging complaints from residents and tenants** – this will help prioritise which cases are about bad landlord and letting agent behaviour. This will need to be backed by documented policy procedures and processes. The process for dealing with complaints needs to be set out in a series of logical steps towards resolution. The step process should identify which team is required to be involved at each stage and emphasise the need for consistency. A recorded post bag history of localised complaints may provide intelligence of a persistent problem.

## **Case Study – Plymouth - Triaging**

**Plymouth has experienced a 20% increase in complaints from tenants about landlords in each of the last four years. Plymouth has managed to handle this without an increase in resource, by having different levels of intervention based on the seriousness of the situation.**

**Initial contact is an in depth telephone conversation with the tenant, which includes discussing defects, advice on security of tenure, how to approach the landlord and asking questions to determine the level of risk. Some tenants use this to successfully challenge their landlords themselves. Where this doesn't happen, Plymouth's response has been to write to the landlord asking him/her to address the tenant's concerns. They found that this resolved about 50% of cases to the tenant's satisfaction and allowed Plymouth to focus on those landlords who are not prepared to take advice and engage with their tenants.**

**Where there is serious concern a prioritised visit will be made and appropriate action taken.**

**Plymouth work on the basis that problematic landlords are allocated one officer who deals with their portfolio – this ensures that they receive consistent messages and their portfolio is tackled as a whole.**

16. To determine the effectiveness of their approach, local authorities will need to consider the baseline and tracking of problems in their area. This can be done by setting targets and monitoring outputs and outcomes. This may include the following suggestions.

<b>No of streets surveyed</b>	
<b>No of properties inspected</b>	
<b>No of statutory notices</b>	
<b>No of prosecutions</b>	
<b>Average level of fine</b>	

# Bad Landlords and Letting Agents

17. This chapter sets out a number of approaches to identifying bad landlords and highlighting the activities of unscrupulous letting agents.

## Identifying bad practice

18. It can be difficult to establish the extent and nature of the problems caused by bad or criminal landlords. Although there are few landlords engaged in this activity, the problems they cause can be highly localised and well hidden; so many local authorities rely on concerns being raised by tenants or neighbours. However, vulnerable tenants can be afraid to raise issues with the local authority or are unaware of their rights, especially those who have recently migrated to the United Kingdom. Staff working on planning enforcement and licensing of Houses in Multiple Occupation will have the best intelligence about the housing stock in their area and about the landlords operating locally. To build a full understanding of local problems, various parts of the local authority need to regularly communicate with each other.

19. The problems caused by bad landlords vary considerably from area to area. In some areas, homes may be poorly maintained and dangerously overcrowded. This in turn can have the effect of degrading a neighbourhood, by acting as a cause of anti-social behaviour and other problems. In other areas, landlords are renting out buildings as permanent living accommodation, compromising the safety of their tenants and causing significant problems for neighbours. Some local authorities have also discovered that vacant commercial premises, often in poor repair, are being used as living accommodation. Local authorities should take action in all these circumstances.

20. Bad landlord behaviours that need to be tackled can include, but are not limited to:

- harassing tenants;
- threats and intimidation;
- renting out unsafe and poor quality accommodation;
- frequently wanting rent paid cash in hand and not declaring the income;
- lack of a tenancy agreement;
- attempts at illegal eviction;
- persistent failure to carry out repairs;
- non-payment of council tax;
- letting property to those without the right to be in the UK;
- failing to protect a deposit with a statutory scheme;
- ignoring statutory notices served by the council; and
- allowing tenants to behave in an anti social way.

21. The most effective means to removing landlords who demonstrate these behaviours is to adopt a pro-active strategy of identifying, taking enforcement action and where necessary prosecuting them. This may include targeted inspections and door to door surveillance of areas to identify problem properties.

22. Street surveys can provide a quick visual indicator to landlord activity. Indicators of bad or criminal landlord activity can include:

- poor maintenance;
- complaints either from tenants or neighbours about noise and anti-social behaviour;
- untidy gardens and exteriors;
- increased rubbish/over-spilling bins and discarded mattresses;
- gathering of large groups of people outside premises (may indicate overcrowding);
- permanently closed curtains (possible evidence of overcrowding);
- newly blocked side entrances to a property (can indicate that an illegal outbuilding in the back garden is being obscured from sight);
- sudden appearance of outbuildings in back gardens; and
- sheds which appear to be occupied e.g. they have flues, satellite dishes and curtains etc.

23. It might be useful to prepare a check list for inspection covering some of the key signs to help build an overall picture of the scale of the problem.

24. The accumulation of rubbish or litter outside of a property, such as old mattresses or broken ovens can blight a neighbourhood and create a nuisance. Sections 79 – 81 of the Environmental Protection Act 1990 provide local authorities powers for dealing with statutory nuisances, which can harm the amenity of a neighbourhood. Local authorities have further powers through section 34 of the Public Health Act 1961; this allows a local authority to remove rubbish on land in open air which is seriously detrimental to the amenity of the neighbourhood.

25. **Bad letting agents** are also an issue. Bad letting agent activities can include:

- a lack of transparency in their fees and the charging of hidden costs;
- charging exorbitant fees for renewing an existing tenancy agreement. While this is not illegal, it involves unnecessary extra costs for both landlord and tenant;
- excessive fees that do not reflect the effort involved;
- keeping tenants' deposits unlawfully;
- knowingly letting a property which is not safe or free from hazards;
- helping landlords to move groups of people around properties to avoid enforcement action;

- helping to find accommodation for illegal migrant workers; and
- failing to notify a landlord of the full details of a let, for example, the let may be overcrowded, but the landlord was led to believe it was for a family of three.

## Raising Tenant Awareness

26. As part of a planned targeted investigation, authorities need to encourage tenants to raise complaints and concerns about their landlords, letting agents or neighbouring tenants. Many tenants are nervous about reporting their landlords out of fear of eviction or intimidation. But in many cases tenants are not aware of their rights and what can be expected of their accommodation and their landlord.
27. The Government has published, the [How to Rent](#) guide, a user-friendly document which provides tenants with information on the key points to be aware of when considering renting a home. The checklist helps tenants to assess if the property is in good condition, free from hazards and that the landlord is complying with their legal obligations. It also advises what to do when things go wrong.
28. Legislation now requires all letting and property management agents to join one of our three approved redress scheme, which gives tenants a process through which they hold their agents to account and could also receive compensation. Any letting agent not signed up to one of the three approved redress schemes will face a fine of up to £5,000. This money can be retained by the local authority.
29. We recommend that local authorities have a clearly publicised contact number and email address for reporting bad practice among landlords and letting agents. Some authorities have found this to be effective when combined with tenancy support networks and other local community groups. This helps officers identify the necessary support to give to tenants; by keeping in touch with local community groups it can encourage tenants to report poor conditions. A further advantage to this approach is that local residents, who have lived longer in an area, will often have useful local knowledge about property ownership, occupation, and suspicious activity, occupation of outbuildings and conversion that may have not had planning approval or building control approval.

## **Case Study – Redbridge**

The London Borough of Redbridge has raised tenant awareness on landlord matters by providing a landing page of information on the private rented sector. The web page offers information for tenants on the typical issues they face, but also advises what they can do and how to take action when needed. They provide fact sheets on the most common issues affecting tenants, which can include: gas safety and damp and mould. The [web page](#) also includes letter templates to help tenants raise a complaint with their landlord and write a reminder letter in cases where the landlord has not responded.

### **Leaflet Drop**

30. Leaflet drops can provide simple information to tenants advising what conditions they should be expecting. This could be the How to Rent Guide or specific local document to inform tenants of their legal rights and their landlords' obligations. It will explain how to raise an issue with a landlord. It will also advise what to do when things go wrong and who to contact. This can include defects which are posing a hazard or being subject to landlord harassment and intimidation.
31. For leaflet drops to be effective, they need to be tenant targeted rather than a blanket approach covering all tenures. Targeting can be done by identifying areas where the Private Rented Sector is likely to be significant, such as areas with higher population densities identified through Lower Layer Super Output Area information available from the National Office of Statistics.

## **Case Study - London Borough of Hounslow**

**A tenant contacted Hounslow Council reporting a rat problem at her property and raw sewage in the rear garden. Following an inspection, which revealed the site contained an overcrowded House in Multiple Occupation and 3 occupied outbuildings, the case was referred to the Rogue Landlord Project.**

**A warrant was executed in a dawn raid with the Metropolitan Police and Home Office Immigration. An immigration offender was arrested and three hazardous outbuildings were found to be occupied.**



Exterior of outbuilding 2

**The following actions were taken in relation to the three outbuildings at the property;**

- 1. Emergency Prohibition Order issued under the Housing Act 2004 prohibiting outbuilding 1 from being occupied. This was a timber construction occupied by a couple and their child under the age of one.**
- 2. Tenants of the prohibited outbuilding were provided with alternative accommodation by the council's Temporary Accommodation Unit.**
- 3. Demolition Orders were issued under the Housing Act 2004, one against each outbuilding.**
- 4. As the landlord did not comply with the Demolition Orders, Hounslow council demolished all three outbuildings billing all related costs to the landlord.**

**Prosecution proceedings have been initiated against the landlord for failure to license the property as a House in Multiple Occupation and failure to comply with management of House in Multiple Occupation regulations.**



# Tackling Criminal Landlord Behaviour

32. This section outlines the approaches for: tackling criminal landlords, providing advice and information, and how to recognise when an illegal eviction has occurred. Guidance is given on building an effective prosecution case against criminal landlords and letting agents.

## Legislation

33. Local authorities have strong and effective powers to deal with poor quality unsafe accommodation which are listed below:

- **When a property is dangerous or in a state of disrepair** a local authority can enter and inspect the home premises, demand the hazard be removed and in some cases ban the property from being used until it is fixed.
- **When rooms are too small** a local authority can enter and inspect the property, assess whether its size is suitable for the needs of particular tenants such as wheelchair users.
- **When a property is overcrowded** a local authority can enter and inspect the property and decide the number of persons allowed to live there.
- **When a property is too cold (or too hot)** a local authority can enter and inspect the property, assess if it is too cold for vulnerable tenants and demand an improved level of warmth.
- **When there is rubbish piled up outside** a local authority can demand the rubbish is cleared, or clear the rubbish and charge the owner.
- **When there are illegal outbuildings** a local authority can enter and inspect the building and demand its demolition.
- **Where a landlord has ignored their improvement or banning orders** the local authority can prosecute the landlord and recover their costs.
- **When a tenant has been illegally evicted**, a local authority can prosecute the landlord and recover their costs.
- **Where a landlord has been found guilty of renting a property that broke the licensing rules allowed bodies can ask** for a rent repayment order to be made to the tenant or the local authority.

Further detail of these and other powers can be found in annexes A and B.

34. Letting and managing agents are subject to consumer protection legislation, which covers issues such as; giving false or misleading information to consumers, not acting with the standard of care and skill that is in accordance with honest market practice, and claiming falsely to be a member of a professional body or an approved redress scheme. The consumer rights legislation is enforced by Trading Standards Officers.
35. Since 1 October 2014, it has been a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme. This will make it easier for tenants and landlords to complain about the service provided and to prevent disputes escalating. Local Authorities can impose a fine of up to £5,000 where an agent fails to comply with this requirement. This money can be retained by the local authority and used for other activities. Guidance is at Annex C.
36. Subject to Royal Assent of the Consumer Rights Bill letting agents will be required to publicise their fees, declare whether or not they are a member of a client money protection scheme and state which redress scheme they have joined, both in their offices and on their website. The requirement will be enforced by trading standards officers which will be able to fine the agent a civil penalty of up to £5,000 (payable to the council) for each office where the information is not published. There will also be a fine of up to £5,000 if the information is not published on an agent's website. Guidance can be found in Annex D.

## Inspection

37. Where a local authority has reason to believe that a property contains health and safety hazards, it can inspect it through the Housing Health and Safety Rating System. It is a risk based evaluation tool to help officers identify risks and hazards to health and safety from any deficiencies identified in dwellings. It was introduced under the Housing Act 2004.
38. The system prescribes two categories of hazard;
  - **category 1** 'serious' hazard, where an authority is under a legal duty to take the appropriate enforcement action to remedy the hazard; or a
  - **category 2** 'other' hazard, where officers have discretion on deciding the most appropriate course of action.
39. Where a hazard is present, officers have recourse to the following actions:
  - serve an improvement notice;
  - make a prohibition order;
  - serve a hazard awareness notice;

- take emergency remedial action;
- make an emergency prohibition order; or
- make a demolition order.

40. Local authorities will normally seek resolution of a problem informally with the landlord in the first instance. Nevertheless, authorities should not delay too long or hesitate to use the legal powers at their disposal if a landlord fails to remedy an issue, or ignores repeated attempts of contact by officials.

### **Powers of Entry**

41. Sections 239 and 240 of the Housing Act 2004 give local authority officers the power to enter a home to obtain information for enforcement action. In most cases officers are required to give 24 hours. If entry is refused or immediate entry is needed because of a health and safety risk, officers should obtain a warrant from the Justice of the Peace.

42. Trading standards officers have the right to inspect letting agents' premises under consumer protection legislation, where they believe there is legitimate need to visit an office following reports or complaints of non-compliant behaviour.

## **Licensing**

43. There are three main forms of licensing: mandatory licensing for larger Houses in Multiple Occupation, as well as additional licensing for smaller Houses in Multiple Occupation and selective licensing for localised issues. The discretionary powers are an option for local authorities who want to tackle problems in small and strictly defined areas.

### **Mandatory Licensing**

44. Mandatory licensing seeks to target those Houses in Multiple Occupation that are at the highest risk, those of three storeys or more and occupied by five or more persons, who are not living together as a single family or other household. These Houses in Multiple Occupation often pose the greatest management challenges and sometimes fail to achieve adequate amenity and safety standards in relation to the number of occupants.

### **Additional Licensing**

45. Additional licensing recognises that problems of poor management can also affect smaller Houses in Multiple Occupation. Local authorities have the power to designate areas, or the whole area within their district, as subject to additional licensing for some or all of the Houses in Multiple Occupation in its area that are not subject mandatory licensing.

## Applying factors

46. Officers will need to identify how an additional licensing designation will improve an area, and how the designation will work alongside other existing policies or measures that are already being taken. Local Authorities will have to show how such a designation will be part of the overall strategic borough wide approach, and how it fits with existing policies on:

- homelessness;
- empty homes;
- regeneration; and
- anti-social behaviour.

47. Local authorities will also have to demonstrate the role of other partners (if any), such as the Police or Social Services, in ensuring the designation reaches its goal.

48. The local authority must show:

- it has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve, and;
- how the making of the designation will significantly assist the local authority in achieving their objectives (whether or not in conjunction with those other measures).

49. It is important for local authorities to demonstrate how licensing will work in conjunction with existing initiatives, such as accreditation and partnerships. Licensing in itself is not a stand alone tool, and local authorities should take account of this. For example, landlords will need adequate support to help them deal with problem tenants. The local authority should ensure that their schemes are adequately resourced and include services such as active outreach support programmes to engage with landlords and tenants who need their assistance.

50. It is also important for local authorities to consider some of the possible effects of making a designation, and to include any risk assessment they may have carried out. For example, has there been an assessment of the possible displacement of unprofessional landlords to other areas within the local authority's jurisdiction or to neighbouring local authorities.

## Consultation

51. Local authorities must take reasonable steps to consult persons who are likely to be affected by the designation, and consider any representations made in accordance with the consultation.
52. Local authorities will be required to conduct a full consultation. This should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation. It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation that will be affected. Local authorities should ensure that the consultation is widely publicised using various channels of communication.
53. During consultation, local authorities must give a detailed explanation of the proposed designation, explaining the reasons for the designation, how it will tackle specific problems, the potential benefits etc. For example, in the case of selective licensing, local authorities must be able to demonstrate what the local factors are that mean an area is suffering from low demand and/or anti-social behaviour, how those factors are currently being tackled, and how the selective licensing designation will improve matters. Affected persons should be given adequate time to give their views, and these should all be considered and responded to.
54. Once the consultation has been completed the results should then be published and made available to the local community.

## Selective Licensing

55. Selective licensing can play an effective role in tackling criminal landlords and linked activities, for example illegal immigration. When it is applied in a borough wide fashion and not properly enforced, it can affect the majority of landlords who provide a good service. The Government is mindful of this when considering the use of selective licensing. To prevent the disproportionate use of selective licensing to penalise good landlords; the Government has announced plans<sup>6</sup> to introduce a threshold in instances where licensing would cover 20% of a local authority's area or stock of rented properties. In such cases, local authorities must first seek approval from the Secretary of State. Larger schemes will be judged impartially, but they will need to demonstrate need and be supported by adequate enforcement plans. New guidance will be made available, following enactment of the changes.

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<sup>6</sup> [The Selective Licensing of Houses \(Additional Conditions\)\(England\) Order 2015](#)  
(Draft Order laid before Parliament under section 250(6) of the Housing Act 2004, for approval by resolution of each House of Parliament).

56. To ensure the benefits of selective licensing are maintained without significant drawback; the Government intends to broaden the scope of selective licensing's qualifying criteria. In addition to anti-social behaviour and low housing demand it will include: high levels of crime, deprivation, poor property condition and the impact of large inward migration. Notably, large inward migration can have consequences for overcrowding, exploitation of vulnerable groups and illegal immigration.

## **Planning Control**

57. Planning permission is required to construct a new dwelling or use an existing building as a residential unit. Where a building does not have planning permission to be used as a dwelling, such as a 'beds-in-shed' structure the local authority should take enforcement action.

58. Some local authorities have found it effective to issue a planning enforcement notices first followed by Prohibition or Demolition Orders under the Housing Act 2004. An enforcement notice under the Town and Country Planning Act 1990 can require an unauthorised construction to be altered to an acceptable condition or demolished, thereby rendering the premises unusable to the landlord. If the owner of the land fails to comply with the enforcement notice, the local authority may complete the works required by the notice and charge the costs to the landlord. It is also an offence not to comply with an enforcement notice, the maximum penalty being a fine of £20,000 in the magistrates' court or an unlimited fine on indictment.

### **Case Study - London Borough of Hounslow - planning**

**Two neighbouring properties owned by the same landlord had without planning permission, been illegally converted into 11 self contained flats, including a self contained rear extension and outbuildings at the rear of each property.**

**A Planning Enforcement Notice was issued against each of the two properties.**

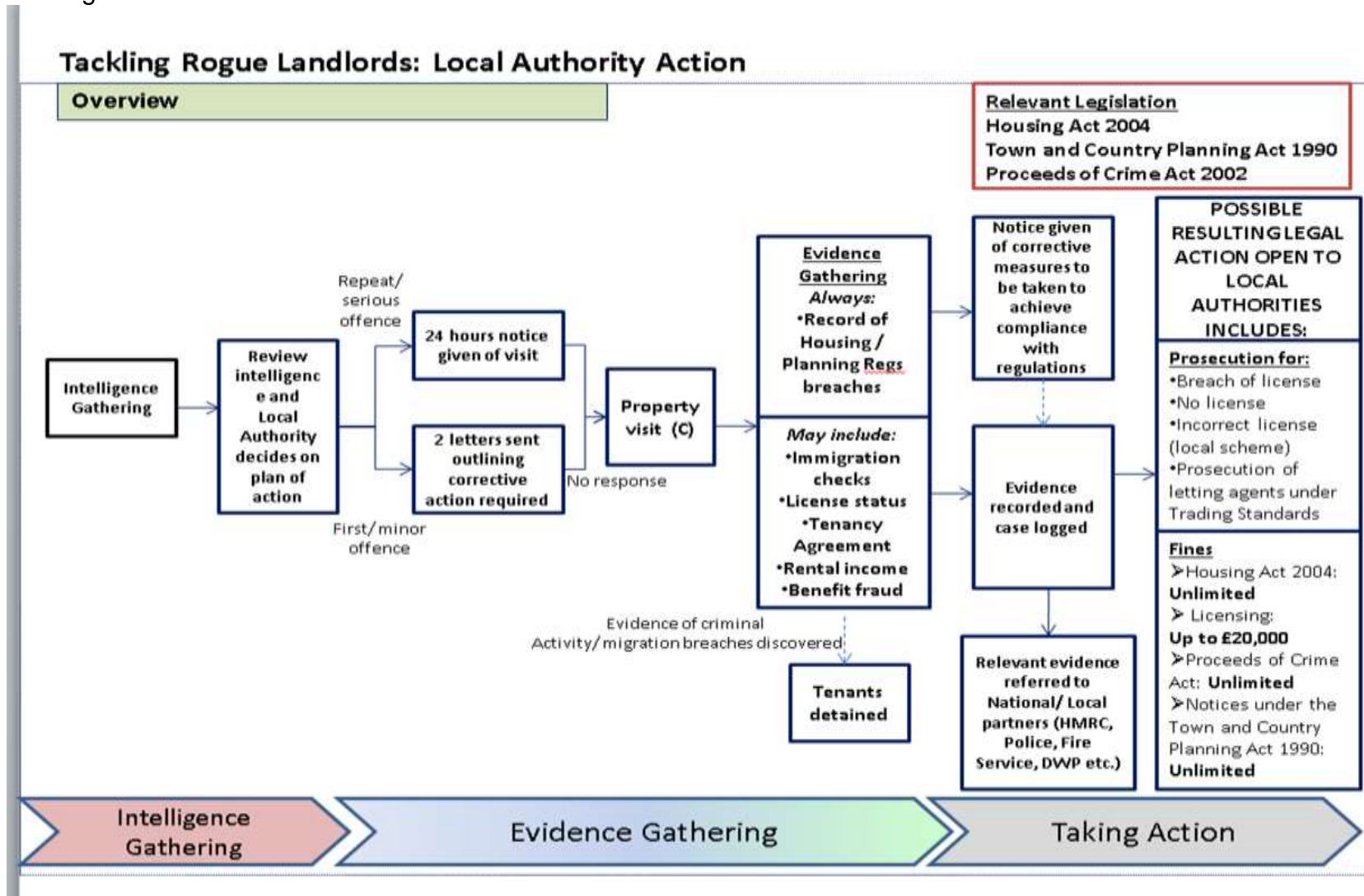
**These notices were not complied with and further enforcement actions were taken under Housing Act 2004 on the flats within the properties, to improve existing living conditions, mainly fire safety. A Prohibition Order was served on the top floor flat prohibiting human habitation.**

**The council advised the owner that they were initiating legal proceedings for non-compliance with enforcement notices. The Magistrates Court referred the case to the Crown Court. Shortly before the court date the landlord demolished both outbuildings and rear extensions and ceased the residential use of the remaining flats. Despite this the landlord was convicted and ordered to pay a £50,000 fine and £2,677 in court costs and victim surcharges.**



## CASE STUDY London Borough of Newham

In collaboration with the Cabinet Office, the London Borough of Newham developed a process map of their approach to tackling recalcitrant landlord behaviour





## Building Control

59. Properties which have had internal building alterations, such as internal subdivisions or the addition of additional fixed building services such as boilers or electrical sockets are subject to building control requirements. Where they have not been complied with, the properties may be lack adequate safety measures against risks such as fire. A person carrying out building work that contravenes the Building Regulations can be fined up to £5,000 for the contravention, and up to £50 for each day the breach continues after conviction. In addition, the local authority may serve an enforcement notice on the owner requiring them to alter or remove work which contravenes the regulations. If the owner does not comply with the notice the local authority has the power to undertake the work itself and recover the costs of doing so from the owner<sup>7</sup>. This power is available only up to one year from the date of completion of the work.
60. These fine levels will be changed following the implementation of Legal Aid, Sentencing and Punishment of Offenders Act 2012. When that legislation comes into force, it will remove the cap on fines which are currently limited to a maximum of £5,000. In future, those fines will be potentially unlimited. Where fines currently have a maximum level of less than £5,000, the maximum level will be quadrupled.
61. If the unauthorised building work leaves a building in a structurally dangerous condition local authorities have powers under the Building Act 1984 to serve a notice on the building owner requiring such action as necessary to remove the danger. Such a notice may be served whenever a local authority becomes aware of a danger of this type.

### Case Study - Leeds Overcrowding

**A developer using a business model of overdeveloping unsuitable accommodation to maximise the income for his investors was subject to multi-agency proactive enforcement action. Despite informal actions to try resolving the overdevelopment, the developer continued to provide too small room sizes which resulted in the service of prohibition notices under the Housing Act 2004 and ensured that any Local Housing Allowance was not paid in these circumstances. The Council adopted a coordinated targeted approach to the landlord's whole property portfolio and served notices under housing and planning legislation as appropriate to address the issue. This resulted in an unsuccessful appeal against a prohibition notice based on the size of the accommodation. The developer has now changed their business model; and is undertaking works to comply fully with all the requirements of both the Planning and Housing Act notices.**

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<sup>7</sup> <http://www.planningportal.gov.uk/permission/responsibilities/buildingregulations/failure>

## Working with other agencies

62. In some cases, landlord criminality will be linked to other issues, such as providing illegal employment, benefit fraud, or tax evasion. In some parts of the country, outbuildings are occupied predominantly by migrant workers, some of whom may be in the United Kingdom illegally. Local authorities will need to combine forces with other agencies and may wish to form focussed multi-disciplinary teams.

### Case Study – Fenland District Council

Fenland District Council's Operation Pheasant is a multi-disciplinary project drawn from several agencies that looks at links between poor property condition, culpable landlords and their associations with illegal working, gangmaster activity and human trafficking. Operations are a joint activity involving, police officers, council officers, interpreters, and fire officers with the broader partnership including the Gangmaster Licensing Authority, Her Majesty's Revenue and Customs and Immigration Enforcement. The decision to conduct an inspection is based on intelligence gathered and received between the various agencies. Each of the agencies working on Operation Pheasant has shared access to a web based case management software package. This enables each team to input intelligence about a particular address or landlord/agent, detail the action taken and whether there is a need for further action. Visits and inspections are not done in uniform, this helps assuage tenant concerns that they are not in immediate trouble. Officers have found this approach helps build trust as well as offering advice on how to access local services and advice and the fire officer installing free smoke detectors where needed.

### Home Office Immigration Enforcement

63. The Home Office has three operational commands (formerly the UK Border Agency) dealing with the control of immigration;

- UK Border Force which checks arriving passengers;
- UK Visas and Immigration which considers applications to enter or stay in the UK; and
- Immigration Enforcement which deports foreign nationals who commit criminal offences and removes those who have committed immigration offences.

64. Home Office Immigration Enforcement has a national structure of local Immigration Compliance and Enforcement teams. Each team has a leader who is the local point of contact for enquiries during office hours (can be found in the contacts section).

65. Local Authorities should involve Home Office Immigration Compliance and Enforcement teams in any enforcement activity where suspected illegal immigrants are involved. More on the powers held by Home Office Immigration officials can be found in Annex B.

66. The Immigration Act 2014 requires landlords to undertake basic immigration checks of their adult tenants. The Government is implementing the scheme on a phased basis that started in December 2014 in large parts of the West Midlands. Landlords are liable to a financial penalty of up to £3,000 if they let the property to an illegal migrant having failed to conduct the specified document check. Under the scheme, landlords are advised to check all adults who are intended to live at the property, not just those named on the tenancy agreement. A landlord may agree to transfer responsibility for performing this task to an agent. Where a tenant sublets the tenancy or takes in a lodger without the landlord's knowledge, it is the tenant's responsibility to conduct the check; unless the landlord has agreed to undertake the check. The Home Office is responsible for enforcing the scheme and is providing an advice and enquiry service to landlords to assist them to comply with the new legislation.

### **Police**

67. Police have powers of arrest, and search and entry. Local authorities should work closely with the police where landlords are suspected of involvement in criminal activity. Such as where the local authority suspects that this criminal activity may involve human trafficking - where victims are moved into or around the UK and have been deceived or coerced individuals into an exploitative situation – the National Crime Agency should be involved. Police can also work with local authorities and arrest landlords who have committed an illegal eviction.

### **Fire and Rescue Service**

68. Fire and rescue authorities and local authorities are expected to work closely together to ensure risks to their communities are identified and effectively mitigated. The common parts of multi-occupied residential premises, such as Houses in Multiple Occupation or blocks of flats are subject to the general fire safety requirements of the Fire Safety Order 2005. In addition, the emergency powers of fire and rescue authorities to prohibit or restrict the use of premises in cases of risk of death or serious injury from fire (including power of entry to inspect) apply to these premises. By working closely together, fire and rescue authorities can inform local authorities where licensed landlords are failing to meet safety requirements and where further action is needed to be taken. Local authorities can reciprocate this by advising of fire risks identified through their own inspections.

### **Co-location**

69. Some local authorities have found it advantageous to have their housing functions co-located with environmental health, trading standards and planning officers. This helps facilitate the sharing of knowledge on illegal behaviour and speed up the co-ordination of enforcement action.

## **Case Study – Herefordshire**

**In Herefordshire Council, the Housing Environmental Health Officer team has been brought in under Environmental Health and Trading Standards and Planning Enforcement. They are located together, which allows the rapid sharing of intelligence. For example, Housing Environmental Health Officers have attended raids with trading standards officers. At such raids, trading standards officers had searched both the shops and accommodation above for illegal cigarettes, whilst the Housing team checked if housing prohibition orders had been breached. This made more efficient use of police time and local authority resource when investigating the same premises.**

## Educating Landlords and Agents

70. A small number of landlords have little awareness of their obligations towards their tenants. While some landlords deliberately flout the Law, in many cases landlords are willing to learn how to be better in their role. The challenge is reaching out to landlords who want to learn more and do the best by their tenants. Local authorities can improve the management of property in their area and reduce costs by avoiding expensive interventions at later stages.
71. By request of the Government, the Royal Institute of Chartered Surveyors have published a [code of practice](#) which makes clear the legal requirements of landlords and letting agents alike. The code has wide industry support and states that where an allegation of professional negligence or a breach of obligation has been made. The courts or a tribunal are likely to take account of the Code in deciding whether or they have acted with reasonable competence.
72. Some local authorities have chosen to educate their landlords as part of a local accreditation programme. The benefit of such activity is that those landlords are committed to meeting locally agreed standards and in some cases continue their professional development as a landlord. Landlords can be signposted through a dedicated web page on private rented accommodation or by environmental health officers, road shows and localised publicity. Some local authorities have enhanced this by introducing a Twitter or Facebook stream showing interaction between local landlords, landlord groups and renters.
73. A dedicated web page on private rented accommodation can be a useful landing page for landlords seeking further information on local standards. The page can highlight:
- local standards;
  - examples of good practice;
  - promoting awareness of responsibilities;
  - dissemination of information;
  - advice on repairs improvements; and
  - provide links to other local landlord groups.
74. Establishing good links with both local and national landlord associations can offer further benefits, as some authorities have found that landlords are more receptive to training and advice issued by a landlord association. The three national associations that officers can direct landlords to are:
- [British Property Federation](#)
  - [National Landlords Association](#)
  - [Residential Landlords Association](#)
75. In addition to landlord associations the National Approved Letting Scheme, provides training for letting agents. This can range from introductory bite sized training on deposits and tenancy agreements, to BTEC level three accreditation and range of continuing professional development courses.

## Case Study - London Rental Standard

[The London Rental Standard](#) is a set of minimum standards that the Mayor of London expects every landlord and letting agent in London to meet. The Mayor has launched a campaign which is designed to increase professionalism in the capital's private rented sector by encouraging landlords to take up voluntary accreditation to the Standard. The Mayor has brought all the existing accreditation schemes in London under one umbrella, in partnership with London Boroughs, the industry and tenant representatives. The standard gives landlords peace of mind that they are managing their property correctly and that they understand their legal responsibilities as well as best practice. It will also give tenants confidence in the landlord or agent they are dealing with. The London Rental Standard can help provide financial savings for landlords and agents through discounted insurance and deposit protection.

# Illegal Eviction

76. If a landlord tries to make a tenant leave their home without following the correct steps it is an illegal eviction. Illegal eviction is a criminal offence. Actions that are deemed to be an illegal eviction include:

- forcible removal from a home;
- forced to leave due to threatening behaviour or intimidation;
- preventing tenants from accessing certain parts of their home; and
- changing the locks while the tenant is out.

77. If a tenant reports the risk of an illegal eviction, local authority officers can help clarify the tenant's rights and what action to take. Where a criminal offence has occurred or is likely to occur, the police should be notified immediately. Police have the power of arrest<sup>8</sup> if a person (landlord) uses or threatens violence to secure entry to premises. The power of arrest also extends to an offence where a trespasser (landlord without the tenant's permission) fails to leave the premises when required to do so, by the occupier.

78. In some evictions the police may be called by landlords to intervene. The Police should not enable or assist an illegal eviction by a landlord. Where police officers are unfamiliar with illegal eviction they should be advised of the tenant's rights under the *Protection from Eviction Act 1977*.

79. If a landlord wishes to end a tenancy and repossess premises, either through no fault of the tenant or a breach of a term of the tenancy agreement, they are required to follow a series of steps below to lawfully evict the tenant.

## Nottingham Case Study - Illegal Eviction

**Nottinghamshire Police were not receiving accurate advice about whether an unlawful eviction was a civil or criminal matter. Meetings with the Police highlighted that there was no material available on their information system about the legality of a landlord evicting a tenant without a Court order. Consequently, Nottingham Council agreed to provide call handling notes and run training sessions for the Police call centre staff.**

**When a call is received advising a landlord is undertaking an unlawful eviction, an appropriate response can be given. Police officers on the ground are told that the matter is criminal and an intervention is needed on that basis.**

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<sup>8</sup> Sections 1&2 Criminal Law Act 1977

## ***Correct steps for a legal eviction***

80. **Notice to end tenancy** – landlords letting properties under Assured Shorthold tenancies can serve notices under section 21 or section 8 of the Housing Act 1988. A section 21 notice is a no grounds notice, which must be served in writing and provide a minimum of two months notice to tenants. It can be served at any time during the fixed term of the tenancy or upon its expiry; but the notice cannot require the tenant to leave before the end of the fixed term.
81. If there has not been a fixed term and the tenancy was periodic from the outset, the landlord will have to serve a notice which expires on the last day of the period of the tenancy and provides a minimum of two months' notice, before the premises can be repossessed.
82. A section 8 notice requires the landlord to prove grounds to obtain a possession order. These cases may involve breaches of the tenancy agreement, such as rent arrears. There are 17 grounds for possession in total. The notice must be in a prescribed form and specify the grounds sought. The notice period for possession can either be immediate, two weeks or two months depending on the ground or reason possession is sought
83. **Notice period** – a minimum section 21 notice period must be two clear months, i.e. if a notice is served on 1 January it cannot expire prior to the 1 March.

For periodic tenancies the last day of a period of tenancy is the day before the rent is due in the fixed term contract.

84. **Notice of possession** - if the tenants do not leave by the date on the section 21 notice, the landlord can go straight to court and seek a possession order. Landlords can choose to notify tenants they are doing this.

Defences can be brought against both processes, when a tenant receives a copy of the landlord's claim to Court

If the court gives a possession order and the tenants do not leave, the landlord must apply for a bailiff's warrant for possession. Only court appointed bailiffs are able to ensure vacant possession is obtained. These bailiffs can engage services of the police if required.

Under a section 8 possession the landlord must issue a 'notice of intention to seek possession'. This informs the tenants of an application to the court for a possession order if they don't leave.

Defences can be brought against both processes, when a tenant receives a copy of the landlord's claim to Court

If the court gives a possession order and the tenants do not leave, the landlord must apply for a bailiff's warrant for possession. Only court appointed bailiffs are able to ensure vacant possession is obtained. These bailiffs can engage the services of the police if required.



85. **Length of process time** - the length of time to remove a tenant can be between 8 – 16 weeks and in some cases can be subjected to an accelerated procedure.

86. **Accelerated possession** - this is quicker than normal eviction and there's usually no court hearing. This can only be done if:

- the tenants have a written assured shorthold tenancy or a statutory periodic tenancy;
- the tenants are served a section 21 notice to move out;
- the tenants have not been asked to leave before the end of a fixed-term tenancy;
- the deposit is placed in a deposit protection scheme if the tenancy started after April 2007;
- the landlord has complied with any local authority licensing requirements;
- it is purely a possession claim and there are no other issues, such as rent arrears;
- tenancy also needs to have been entered into on or after 15th Jan 1989; and
- the tenancy must not have immediately followed an assured tenancy which was not an assured shorthold tenancy.

If at any stage a landlord has forcibly removed a tenant before the bailiffs have arrived, they have committed an illegal eviction and can be prosecuted.

# Prosecution of Illegal Landlords

87. This section offers advice on how to create an effective prosecution strategy for illegal landlords ensuring prosecutors maximise the appropriate fine to be imposed by the courts.
88. The 2013 [select committee report](#) which commissioned this revised guidance sought that better advice be provided on the prosecution of criminal landlords. More significantly if the prosecution was to be meaningful it should highlight the harm criminal behaviour causes tenants. Key to this approach is the use of tenant impact statements
89. Officers need to be aware that there are no specific sentencing guidelines in relation to housing or planning offences. When sentencing a landlord, a magistrate takes into account the level of harm caused and the culpability of the landlord when determining the appropriate sentence. It is the responsibility of council officers to ensure magistrates have a full and tangible understanding of the harm suffered by the tenant and how the harm had been caused by the landlord. Schedule 16, part 6 of the Crime and Courts Act 2013, allows the court to take account of assets as well as income when setting a financial penalty.

## Pursuit and Prosecution

### Prosecution

90. A number of cynical landlords are experienced enough to take advantage of a local authority offering advice and use delaying tactics to avoid undertaking the necessary work. It is important to avoid wasteful informal engagement. Landlords should respond to advice and informal engagement promptly, failure to do so should be met with prompt robust enforcement action and the beginning of prosecution proceedings.

### Time Limit Alerts

91. Most offences fall into the summary offence category and are heard in the magistrates' court. A summons needs to be served within six months of the date of the alleged offence. Summons issued close to the expiry is at risk if it is sent to the wrong landlord or letting agency, as there is no time to resend the correct summons.

### Instruction to legal representatives

92. It is recommended that solicitors are used to handle court proceedings and where necessary a barrister.

### Court Summons

93. A court summons to a landlord should list all offences as evidence of consistent breaches of legislation and disregard towards tenants.

## Evidence

94. In any criminal proceedings a 'section 9' (Criminal Justice Act 1967) written statement is required as evidence. Its contents should include:

- the facts of the case;
- a focus on the offences occurred;
- a description of the impact of the offence on the tenant; and
- evidence relevant to the offence.

95. It is the local authority's role to collate material and make a decision on what material is to be retained. In doing so they must ensure that:

- all notes are detailed;
- strictly factual;
- records of all information kept;
- reasonable lines of enquiry are pursued; and
- all written, computer records and recorded media are catalogued.

96. The local authority's disclosure officer is tasked with going over evidence and unused material in a case and deciding whether to disclose it to the defence under the rules regarding primary and secondary disclosure. The officer should be someone who is acquainted with the case and know where all the material is gathered during the investigation.

### Supporting Evidence

97. **Additional expertise** - should be used where available, for example gas and electrical contractors or building surveyors. They will provide an expert report on the property's defects and hazards.

98. **Photographs** - where possible they should need to be exhibited on display boards, whether it is a collapsing ceiling or a tenant improvising guttering. The images are tangible and create a lasting impression.

99. **Artefacts** – use where appropriate for example a burnt fuse-board or perished electrical cable.

100. **Impact Statements** – this can impress upon the court that the issue is not a regulatory breach, but the protection of individuals and their families and the emotional damage that can be caused. By effective use of impact statements, magistrates can gain a tangible sense of the harm caused, instead of adopting a detached judgement that the case is a technical breach of regulation.



Make sure good quality photographs are properly exhibited.

## **Attending court – what can be expected**

### **The magistrates' court**

101. For most housing and planning breaches the matter will be dealt with in a Magistrates' court. The court will normally consist of volunteer judicial office holders who are appointed to sit as lay magistrates. The lay magistrates will be supported by a Court Legal Advisor who can advise magistrates of the law. Instead of the lay bench, a court can sometimes consist of a salaried magistrate who is a qualified lawyer and known as a District Judge.

### **Giving evidence**

102. Because magistrates will have little knowledge of housing and planning offences it is extremely important for the solicitor working with the case officer to fully set out the facts of the case and the impact it has on the tenant. The following approaches may be helpful in getting across the nature of the offence;

- always provide additional clarification where needed, as it may also help enhance the bench's understanding of the case;
- provide a clear narrative of the faults found;
- expose the lack of co-operation from the landlord;
- highlight why the prosecution case is of public interest;
- show the landlord's impact on tenants and other tenants particularly multiple occupied properties; and
- in cases of Anti-Social Behaviour, impact on neighbours too.

### **Magistrates sentencing powers**

103. Magistrate sentencing powers are set to change with the maximum fine becoming unlimited. The sentencing element of Legal Aid Sentencing and Punishment of Offenders Act is set to come into force in 2015.

## Recovery of costs

104. Officers should seek full recovery of costs for bringing a prosecution forward. Officers will be mindful of the need to keep a full and accurate record of the time spent and costs incurred along with the investigative costs.
105. **Proceeds of Crime Act** - if a defendant has been convicted of a listed serious offence or has a history of a number of convictions, the court can assume that all their property is the proceeds of crime and this can be factored into the amount of a confiscation order. Some local authorities have already used this in cases of landlord criminality. This has to be requested prior to sentencing in which case the matter will be referred to Crown Court.

### Case Study - Redbridge Council

In November 2013, a landlord pleaded guilty to nine offences under the Housing Act 2004 following a prosecution by Redbridge Council - six offences under the housing management regulations and three breaches of an Emergency Prohibition Order. There had been a blatant and ongoing breach of the Emergency Prohibition Order which placed the occupants at significant risk. Eight months earlier, they had pleaded guilty to three previous breaches of the Emergency Prohibition Order. Following the guilty plea, Redbridge Council made an application for the case to be committed to Crown Court for a Confiscation Order under the Proceeds of Crime Act. The application related to the rental income received by the landlord during the period for which the Emergency Prohibition Order was in force. The Court ordered full financial disclosure by the defendants. The financial investigation was carried out by the Metropolitan Police Criminal Finance Team North 3 in Edmonton, working closely with the Environmental Health Officer and the Council's Legal Services Department. In July 2014, the Crown Court awarded a Confiscation Order of £14,860, fines of £46,500 and costs of £4,610. Total penalty of £65,970 to be paid within five months, with each defendant liable for half the total amount or face 18 months imprisonment.

# Post Court Action and Deterring Bad Landlords

106. Given the time and cost of prosecution, local authorities will want to consider doing all they can to deter bad landlords and raise public awareness - both so that the public can report properties of concern and so that prospective tenants are informed of the landlords to avoid.

## Post Court Action

107. **Enforced Recovery of Debt** - determined landlords may try to avoid payment of fines by claiming an inability to pay or refusal to pay. In such cases, local authorities can enforce the debt by imposing the following sequence of actions:

- requesting a County Court Judgement;
- placing a Charging Order on a property; and
- requesting an Order for Sale.

108. **Rent Repayment Orders** – this is where a landlord has been found guilty by a court or a residential property tribunal for renting a property without a selective or House in Multiple Occupation licence, where such a license is required for the property. The fine can be a strong penalty of claiming up to 12 months rent. This can help local authorities detect unlicensed properties, as both tenants and local authorities (where housing benefit has been paid) can keep the reclaimed rent and use it for other activities.

109. **Her Majesty's Revenue and Customs** – local authorities can contact Her Majesty's Revenue and Customs when they have intelligence of landlords that may have been involved in criminal activity, such as benefit fraud and tax evasion. Reports should be routed to the Intelligence Bureau, within Her Majesty's Revenue and Customs, which is specifically for information from public sector bodies and not the general public. They will ensure that the intelligence is sent to the right team to be acted upon. They are also currently examining how to provide feedback on intelligence reports to local authorities. Contact them by emailing [Intelligence.Bureau@hmrc.gsi.gov.uk](mailto:Intelligence.Bureau@hmrc.gsi.gov.uk) or phone 01236 818194 (8:00 am to 8:00pm 7 days a week).

110. **Mortgage providers** – should be notified of any enforcement action. In some cases fraudulent behaviour may contravene the terms and conditions of a mortgage, where possible mortgage providers will take action proportionate to the offence.



## Contact Details

Her Majesty's Revenue and Customs

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Email: [Intelligence.Bureau@hmrc.gsi.gov.uk](mailto:Intelligence.Bureau@hmrc.gsi.gov.uk)

Tel: 01236 818194 (8:00 am to 8:00 pm 7 days a week)

UK Visas and Immigration

[www.gov.uk/government/organisations/uk-visas-and-immigration](http://www.gov.uk/government/organisations/uk-visas-and-immigration)

Gangmaster Licensing Authority

[www.gla.gov.uk](http://www.gla.gov.uk)

Government Approved Tenancy Deposit Schemes

Deposit Protection Service

[www.depositprotection.com](http://www.depositprotection.com)

My Deposits

[www.mydeposits.co.uk](http://www.mydeposits.co.uk)

Tenancy Deposit Scheme

[www.tds.qb.com](http://www.tds.qb.com)

Leasehold advisory service

[www.lease-advice.org](http://www.lease-advice.org)

Leasehold Redress Schemes

Ombudsman Services Property

[www.ombudsman-services.org/property.html](http://www.ombudsman-services.org/property.html)

Property Redress Scheme

[www.theprs.co.uk](http://www.theprs.co.uk)

The Property Ombudsman

[www.tpos.co.uk](http://www.tpos.co.uk)

Royal Institution of Chartered Surveyors

[www.rics.org/uk/](http://www.rics.org/uk/)

The Association of Residential Landlords

[www.arla.co.uk](http://www.arla.co.uk)

Guild of Residential Landlords

[www.landlordsguild.com](http://www.landlordsguild.com)

Residential Landlord Association

[www.rla.org.uk](http://www.rla.org.uk)



**National Landlord Association**  
[www.landlords.org.uk](http://www.landlords.org.uk)

**National Approved Letting Scheme**  
<http://www.nalscheme.co.uk/>

## Further information

### Planning

Current Guidance is in:

National Planning Policy Framework (Decision-taking)  
Paragraph 207

<http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/>

Planning Guidance (Ensuring effective enforcement)

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

Planning Guidance (Appeals – appeals against other planning decisions)

<http://planningguidance.planningportal.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>

### UK Visas and Immigration

Further information for potential assisted voluntary return applicants and others may be found on:  
[www.refugee-action.org.uk](http://www.refugee-action.org.uk) <http://www.refugee-action.org.uk/>

Refugee Action can be contacted on 0808 800 0007 (free from mobile phones as well as land line)

For regional links and contacts:

<https://www.gov.uk/government/publications/contact-details-for-immigration-compliance-and-enforcement-teams>

Home Office guidance on Assisted Voluntary Returns is on:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300369/AVR\\_guidance\\_v10.0EXT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300369/AVR_guidance_v10.0EXT.pdf)

### Department for Communities and Local Government

Top tips for Landlords: Assured Shorthold Tenancies

<http://www.communities.gov.uk/publications/housing/tipslandlordsassuredshorthold>

Housing Health and Safety Rating System: Enforcement Guidance: Housing Act 2004 Part 1:  
Housing Condition

<http://www.communities.gov.uk/publications/housing/housingact2>

Health and Safety ratings system – guidance for landlords and property related professionals:

<http://www.communities.gov.uk/documents/housing/pdf/150940.pdf>

Housing Health and Safety Rating System:

<http://www.communities.gov.uk/documents/housing/pdf/142631.pdf>

## **Police**

Information on Police Powers can be found at:

<http://www.homeoffice.gov.uk/police/powers/>

Find your local Police team / Service information at:

<http://www.police.uk/>

## **Local Government Association**

The Private Sector Housing Forum on the Local Government Association's Knowledge Hub website provides local authorities with the opportunity to share information about private sector housing issues:

<https://knowledgehub.local.gov.uk/group/privatesectorhousingforum>

A research paper on the costs of prosecuting private landlords for poor property conditions. The research paper includes case studies and tools used by councils in the prosecution process.

[http://www.local.gov.uk/web/guest/housing/-/journal\\_content/56/10180/6271002/ARTICLE](http://www.local.gov.uk/web/guest/housing/-/journal_content/56/10180/6271002/ARTICLE)

## ANNEX A

### LOCAL AUTHORITY POWERS

Local Authorities have a wide range of powers which can be brought into effect to tackle the problems associated with recalcitrant or criminal landlords. These powers have been enhanced by the Localism Act 2012. The guidance provides some information on the relevant powers held by other bodies, in these circumstances the Local authority should act in conjunction with the body which holds the powers.

#### Housing Act 2004

Power	What the power allows	What the power can deliver
<b>Housing Health and Safety Rating System</b>	<p>Housing Health and Safety Rating System is an evidenced based system used to assess housing conditions in all residential property. The Housing Health and Safety Rating System sets a minimum standard for all residential properties, ensuring that they are safe and habitable.</p> <p>The Housing Health and Safety Rating System comprises an assessment of the presence and severity of 29 hazards, including 'excess cold'. Local authorities have a duty to take enforcement action to secure necessary improvements where Category 1 (serious) hazards are present. Local authorities also have discretionary power to intervene where Category 2 hazards are present. In determining the most appropriate form of action, local authorities can consider the extent of vulnerability of person's living (or likely to live) in the accommodation.</p>	<p>A local authority can carry out an assessment of a home and will look at the likelihood of an incident arising from the condition of the property and what the harmful outcomes might be.</p> <p>As a result of the assessment, the council will be able to say whether the property has 'Category 1' (serious) or 'Category 2' (other) hazards.</p> <p>If the local authority discovers serious Category 1 hazards, they will first discuss these with the home owner or landlord to encourage them to deal with the problems. If this isn't successful, then they are obliged to take some form of enforcement action:</p> <ul style="list-style-type: none"> <li>▪ issue an improvement notice to the landlord to carry out improvements to the property</li> <li>▪ ban the use of the whole or part of a dwelling or restrict the number of people living there using a <b>prohibition order</b></li> <li>▪ serve a hazard awareness notice to draw attention to the problem</li> <li>▪ take emergency action to fix the hazard where there is an immediate risk</li> </ul> <p>If a home owner/landlord doesn't carry out the requirements of a legal ('statutory') notice issued by the local authority, they could face a fine which is currently up to £5,000.</p>
<b>Mandatory House in Multiple Occupation Licensing:</b>	<p>There is a statutory duty on local authorities to licence larger higher risk Houses in Multiple Occupation of three or more storeys housing five or more unrelated persons. These properties are seen as higher</p>	<p>Private landlords must be deemed to be a "fit and proper" person in order to be granted a licence.</p> <p>Local authorities can impose conditions on a licence, such as how the licence</p>

Power	What the power allows	What the power can deliver
	<p>risk, both because of the nature and condition of the properties, and the vulnerability of their occupants.</p> <p>The mandatory House in Multiple Occupation licensing regime addresses poor management practices and aims to secure a reduction in death and injury from fire and other health and safety hazards, and ensures adequate provision of amenities.</p>	<p>holder deals with the behaviour of occupiers and the maximum number of occupants allowed in the property. They can also impose conditions requiring adequate amenities and safety requirements to ensure decent standards in properties where there are several households sharing basic facilities.</p> <p>Breach of a licence condition is an offence currently subject to a fine of up to £5,000. Letting or managing a property without a licence is a criminal offence currently subject to a maximum fine of £20,000.</p>
<p><b>Additional House in Multiple Occupation Licensing:</b></p>	<p>Poor conditions and bad management practices can manifest themselves in smaller Houses in Multiple Occupation in specific areas. These smaller types of House in Multiple Occupation may not meet the mandatory licensing criteria but there is a discretionary power to extend licensing to smaller types of House in Multiple Occupation. Local authorities have the general consent to introduce such schemes subject to local consultation.</p>	<p>In order to introduce additional House in Multiple Occupation licensing schemes local authorities are required to consult with local residents, landlords and tenants for a minimum of ten weeks.</p> <p>Local authorities are required to provide a robust evidence base for introducing a scheme, such as demonstrating there are significant management issues and poor property condition that need addressing within a designated area.</p> <p>Once a designation is confirmed landlords who operate within the designated area will be required to apply for a House in Multiple Occupation licence for each of their properties.</p>
<p><b>Selective Licensing:</b></p>	<p>This is a discretionary power to licence all privately rented properties in a designated area that is deemed to experience: low housing demand, and/or significant and persistent anti-social behaviour, high levels of crime, deprivation, poor property conditions and large inward migration. Such schemes are subject to local consultation</p> <p>Forthcoming legislation will require local authorities to seek approval from the Secretary of State for any licensing scheme which would cover more than 20% of a local authority's area or stock of rented properties. Selective licensing is intended to address the adverse impact that poor management by a minority of private landlords, and anti-social behaviour by a few tenants, can</p>	<p>In order to introduce a selective licensing scheme local authorities are required to consult with local residents, landlords and tenants.</p> <p>Local authorities are required to provide a robust evidence base for introducing a scheme, such as demonstrating there are significant management issues that need addressing within a designated area.</p> <p>Once a designation is confirmed landlords who operate within the designated area will be required to apply for a licence for each of their properties.</p>

Power	What the power allows	What the power can deliver
	have on other tenants and the wider community. Selective licensing is only concerned with the management of privately rented property.	
<b>Special Interim Management Orders:</b>	This is a power to take over the management of individual privately rented properties which give rise to significant problems of anti-social behaviour if the landlord does not take action to deal with the problem. Local authorities can use this power to tackle serious anti-social behaviour emanating from individual privately rented properties that are causing problems for the local community, without the need to introduce a selective licensing scheme.	Local authorities will require approval from a First Tier Tribunal (property chamber) in order to make a Special Interim Management Orders. In order for it to be granted the local authority will need to demonstrate that a private landlord is failing to address the anti-social behaviour and that the Special Interim Management Orders is necessary to protect the health, safety and welfare of occupiers, neighbours or visitors to the property.  Once in force a Special Interim Management Orders will last for a period of up to twelve months.  Local authorities will take over the management of the property from the landlord i.e. will collect rent, do repairs, spend money from rents on its management functions etc.

## Planning Legislation

Under powers in the Town and Country Planning Act 1990<sup>9</sup>, local planning authorities have wide-ranging, discretionary enforcement powers to deal with breaches of planning control. The powers provide for a controlled and proportionate response to a wide range of breaches of planning control. Ultimately failure to comply with any enforcement action will lead to the Courts, and it will be for the Courts to decide what sanction to impose.

Power	What the power allows	What the power can deliver
<b>Planning Contravention notices</b>	This may be used where it appears that there may have been a breach of planning control and the local planning authority require information about the activities on the land or to find out more about the nature of the recipient's interest in the land.	Penalty for non-compliance is a level 3 fine (maximum £1,000) on summary conviction. A second conviction for continuing non-compliance can be penalised by a daily fine. A false or misleading response to a Planning Contravention Notice (either deliberately or recklessly) is subject to a penalty of a level 5 fine (maximum £5,000) on summary conviction (section 171D Town and

<sup>9</sup> As amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011.

<b>Power</b>	<b>What the power allows</b>	<b>What the power can deliver</b>
		Country Planning Act 1990).
<b>Temporary Stop Notices</b>	This stops any activity for a period of 28 days. This allows the local planning authority time to decide whether further enforcement action should be taken.	Penalty for non-compliance is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment (section 171G Town and Country Planning Act 1990).
<b>Enforcement notice</b>	This notice requires steps to be taken to remedy the breach within a given period (there is a right of appeal to the Secretary of State against an enforcement notice)	If the notice is upheld, the penalty for failure to comply is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment. If non-compliance continues after conviction, a further conviction can result in a daily fine. In determining the amount of the fine, the court "shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence" (section 179 Town and Country Planning Act 1990).
<b>Stop notice</b>	This has the effect of immediately stopping any activity which contravenes planning control guidelines and where there are special reasons which justify doing this.	Penalty for non-compliance is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment. A second conviction for continuing non-compliance can be penalised by a daily fine. In determining the amount of the fine, the court "shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence" (section 187 Town and Country Planning Act 1990).
<b>Breach of Condition notices</b>	This can be issued where there is a failure to comply with any condition or limitation imposed on a grant of planning permission.	Penalty for non-compliance is a level 4 fine (maximum £2,500). A second conviction for continuing non-compliance can be penalised by a daily fine (section 187A Town and Country Planning Act 1990)
<b>Injunctions</b>	Injunction in the High Court or County Court to restrain any actual or expected breach of planning control (including against someone whose identity is unknown).	Non-compliance is a contempt of court and can be penalised by a fine or possibly imprisonment.
<b>Powers of entry</b>	Powers of entry on to land are available for authorised officers of the local planning authority for the purposes of obtaining information required for enforcement purposes. Where the premises are a dwelling, 24 hours' notice must be given. If entry has been refused or in an emergency, entry can be by warrant. Wilful obstruction of an authorised person is an offence.	These provisions are specific to enforcement. The penalty is a level 3 fine (maximum £1,000) on summary conviction (sections 196A – 196C Town and Country Planning Act 1990).
<b>Article 4 Directions</b>	Article 4 directions allow authorities to withdraw the 'permitted development'	Outbuildings may be erected without the need to apply for specific

Power	What the power allows	What the power can deliver
	rights that would otherwise apply by virtue of the <i>Town and Country Planning (General Permitted Development) Order 1995</i> as amended. An article 4 direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority.	planning permission from the local council (i.e. as permitted development). It is possible to withdraw permitted development rights and instead require that a planning application is made by making an article 4 direction. Such directions are subject to local consultation.

### Other indirect means of redress

The landlord may have breached other areas of law and as such it may be appropriate to work with prosecution authorities to bring action against the perpetrator.

Power	What the power allows	What the power can deliver
<b>Proceeds of Crime Act</b>	<p>If a defendant has been convicted of a listed serious offence or has a history of a number of convictions, the court can assume that all their property is the proceeds of crime and can be factored into the amount of a confiscation order. Confiscation orders are made through the Crown Court. Although there is power under the legislation to make confiscation orders in Magistrates Courts this has not yet been commenced.</p> <p>The Proceeds of Crime Act allows specific financial investigation powers which are also available to civilian investigators in the public sector (known as accredited financial investigators). The National Policing Improvement Agency has the lead on training, accrediting and monitoring financial investigators. Over 20 bodies have investigators and there are 119 Accredited Financial Investigators within the Local Authorities. This allows accredited financial investigators within local authorities to apply for restraint orders, to seize and seek the forfeiture of suspect cash and investigate the suspected proceeds of crime</p>	<p>The Act provides for:</p> <p>The confiscation of the value of the proceeds of crime following any criminal conviction regardless of the amount;</p> <p>The freezing of assets from the beginning of an investigation so as to prevent their dissipation;</p> <p>Civil recovery: a process that allows for the main prosecution agencies to effectively sue for the proceeds of crime in the High Court. This is against property, rather than an individual, and so does not require a criminal conviction;</p> <p>seizure and forfeiture of cash (not less than £1,000) which is the proceeds of, or intended for use in crime and to tax the suspected proceeds of crime.</p> <p>In 2010-11 Local Authorities recovered assets to the value of £4.45m (and they were paid back £2.4m under the Asset Recovery Incentivisation Scheme).</p>



## **ANNEX B**

### **POWERS OF OTHER AGENCIES**

#### **Home Office Immigration Enforcement**

Immigration Enforcement has a number of powers to execute its functions, and maintains information on non-European Economic Area nationals who have entered the country lawfully or previously been dealt with as an immigration offender, including taking the fingerprints and photographs of all persons granted entry clearance to be in the UK for more than six months, persons from certain countries required to hold visas simply to visit the UK, all persons applying to extend their stay in the UK and all persons who have applied for asylum. Immigration officers have the power to arrest and detain non-EEA nationals committing offences under the Immigration Act 1971, both at ports and inland. Immigration officers' more limited powers over citizens of the European Economic Area (EEA) and their family members are currently governed by the Immigration (EEA) Regulations 2006.

The power to detain immigration offenders is exercised as a last resort and is for the purpose of effecting the person's enforced removal from the UK. It can sometimes take some time to manage a person's removal because of the need to obtain the necessary travel documentation from the relevant overseas government, and the need to address legal challenges. The Home Office prefers that illegal migrants leave the UK voluntarily at their own expense. Where appropriate, the Home Office provides assistance for illegal migrants to facilitate a dignified return – Assisted Voluntary Return schemes.

#### **a) Voluntary Assisted Return and Reintegration Programme**

Voluntary Assisted Return and Reintegration Programme is open to asylum seekers or failed asylum seekers of any nationality (apart from UK, European Economic Area or Swiss nationals) meeting eligibility criteria relating to criminality, immigration history and status in the UK.

#### **b) Assisted Voluntary Return of Irregular Migrants**

Assisted Voluntary Return of Irregular Migrants assists irregular migrants – illegal entrants, trafficked people, smuggled people, overstayers – of any nationality (apart from UK, European Economic Area or Swiss nationals) to return to their country of origin. It is not open to those who are been in the asylum system.

#### **c) Assisted Voluntary Returns for Families and Children**

This programme was introduced in April 2010 to provide specific assistance for returning families and also to unaccompanied children (under-18). It is open to those who have sought asylum or are irregular migrants, and provides reintegration assistance for each individual. A family is considered as one or two parents or legal guardians and at least one child under-18. Any other family members over 18 may be considered under Voluntary Assisted Return and Reintegration Programme or Assisted Voluntary Return of Irregular Migrants as appropriate, or make a Voluntary Departure through UK Visas and Immigration. Each individual family member under Assisted Voluntary Returns for Families and Children is eligible for reintegration assistance of up to £2000 including a £500 relocation grant on departure and, once home up to £1,500 in kind.

The Home Office may, in certain circumstances, meet the cost of departure in cases where evidence of the person's inbound carrier is not available. Departure in these circumstances will not include any element of assistance payment. It should be noted that the above programmes are dependent on cooperation from the person's home government authority for travel documentation. Speed of departure is therefore reliant on that country's administrative processes.

## ANNEX C

### Guidance for Local Authorities

on

### The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

#### Introduction

This Order makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme by 1 October 2014.

This now means that tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received. This will make it easier for tenants and landlords to complain about bad service and prevent disputes escalating.

The requirement will be enforced by local housing authorities (see section 3 for more details) and this note provides guidance for local authorities on who the requirement applies to and how it should be enforced. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (SI 2014 No. 2359) which can be found at: <http://www.legislation.gov.uk/ukSI/2014/2359/contents/made>

Enforcement authorities (local authorities) will be able to ascertain whether an agent or property manager has joined a redress scheme, as all three schemes publish a list of their members on their website. It should be possible to determine if someone is acting as an agent either through a consumer complaint or through the equivalent of a mystery shopper exercise. Neither of these approaches requires new powers.

#### SECTION 1: LETTINGS AGENTS

##### What do we mean by 'lettings agency work'

'Lettings agency work' is defined in the [Enterprise and Regulatory Reform Act 2013](#) as things done by an agent, in the course of a business (see Section 2 below), in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 except where the landlord is a private registered provider of social housing or the tenancy is a long lease.

In the Act, lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

The intention is that all “high street” and web based letting agents, and other organisations, including charities, which carry out lettings agency or property management work in the course of a business will be subject to the duty to belong to an approved redress scheme.

### **Exclusions from the requirement to belong to a redress scheme – lettings agency work**

Employers who find homes for their employees or contractors: Article 4(2) of the Order excludes things done by an employer where the prospective tenant is an employee, or a contractor. It excludes the person the prospective tenant provides work or services to where the prospective tenant is a worker, or a contractor, or is on secondment. It also excludes the hirer where the prospective tenant is an agency worker.

This is because an employer may either directly, or via a third party, help an employee find accommodation as a way to attract and then retain workers, especially in areas of high labour demand. This would fall within the definition of lettings work but, to avoid discouraging organisations from providing housing assistance to those who work or provide services for them, they have been exempted from the requirement to belong to a redress scheme.

Higher and further education establishments: Article 4(3)(a) of the Order excludes higher and further education establishments. Universities, for example, often provide a service for their students to help them find property to rent. While this is lettings agency work as per the definition, the housing teams are not acting as independent agents and have a wider duty of care for the students at their institution. If an individual student feels that the housing teams have not provided a good service there are existing channels for students to complain to including the students union.

Legal professionals: Article 4(3)(b) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. Legal professionals could be considered as carrying out lettings type work, for example, when they draft tenancy agreements. They are excluded from the duty as they are already heavily regulated and complaints about their services can be made to the Legal Ombudsman.

The Order does not exclude charitable organisations because any charity that is operating not as a business will already be exempt from the requirement. It is important that where charitable organisations are operating in the course of a business and especially where they are dealing with the most vulnerable that those most in need of support are not denied the opportunity to seek redress where things have gone wrong.

## **SECTION 2: PROPERTY MANAGEMENT**

### **What do we mean by ‘property management work’**

In the Enterprise and Regulatory Reform Act 2013, property management work means things done by a person in the course of a business (see Section 2 below) in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

However, it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme by Schedule 2 to the Housing Act 1996.

For there to be property management work, the premises must consist of, or contain:

- a) a dwelling-house let under a long lease - “long lease” includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;
- b) an assured tenancy under the Housing Act 1988; or
- c) a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas, corridors, stairwells etc.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation will apply to people who in the course of their business (see Section 2 below) manage properties, for example, high street and web based agents, agents

managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

### **Exclusions from the requirement to belong to a redress scheme – property management work**

Managers of commonhold land: Article 6(2) of the Order excludes managers of commonhold land even if one of the units is subsequently let on an assured tenancy. This is to avoid the manager having to join a redress scheme if one of the units on the development was let under a relevant tenancy type, when this is not something they are likely to be aware of. A relevant tenancy type means:

- a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;
- b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977; or
- c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies.

The exemption for managers of commonhold land only applies to the manager of the whole development- where an agent manages an individual dwelling-house in such a development, the duty to belong to a scheme will apply.

Managers of student accommodation: Articles 6(3) to (7) of the Order exclude student accommodation; in particular, halls of residence (which may be run privately), accommodation provided to students by education authorities and charities; and accommodation provided by any landlord where the students are nominated by an educational establishment or charity. Educational institutions will often rent bed space from trusted private providers (frequently agreeing a certain number of beds for a number of years and hence guaranteeing a level of rental income for the private provider) and then give that provider a list of names (nominated students) who will actually take up residence each year. The legislation is not aimed at university managed accommodation which is already well regulated and students have other mechanisms to complain, including through the students union.

Managers of refuge homes: Articles 6(8) to 6(10) of the Order exempt organisations that provide accommodation (refuge homes) for people who are fleeing from actual, or threat of, violence or abuse including controlling, coercive or threatening behaviour, physical violence or abuse of any other description (including both physical and mental). Where those organisations are not operated on a commercial basis and the costs of operation are provided wholly or in part by a government department or agency, a local authority, or the organisation is managed by a voluntary organisation or charity then there is no requirement for the managers of the building to join a redress scheme. The management and letting of such properties goes significantly wider than property management per se and the person living in such a property will not be occupying it as their permanent residence.

Receivers and insolvency practitioners: Article 6(11)(a) of the Order excludes work done by a person (“A”) in the course of a business where the property is subject to a mortgage and A is the receiver of the income of it. When a borrower defaults on a mortgage the receiver is appointed as agent for the mortgagor and steps into their shoes. As such it would not be appropriate to treat the receiver as a managing agent and require them to join a redress scheme.

Other authorities: Article 6(11)(b)(i) of the Order excludes authorities where Part 3 of the Local Government Act 1974 applies, as these authorities will already be subject to investigation by the Local Government Ombudsman. Such bodies include a local authority as not all local authorities are social landlords, a National Park authority, police and crime commissioners, or fire and rescue authorities etc. The requirement to belong to a scheme under this Order does not apply to work carried out by these authorities.

Right to Manage companies: Article 6(11)(b)(ii) excludes Right to Manage companies who acquire the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002 as they are in effect long leaseholders who have taken direct management of their block of flats from the landlord.

Legal professionals: Article 6(11)(b)(iii) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. This is because they are already heavily regulated and complaints by relevant persons about their services can already be made to the Legal Ombudsman. (Where a property management firm is part of a joint venture with a legal firm but is operating under its own identity and is carrying out property management work then it will have to join an approved or designated redress scheme as under these circumstances it will not be authorised or licensed under the Legal Services Act 2007.)

Managers instructed by local authorities and social landlords: Article 6(12) of the Order excludes things done where a Local Authority or a social landlord have instructed the person undertaking the work. Again this is because local authorities and registered social providers are already heavily regulated and consumers already have guaranteed access to an Ombudsman.

If a person is exempt from the redress scheme as they are not operating in the course of a business but they are collecting rent they will still have legal responsibilities as “manager” where the property is a [House in Multiple Occupation](#).

Head tenant as a manager: where a leaseholder receives a reduced service charge in exchange for maintenance work around the property for example gardening in a block of flats, or cleaning and maintains common areas such as stairwells, car parks and corridors. In such cases they are not required to be part of a redress scheme, as they are not doing the work in the normal course of business. In cases where the level of service is deemed to be sub-standard, other leaseholders can complain to the main agent or freeholder that their subcontractor is not up to standard.

## **Implicit exclusions from the requirement to belong to a redress scheme**

Landlords are not explicitly excluded by the Order but are not generally caught by the Enterprise and Regulatory Reform Act as they are not acting on instructions from another party.

Resident management companies are not explicitly excluded by the Order although, in many cases, these are not caught by the Enterprise and Regulatory Reform Act 2013. Resident management companies can arise in different circumstances, but where the residents' management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme. This is because, under the definition in the Act, property management work only arises where one person instructs another person to manage the premises and, in this case, the person who owns the block (and is responsible for its management) and the person managing the block are one and the same.

Likewise, where a resident management company does not own the freehold but is set up and run by the residents and manages the premises on behalf of the residents this would also be excluded as the work is only in respect of the residents' own premises and would not be operating in the normal course of business.

## **What do we mean by 'in the course of business'**

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work 'in the course of business' [as referred to in sections 83 and 84 of the Act](#). The requirement will therefore not apply to 'informal' arrangements where a person is helping out rather than being paid for a role which is their usual line of work. Some examples of 'informal arrangements' which would not come under the definition of 'in the course of business' are set out below:

- someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a small thank you gift of minimal value;
- a friend who helps a landlord with the maintenance or decoration of their rented properties on an ad hoc basis;
- a person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- a landlord who occasionally looks after a friend's property or properties whilst they are away and doesn't get paid for it;
- a joint landlord who manages the property or properties on behalf of the other joint landlords.

Whilst it is not possible to cover all eventualities in this note one of the key issues to consider when deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is offering their services to genuinely helping out a friend or acquaintance, instead of being paid for their services..

Charities - the Order does not exclude charitable organisations because any charity that is not operating as a business will already be exempt from the requirement, Charities which find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for this service it is likely that the charity could argue that it is not operating in the course of a business and therefore be excluded from the duty.

### **SECTION 3: ENFORCEMENT**

In order for the requirement for lettings and property management agents to belong to a redress scheme to be effective there needs to be a process for ensuring compliance and for there to be a fair and effective penalty where the requirement is not met.

#### **Enforcement authority**

The enforcement authority for the purposes of this Order is a district council, a London Borough Council, the Common Council of the City of London in its capacity as a local authority, or the Council of the Isles of Scilly. These are all local housing authorities but this does not limit the enforcing role to housing officers. Where Trading Standards services sit within one of these enforcing authorities, trading standards officers will be able to enforce the regulations and issue the penalty notices, as well as housing officers.

For failure to publish prices on a website, the enforcement authority will be the local authority in whose area the head office of the lettings agent or property manager who has not complied with the requirement.

#### **Penalty for breach of requirement to belong to a redress scheme**

The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.

The three government approved redress schemes are:

Ombudsman Services Property ([www.ombudsman-services.org/property.html](http://www.ombudsman-services.org/property.html))

Property Redress Scheme ([www.theprs.co.uk](http://www.theprs.co.uk))

The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk))

Each scheme will publish a list of members on their respective websites so it will be possible to check whether a lettings agent or property manager has joined one of the schemes.

The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating



circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

Where an enforcement authority intends to impose a penalty they must follow the process set out below.

## **Enforcement process:**

### **Step 1: Notice of Intent**

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- i) the reasons for the penalty;
- ii) the amount of the penalty; and
- iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate). It is up to each local authority to decide who should serve the notice.

The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

### **Step 2: Representations and Objections**

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

### **Step 3: Final Notice**

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

### **Step 4: Appeals**

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- i) the decision to impose a fine was based on a factual error or was wrong in law;
- ii) the amount of the fine is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

### **Step 5: Recovery of the penalty**

If the lettings agent or property manager does not pay the fine within the period specified the authority can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

## ANNEX D

### Guidance on

### Consumer Rights Bill 2015: Duty of Letting Agents to Publicise Fees

#### Introduction

The Consumer Rights Bill will make it a legal requirement for all lettings agents in England and Wales to publicise details of their relevant fees, whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Subject to the usual Parliamentary procedure the intention is that the requirement will come into force on 6 April 2015.

Requiring full transparency of fee deters double charging and enables tenants and landlords to shop around, encouraging letting agents to offer competitive fees. Linking fees to level of service provided enables landlords and tenants to make more informed choices.

The requirement will be enforced by local weights and measures authorities (see section 4 for more details) and this note provides guidance for English local authorities and letting agents who advertise or manage properties in England on who the requirement applies to and how it should be enforced. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading the Consumer Rights Bill which can be found at: <http://www.legislation.gov.uk> Welsh local authorities should refer to any guidance provided by the Welsh Government and any subsequent secondary legislation passed by the Welsh Assembly.

#### SECTION 1: FEES

##### Which fees must be displayed

All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy.

The legislation only applies to letting agents and their chargeable activities; **the legislation does not apply to landlords.**

The only exemptions are listed below. The requirement is therefore for a comprehensive list of everything that a landlord or a tenant would be asked to pay by the letting agent at any time before, during or after a tenancy. As a result of the legislation there should be no surprises, a landlord and tenant will know or be able to calculate exactly what they will be charged and when.

Letting agents should ensure that in addition to publicising fees and service details as required by the Consumer Rights Bill they also adhere to other consumer protection

regulations. This includes the guidance to advertisers published by the Advertising Standards Authority on how to make sure non-optional fees including the rent are stated clearly and upfront.

### **Exemptions to which fees must be displayed**

An agent does not need to publicise the following as part of this legislation:

- rent payable to a landlord;
- a tenancy deposit which is taken as security against damage or violation of the tenancy agreement; and
- any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person.

For example should a letting agent recommend a gardener for a property and arrange to pass the fee from the landlord to the gardener without taking a cut or adding a fee for this service there would be no requirement to publicise the fee charged by the gardener. In this example the agent is simply providing a more convenient way for the landlord to pay the gardener.

### **Where the fees should be publicised**

The agent must display a list of the fees at each of their premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate. The list must also be such that it is likely to be seen by customers.

Ideally someone walking into an agent's office should be able to see the list without having to ask for it and if someone does ask it should be clearly on view and not hidden for example in a drawer.

If an agent has a website the agent must publish a list of fees on their website.

### **How the fees should be displayed**

The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill defined terms such as administration cost must not be used. All costs must include tax.

Examples of this could include individual costs for:

- marketing the property;
- conducting viewings for a landlord;
- conduct tenant checks and credit references;
- drawing up a tenancy agreement; and
- preparing a property inventory.

It should be clear whether a charge relates to each dwelling unit or each tenant.

Where a fee cannot be reasonably determined in advance, the list should describe how a cost is finally calculated.

The intention of the legislation is that both tenants and landlords are able to understand what a service or cost is for and why it is being imposed.

Letting agents often have a range of charges based on the level of service provided; costs must identify charges for the level of service provided. For example:

- fee for a let only service 8.4%;
- fee for a let and rent collection service 12%;
- and fee for a full management service 18%.

There is no legislation on the level of fee set by a letting agent; as this is a commercial decision for each agent to make.

For some services, it is perfectly acceptable to split the charge between tenants and landlords where both receive benefit from the service, for example the cost of drawing up a tenancy agreement. This is not double charging as the cost is split not duplicated.

In addition to the fees letting agents should publicise whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Letting agents who are not members of a client money protection scheme must make this clear, silence on this subject is a breach of the legislation. As with the fees this information should be prominently displayed in every office and on the website.

## **SECTION 2: LETTINGS AGENTS**

### **Definition of letting agents**

Letting agents are defined in the Consumer Rights Bill as a person who engages in letting agency work. The Bill makes it clear that a letting agent doesn't have to exclusively engage in letting agents work but so long as they undertake it they are a letting agent regardless of what else they do.

### **What do we mean by 'lettings agency work'**

'Lettings agency work' is defined in the Consumer Rights Bill as things done by an agent in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988.

In the Bill, lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector.

### **What do we mean by ‘property management work’**

In the Consumer Rights Bill, property management work means things done by the agent in the course of business, in response to instructions from another person who wants to the agent to: arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

For there to be property management work, the premises must consist of a dwelling-house let under an assured tenancy.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector.

## **SECTION 3: ENFORCEMENT**

For the legislation to be effective there needs to be a process ensuring compliance and for there to be a fair and effective penalty where the requirement is not met.

### **Enforcement authority**

The enforcement authorities for the purposes of this Duty are local weights and measure authorities, also known as trading standards authorities these can be a County Council, a London Borough Council, the Common Council of the City of London in its capacity as a local authority, or the Council of the Isles of Scilly.

Generally, the enforcement authority will be the local authority in whose area the lettings agent who has not complied with the requirement is based. So for a national letting agent who has not published their fees and other details, they can be liable for a fine for each and every office where the information is not published. However, local authorities will need to

agree to enforce fines for a website which covers the whole country, as fines cannot be imposed for the same breach of the requirement. Where several authorities are involved the authorities must agree which authority will issue the notice and subsequently keep the fine. In such cases authorities may need to give consideration, to which local authority has the registered head office or registered website.

### **Penalty for breach of duty publicise fees**

The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting work and is required to publish their fees and other details, but has not done so.

The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; alternatively an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.

The enforcement authority can impose further penalties if a lettings agent continues to fail to publicise their fees and other details despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent if they continue to be in breach of the legislation.

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

Where an enforcement authority intends to impose a penalty they must follow the process set out below.

### **Enforcement process:**

#### **Step 1: Notice of Intent**

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- i) the reasons for the penalty;
- ii) the amount of the penalty; and
- iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate).

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

## **Step 2: Representations and Objections**

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

## **Step 3: Final Notice**

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must require the penalty to be paid within 28 days, from the day after the day on which the final notice was sent. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

## **Step 4: Appeals**

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- i) the decision to impose a fine was based on a factual error or was wrong in law;
- ii) the amount of the fine is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.



Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

### **Step 5: Recovery of the penalty**

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

If the lettings agent does not pay the fine within the 28 day period the authority can recover the fine on the order of the county court, as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.