Housing Standards Enforcement Policy
Approved by Cabinet 15 December 2021

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Introduction

This policy provides guidance for officers, businesses and members of the public on the principles and processes which will apply when enforcement action is considered or taken in relation to Private Sector Housing Standards.

Walsall Council follows the principles laid down in the Regulators' Compliance Code when investigating complaints, responding to service requests, carrying out inspections, reviewing and granting licences and completing proactive project work. This enforcement policy will meet the objectives set out in this Code as we aim to prevent and reduce risks to public health, statutory nuisances, anti-social behaviour, environmental crimes, unfair competition and trading which is detrimental to consumers and businesses. It is also the policy of the council to promote awareness and understanding of our regulatory and licensing issues through education and working in partnership with other organisations.

Any departure from this enforcement policy will be exceptional, recorded and the circumstances and reasoning noted.

Note – In this Policy, the term "landlords" also includes "property agents", "managing agents" and "letting agents" unless otherwise specified.

This Policy adopted by Walsall Council includes a number of detailed appendices which will be kept under review as case law develops, new guidance is issued by the Government and legislative changes are made. The purpose of the appendices to the policy is so that as and when case law develops and Government guidance is updated the appendices can be updated by way of delegated decision rather than full Cabinet approval. This gives the flexibility and degree of reactiveness to target housing enforcement at those poor performing duty holders, protecting the residents of Walsall and providing a level playing field for economic development and growth of business within the borough.

Our objectives

In normal circumstances, enforcement action will be carried out by the Housing team with the objectives to ensure that:-

- Tenants of private landlords and Registered Providers or Housing Associations live in homes that are free of significant risks to their health, wellbeing and safety;
- All Houses in Multiple Occupation (HMO's) are appropriate to be used as a HMO, are safe and well managed and all relevant Management Regulations are adhered to;
- All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met;
- Privately owned property and land does not present a statutory nuisance to other land owners, and does not directly or indirectly present an unacceptable risk to the public health, safety or the environment;
- All properties in Walsall comply with the legal requirements in relation to smoke and carbon monoxide regulations;
- Letting agents and property management agents in Walsall are registered with one of Government approved Ombudsman Schemes;

- The Council meets its statutory duties in relation to hazards within housing in so far as dealing with Category 1 Hazards using HHSRS and under the provisions of the Housing Act 2004.
- All applicable properties have a valid electrical safety certificate in accordance with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- All privately rented properties in Walsall comply with the Minimum Energy Efficiency Standards under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and amendments

What to expect from the Council Housing Standards Team.

Landlords

- We will advise you of the legislation and or where to find relevant legislation online and help you understand how you can comply with it. The legal responsibility to comply with legislation will always remain the landlords and they may also wish to seek separate legal advice.
- We will advise you as to what action you need to take to comply with the legislation and seek to agree a reasonable timescale to comply. In some circumstances this timescale may be very short for example where there is an imminent risk.
- If we agree a timescale with you we will work with you to secure compliance within agreed timescales.
- If we are unable to agree a timescale as we consider that works or actions should be carried out sooner than you wish to do them, we will initiate formal action by either the service of a notice, issuing a fine, carrying out works in default and/or prosecution.
- In making the decision to prosecute or issue a fixed penalty fine we will have regard to how serious the offence is, the benefit of prosecution and whether some other action would be better. This decision rests with the council
- A charge will be made for the service of a notice as stated later in this Policy.

Private Sector Tenants

- We will expect you to advise your landlord of the issues within your property before contacting us. We provide handy template letters on-line that you can use to do this.
- We will advise you as to what action (if any) we can take and advise you of the expected timescales.
- We will expect you to co-operate with the landlord to get the works carried out and to advise us of any action taken by the landlord.

Housing Association (Registered Provider) Tenants

The Council receives complaints from housing association (HA) tenants requesting action against their landlord most frequently related to items of disrepair.

Housing Associations (HAs) exist to provide suitable and properly maintained accommodation for their tenant's. They are managed by Board's and their performance is scrutinised by Regulator of Social Housing https://www.gov.uk/government/organisations/regulator-of-social-housing.

HA's employ staff (directly or through third parties) to both manage and maintain their properties and will usually have published policies advising tenants about reporting

problems, setting out the response times they aim to achieve, and also for registering any complaints about service failures. On that basis the Council will not usually take complaints from tenants of HA properties unless:-

- The Council is satisfied that the problem in question has been properly reported to the HA;
- The HA has failed in the opinion of the Council to take the appropriate action;
- The tenant has exhausted all internal HA complaint procedures; **and**
- Has made a formal complaint to the Housing Ombudsman; **or**
- There is a serious risk of imminent harm **or**
- There is a statutory nuisance arising from the HA property.

If the Council determines that it is appropriate to take action, it will usually notify the HA that a complaint has been received and/or the hazard identified and seek the HA's comments and proposals. This is the same as the council operates with private landlords and agents.

Only in cases where it judges the HA's response to be unsatisfactory will the Council take further action, determining at this stage the appropriate enforcement action to take, after considering all the facts and circumstances of the case.

Any formal action taken will be subject to the usual charging procedure. The Council would only undertake works in default in the most extreme of circumstances as it considers that HAs should have the full capacity to undertake these themselves.

In all other situations e.g. dissatisfaction with the HA's timescales, the tenant will be redirected to;
The Housing Ombudsman Service – Exchange Tower, Harbour Exchange Square, London E14 9GE. Tel: 0300 111 3000, email: info@housing-ombudsman.org.uk.

Owner-occupiers

- We always expect owners to maintain the properties they live in. The responsibility for repairs and maintenance rests solely with owners and the council has no funds (except in specific cases which are often time limited such as energy grants / loans) to repair owners homes. We encourage residents to secure relevant house insurance.
- Enforcement action will be considered if there is a serious risk to a person's health and/or the property is causing a statutory nuisance to neighbouring properties.
- Where the council has financial assistance it publishes information on its website about this. This can change over time and within any financial year. In 2021/22 for example a range of help is available for energy / insulation works for specific owner occupied properties.
- Where funding is provided by the council under a discretionary grant / loan this may require the council to issue a Hazard Awareness Notice.

Leaseholders

We will not normally become involved in disputes between leaseholders and freeholders or between neighbouring owner-occupiers. Resolving disputes of these type, require a detailed knowledge and expertise of leases or deeds; the Council is not sufficiently

equipped to handle such private matters / claims so that any enforcement action pursued, concludes successfully, in the rare cases where this occurs. We will signpost the complainant to other organisations which offer advice, including that involve the merits of taking of civil action.

What the law expects of tenants

The responsibility to keep housing safe does not solely rest with landlords or their agents. Tenants have key responsibilities too.

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to all tenants (social and private rented).

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. The Council provides templates that tenants may wish to use to correspond with their landlord / agent when they have a problem at their home.

It is key for tenants to:-

- raise the matter as soon as it is a concern to them with their landlord / agent – not to delay it until they are about to leave the property or until there is a disagreement with their landlord about another matter (for example rent);
- give their landlords as much information about the issue as possible so that the landlord will be able to address it.
- Work with the landlord or their contractors to facilitate access for repairs or relevant inspections to be undertaken promptly.

When a tenant wishes to raise a complaint with the Council about their property they should send or have available copies of correspondence (letters and or email) between them and their landlord and this should be provided for council officers when requested. In certain situations the council may be able to take action even without the need to see evidence that the tenant has written to their landlord first. This can include the following:-

- Where the matter appears to present an imminent risk to the health and safety of the occupants;
- Where there is a history of harassment/threatened eviction/poor management practice on the part of the landlord;
- Where the tenant is otherwise vulnerable, e.g. a lack of heating in the winter where there are pre-school children in the household;
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent;

When a complaint is being investigated tenants are responsible for keeping Council Officers informed of any relevant contact they have had with their landlord (or the landlord’s agent or builder, etc.) which may affect the action the council is taking or considering taking.

Situations where a service to tenants is not provided

There are some limited situations where the council will not be able to assist. The decision on these cases rests with council officers and is made on a case by case basis and will include consideration of the risk to the tenant(s) and their vulnerability. Where any of the following situations arise consideration will be given to either not providing a service or ceasing to provide a service:-

- Where the tenant(s) are, of their own free will, shortly to move out of the property. Although, where the property is to remain in the private rented sector, then intervention may be appropriate and/or necessary;
- Where the tenant(s) in the opinion of the council are unreasonably refusing or making it difficult for the landlord or their representative to gain access or to carry out works;
- Where the tenant(s) have, in the opinion of the council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair, etc.;
- Where the tenant(s) only reason for reporting disrepair is in order to get re-housed. If a tenant is not interested in their present accommodation being brought up to standard the service will not be provided;
- Where the tenant(s) have requested a service and then failed to keep an appointment(s) and or not responded to a follow up communication from council officers.
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Council Officers. The Council has a zero tolerance policy on abuse and threats and will seek legal action against any tenants who for example threaten their staff ;
- Where on visiting the property there is found to be no justification in the officers opinion for the complaint;
- Where the service has determined, through council procedures, that the complainant is ‘vexatious’;
- Where the tenant unreasonably refuses to provide the council with relevant documentation / information (including but not limited to landlord contact information) to support their complaint.

Decision Making

Enforcement action will be based on risk and we must also have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance. Enforcement Officers are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering the criteria within this Policy and any relevant written procedures. A senior officer will give prior approval to all formal action falling outside the scope of this policy. Where the investigating enforcement officer believes that legal action may be required, evidence will be collected and in some cases reviewed by senior officers before any action proceeds.

Any person subject to potential prosecution action will be invited to a formal interview under caution or asked to send to the council written responses to questions under caution for consideration prior to any final decision being made Principles of good enforcement

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:-

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities
- The Code for Crown Prosecutors Principles underpinning enforcement action

Enforcement action taken by officers of Walsall Council with responsibility of the regulation of safety within private rented housing enforcement activity will be:

Targeted at properties and people that pose the greatest risk, including those owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

Proportionate, reflecting the nature, scale and seriousness of any breach or non-compliance. Fair and objective, based on the individual circumstances of the case, taking all available facts into account.

Transparent, communications will be easy to understand, with clear reasons being given for any enforcement action taken.

Consistent, undertaken by well-trained investigators to ensure consistency in the interpretation and enforcement of legislation. We will work with other regulatory agencies and share and develop good practice.

Accountable, undertaken in a responsible manner that has a clear purpose.

Targeted Enforcement Action

From time to time we will target our enforcement activity to ensure we meet our objectives effectively and efficiently. Such targeting can include for instance, the following:-

- Unlicensed dwellings.
- Poorly managed privately rented properties.
- Private rented property subject to incidences of anti-social behaviour.
- Properties where tenants receive Local Housing Allowance/Housing Benefit/Universal Credit. These tenants are more vulnerable to lower standards of accommodation and can consequently face greater risks to their health safety and welfare.
- Properties poorly or illegally built or converted that may not comply with planning or building regulation requirements.
- Household types such as shared accommodation.
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).
- Construction type – where there is a known issue associated with methods of construction for example precast reinforced concrete.

- Where a style of renting or rental model causes risk to health, safety or welfare, e.g. rent to rent models, where a short-term tenant sub-lets a property creating an unregulated HMO.
- Intelligence led regarding landlords who operate poorly across the authority or neighbouring/regional authorities.
- Targeting priority areas within the borough as identified by intelligence led computer modelling.

Dealing with Enquiries

Council Officers will respond to enquiries from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness.

Unless the matter appears to present an imminent risk to health, the tenant is usually expected to contact their landlord first about the problem. Tenants are expected to keep copies of all correspondence with their landlord and this should be made available to the officers on request.

Residents can contact us using the following details

1) By sending an email to TacklingRogues@Walsall.gov.uk or HMOs@Walsall.gov.uk

2) By telephone using **01922 652 171**

3) By writing to us at: Housing Standards & Improvement, Walsall Council, 1st Floor, Civic Centre, Darwall Street, WS1 1TH

Housing, Health and Safety Rating System (HHSRS)

The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- Category 1 hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council may choose exercise its power to reduce category 2 hazards through appropriate action.

A range of enforcement powers are available under the Act to remove any identified hazards or reduce them to an acceptable level.

Powers of Entry

To comply with the Council's general duty to investigate housing standards where necessary it will use statutory powers of entry to investigate complaints further. These powers allow Officers to enter any premises:

- Without giving any notice, if they suspect an offence under s72, s95 or s234 of the Housing Act 2004 has been committed; or
- Where it is suspected that hazards are present which pose an imminent risk of serious harm to the health and safety of any of the occupiers, and requires the use of emergency remedial action or emergency prohibition

- Formally after giving 24 hours' notice.
- To execute a warrant that has been issued by a Court

In general, the powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection and gather evidence
- Take someone with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Leave recording equipment for later collection
- Take samples of articles or substances; and in some cases to carry out works.

In most cases prior notice will be given to the occupiers and to the owners (where known). The notice given depends on the legislation being enforced and is often a minimum of 24 hours. Notice that powers of entry need to be exercised will normally be in writing or by email but can in some circumstances be given verbally, depending on the relevant statutory provision and the urgency of the situation. In certain circumstances, the Police will accompany officers where it is deemed appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their power of entry will carry identification and details of their authorisation to carry out their role.

Authorisation of Officers

Officers undertaking housing enforcement work, will be officers who are competent by virtue of their training, qualification and/or experience and will be authorised to undertake enforcement action. Authorised officers will also have sufficient training and understanding of standard procedures to ensure there is a consistent approach to service delivery.

The Council's Constitution sets out matters delegated to the relevant Service Director under various pieces of legislation including the Housing Act 2004. The internal scheme of delegation sets out the detail of the delegated powers given to Officers.

Enforcement Decision Table

The following table contains some examples of situations where different types of action may be taken. Where a number of examples of general circumstances are given, the relevant action may be taken if any one or more of those circumstances applies. It is important to note that decisions on enforcement action are made on a case-by-case basis.

Action	**General Circumstances**
No Action	Where formal or informal action may not be necessary or appropriate. In such cases, customers may be directed to other sources of advice and support.
Informal action and advice (including verbal advice and advisory letters)	Where it may be appropriate to deal with the issues through informal action and advice. It is generally considered appropriate to take informal action in one or more of the following circumstances: • The act or omission is not serious enough to warrant formal action.

	• Where the officer believes looking at the landlord's past history that it can be reasonably expected that informal action will achieve compliance with the law. • The consequences of non-compliance will not pose a significant risk In such cases, the pre-formal stage of the HHSRS may be followed, with the council working collaboratively with responsible landlords to address and resolve any problems
Service of Notice requiring repairs or specific legal requirements	Where a person refuses or fails to carry out works through the pre-formal HHSRS process; Where there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach; Where there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc.); Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; Where the person has a history of non-compliance with the Council and/or other relevant regulators; Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management); Where it is necessary to safeguard and protect the occupiers' future health and safety.
Powers to require information and/or documents	Service of Notice requiring repairs or specific legal requirements
Emergency Remedial Action/Emergency Prohibition Order	Where a category 1 hazard exists and there is an imminent risk of serious harm to the health or safety of any occupiers of the premises or any other residential premises

Enforcement Options

Walsall Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action, including prosecution.

To achieve and maintain consistency, relevant guidance and policy is always considered and followed unless inappropriate in the circumstances. In deciding upon enforcement options the Council will have due regard to its overarching enforcement policy as well as having due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.
The council will seek to secure compliance with regulatory legislation through the use of the following courses of action:

Action	Circumstances
1. No action	Complaints or allegations of housing legislation breaches or statutory nuisances are of minor or low risk to health and the landlord has not been informed by the complainant, or allegations are unsubstantiated and unwitnessed. Formal action is inappropriate in the circumstances.
2. Advisory notices and letters	Where conditions are evidenced to justify action and investigation and it is appropriate to give opportunity to landlords and tenants to make representations, provide information or effect change to meet compliance. No health impacts are present which poses a risk to health or nuisance.

3. Formal (Statutory) Notices or Orders	In respect of breaches under the Housing legislation Walsall Council has powers to issue certain statutory notices. Such notices are legally binding and can include the following: • Serve a Hazard Awareness Notice • Serve an improvement notice • Make a prohibition order • Take emergency remedial action (category 1 only) • Make an emergency prohibition order (category 1 only) • Make a demolition order • Declare a clearance area • Require the production of documentation Notices will normally be served where: • informal action has not achieved the desired effect, • there is a lack of confidence that the individual/company will respond to an informal approach, • there is a history of non-compliance with informal action, • action is required to be taken within a short period of time than a Housing Act notice would permit. For example gas safety or heating related matters. • standards are generally poor with little management awareness of statutory requirements, • the consequences of non-compliance could be potentially serious to the health and safety of the public Realistic time limits are attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served. In some circumstances, requests for extension of time can be made. These should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request. Statutory notices may also be served in conjunction with prosecutions. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include officer contact details. Failure to comply with a statutory notice is a criminal offence and may lead to prosecution, a financial penalty fine and/or, where appropriate, the carrying out of works in default. The Council relies upon statutory notices to ensure compliance and will view a breach of a notice as a serious matter.

4. Financial Penalties (of up to £30,000 if under Housing & Planning Act 2016, The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 or Tenant Fees Act 2019, or the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended	Walsall Council has powers to issue civil penalties as an alternative to prosecution in respect of the following breaches. See details under Appendix 3. • Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004); • Offences in relation to licensing of Houses in Multiple Occupation under Part 2 of the Act (section 72 of the Housing Act 2004); • Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004); • Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004); • Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004); • Breach of a banning order (section 21 of the Housing and Planning Act 2016) • Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 • Offences of breaches under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended More information on this topic is available in App. 1
5. Fixed penalty notices /penalty charge notice/monetary penalty	An authorised officer may issue fixed penalty notices where the legislation allows and where there is sufficient evidence to believe an offence has been committed under specific legislation. This notice will give the offending landlord the opportunity to avoid prosecution or further action for that offence by the payment of a fixed penalty. Such notice can be issued under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 created the power to issue a penalty charge notice when these regulations were in breach as they are solely civil legislation. This policy is detailed in Appendix 2 of this document. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014. This policy is detailed in Appendix 7.
6. Other Statutory duties / powers	There may be occasions where enforcement action is appropriate using other associated legislation in order to address issues in domestic dwellings such as the Environmental Protection Act 1990, Public Health Acts, Building Act 1984, Prevention and Damage by Pests, Local Government (Miscellaneous Provisions) Act 1982 and others. In particular, where a more expedited course of action is required or necessary, consideration will be given to utilising the provisions of these and other relevant statutes to secure improvements or action.

7. Works in Default - Emergency Remedial Action	This will be considered where the following criteria is met. • There is an imminent risk to health and safety to the occupant • and/or public • Awaiting the service of a notice or a prosecution would not adequately protect the public interest. • However this does not rule out subsequent action being taken in conjunction with a prosecution, financial penalty, RRO or other legal action.
8. Works in Default – non-compliance with a notice	In some circumstances, failure to comply with a notice may result in the Council arranging for the necessary works to comply with the notice to be carried out (work in default), in addition to or instead of a prosecution or administration of a simple caution. The cost to the owner will usually be more than if the owner carries out the works themselves as they will be charged for officer time on visits, carrying out schedules of work and any other reasonable costs incurred by the local authority. The council will actively pursue the recovery of such costs. Once the works have started, it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works.
9. Reducing the term (length) of a Property Licence.	Licences will normally be granted for the full five-year period. When assessing a licence application, where appropriate, we may reduce the term of the licence. Some examples of this may be: - • Where correct planning permission has not been obtained, and is required, this will be a ground for reducing the term to a 1 year licence. • Where there are concerns that the proposed management arrangements may not be satisfactory and evidence is required that management is satisfactory before allowing a longer licence period to be granted. • In the case of delayed applications, to remove any advantage gained over those licence holders who applied at the appropriate time. • Where a scheme is time limited by law. Further details in relation to shorter licence duration is detailed in Appendix 1.
10. Adding new property licence conditions	When assessing a Property Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policies, we may add further conditions to remedy poor landlord behaviour or standards e.g. not fulfilling the training requirement, poor management etc.
11. Formal (Simple) Caution	Where a prosecution or Financial Penalty is determined not to be in the public interest. Cautions will only be given when: • The offender makes a clear and unequivocal admission of guilt. Putting forward a defence even while admitting carrying out an act that would have to be proved to establish guilt is not an acceptable admission. The offender signs a document

12. Refusal to grant a property licence and Revocation of property licenses and approvals	• Where the Licence application is not made in accordance with the Council's application requirements; or • Where the Licence application is not accompanied by the appropriate fee; or • Where the proposed manager/licence holder is not a 'fit and proper' person; or • Where the proposed manager/licence holder is not the most appropriate person to hold a licence; or • Where the proposed manager/licence holder is not the person or an agent of a person who has control of the property; or • Where the proposed management arrangements are not satisfactory; or • Where the property is not reasonably suitable of occupation in regards the number of persons or households. • Where the Council consider that the licence holder or any other person has committed a serious breach or repeated breaches of a condition of the licence. • Or a combination of the above.
13. Civil proceedings	Where appropriate, Walsall Council will use civil proceedings in the fulfilment of its duties. For example, an injunction may be sought to prevent a landlord from evicting a tenant or to re-instate a tenancy where there is evidence to prove that a tenant has been illegally evicted.
14. Interim & Final Management Order	Where a HMO is subject to licensing, or a property is subject to selective licensing, and has not been so licensed, or a licence has been revoked but the revocation is not yet in force, the Council must make an interim management order subject to obtaining authorisation from the appropriate First-tier Tribunal. if: • it appears to it that there is no reasonable prospect of the property being licensed (or, upon a revocation coming into effect, further licensed) in the near future or • that the making of an order is necessary to protect the health and safety or welfare of persons occupying it or persons occupying or having an estate or interest in any premises in the vicinity. An IMO lasts for a maximum of 12 months and gives control of the subject property to the Council. At the end of the Interim period a Final Management Order (FMO) of up to 5 years may be sought, which follows the same principles but on a longer term basis.

15. Prosecution	Before deciding that prosecution is appropriate, Walsall Council will have particular regard to the following public interest criteria: • How serious is the offence committed? • What is the level of culpability of the suspect? • What are the circumstances of and the harm caused to the victim? • Was the suspect under the age of 18 at the time of the offence? • What is the impact on the community? • Is prosecution a proportionate response? • Do sources of information require protecting? The Council expects that, in the public interest, enforcing authorities should normally prosecute, or recommend a prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where: • a breach of the legislation resulted in a death • the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it; • there has been reckless disregard of legislative requirements; • there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance; • the breach has been carried out without or in serious non-compliance with an appropriate licence or permission; • a duty holder's standard of compliance is found to be far below what is required by law and to be giving rise to significant risk; • there has been a failure to comply with a statutory notice; or there has been a repetition of a breach that was subject to a simple caution; • false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk; • officers have been intentionally obstructed in the lawful course of their duties. • Where inspectors are assaulted we will seek prosecution of offenders. In deciding on the public interest the Council will make an overall assessment based on the circumstances of each case and will consider all relevant circumstances carefully, including local and corporate priorities.

16. Rent Repayment Orders (RRO)	A RRO is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent to the tenant or the council depending on who paid for the rent. See Appendix 4 for more details. The Council will consider RROs for the following offences. • Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004; • Failure to comply with a Prohibition Order under section 32 of the Hosing Act 2004; • Breach of a banning order made under section 21 of the Housing and Planning Act 2016;3 • Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and • Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977 • Where a landlord fails to licence a licensable property and they received a significant amount of Housing Benefit or Universal Credit, a RRO application may be made to the First Tier Tribunal. More information on this topic is available in App. 4
17. Banning Order	The Council may decide to seek a Banning Order following the breach of 'banning order offences' by landlords and agents. A banning order last for a minimum of 12 months and prevents landlords or agents from letting their own properties or being involved in the lettings and property management industry across England. More information on this topic is available in App. 5
18. Compulsory Purchase Orders (CPO) / Empty Dwelling Management Orders (EDMO)	Where long term empty dwellings are causing problems in their neighbourhood the council will use a suite of powers, including CPOs and EDMOs, to ultimately take ownership away from those who show no prospect of bringing their properties back into use. A systematic approach will be taken with increasing use of stronger powers as long as these cases are not adequately dealt with by owners. Empty homes represent waste and missed opportunity, as well as restricting housing supply. They can blight communities, attract vandals and squatters and tie up the resources of the Council and the emergency services. A dwelling that is left unoccupied and not maintained will, over time, begin to impact on its surroundings and is at risk from being broken into by vandals and squatters. Neighbouring properties can be affected by the physical decline of a poorly maintained property. The only effective way to reduce the negative impact of an empty dwelling is to secure its occupation. It is therefore of public interest that empty homes are brought back into use. These options will only be used as a last resort where the property has been empty for at least 2 years and where, for example: • the property has been derelict for some time and is having a detrimental impact on the local environment or neighbouring properties; • the property appears to be abandoned and the owner cannot be traced; • the property is suitable for immediate residential use, but is not likely to be occupied for residential purposes unless bought by the Council.

	• Where reasonable forms of engagement have been attempted with the property owner to bring a property back into use and a valid exemption is not in force
19. Enforced Sale	If a charge has been recorded in the Local Land Charges register and it is statutorily a priority charge, the council may opt to recover the debt by way of an enforced sale of the charged property. The criteria for carrying out an enforced sale would be: • The total debt on the property should normally exceed £500 • The property is vacant and has been empty for more than 2 years. • The necessary enforcement notices and documents have been served. Upon disposal of the property the Council will recover all of its debts and costs from the sale proceeds. The balance will be paid to the owner or, in the case of an unknown/missing owner, held by the Council for 12 years until it is claimed.
20. Proceeds of Crime Act	Where landlords or others have benefited from the proceeds of a criminal activity an application may be made to recover any benefit, such as a Confiscation Order under The Proceeds of Crime Act 2002.

Charging for Enforcement Action

If there is a statutory charging mechanism the Council will seek to recover the full costs of providing its services wherever that is possible in accordance with guidance provided by Government and its policies. The Council makes charges for the serving of formal notices under the Housing Act 2004. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Council's agreed charges having regard to a written record assessing costs reasonably incurred. The current charges are often published on the Council's website.

In all cases the Council will instigate debt recovery action unless where legislation simply require the Council to register a debt against the property in question.

Cost to undertake work in default of statutory notice

This cost is calculated by the council as the cost to:

- undertake the necessary work including officer and administration time in arranging the contractor/work,
- service of the various notices/demands for payment and invoicing,
- registering a local land registry charge
- incurring interest as specified at either the national rate or other rate set by Walsall Council, which continues to accrue until the moneys are recovered.

Houses in Multiple Occupation (HMOs)

An HMO is defined by the Housing Act 2004 as a building occupied by more than one household where there is a degree of sharing of facilities. A household is either a single person or members of the same family who live together. The definition includes houses containing bedsits, hostels, shared houses and some flats. The Act has clarified past confusion and means that shared houses, such as the type traditionally occupied by students, will always be defined as HMOs.

HMOs form a considerable part of the private rented sector, and often provide homes for people with limited housing options. HMOs are frequently occupied by persons with limited income such as single people who have been homeless, students and an increasing number of professionals sharing houses and flats.

A relatively high proportion of HMO residents are vulnerable persons. Historically, the accommodation was not built for multiple occupation. There is an increased risk to the safety and health of occupants in many HMO properties, often through overcrowding, lack of proper fire equipment and a lack of compliance with regulations.

With the introduction of licensing of HMOs, the Council is firmly committed to supporting good private sector landlords who endeavour to provide decent well- maintained homes to high standards by compliance with necessary regulations and legislation.

HMO Licencing Schemes Operating in Walsall

The following separate licensing schemes currently affect the Private Rented Sector in Walsall. They are:

1) **The Mandatory HMO Scheme:** This applies to HMOs which are occupied by five or more persons. The government has designated these properties as being subject to mandatory licensing.

2) **The Additional HMO Scheme:** This Scheme applies to all HMOs that are not already subject to Mandatory licensing (occupied by 3 or more unrelated persons) in the 4 wards of Paddock, Pleck, Palfrey and St Matthews.

The Council is looking at whether there is a need to extend this current scheme to include more wards.

The aim of HMO Licensing

The aim of HMO licensing is to ensure this type of property is safe, well managed and meets minimum legal standards set. The Council has a statutory duty to licence all mandatory or additional licensable properties.

To achieve this aim the Council will:

- Incentivise landlords with fee discounts for early application, accreditation and such other criteria as the Council may designate;
- Use all available data to identify relevant properties;
- Deter non-compliance by the use of civil penalties against landlords who fail to disclose their HMO properties and/or who fail to engage with the licensing schemes;
- Assess whether a licensable HMO is being managed well by clear and demonstrable evidence of periodic inspection of licensed properties, to monitor compliance with licensing conditions and management regulations;
- Work with landlords and tenants to achieve better standards.

HMO Licensing Principles

Applications for licences will only be considered to be complete where:

- They are made using the Council's application form;
- All necessary documents and information have been provided;
- The applicant has completed and signed the declaration;
- The forms are signed by the person(s) making the application; and
- The requisite administration fee has been paid.

An HMO licence will be granted where:

- The house is suitable for occupation as a HMO;
- The management arrangements are satisfactory;
- The licensee and/or manager are fit and proper persons;
- The applicant is the most appropriate person to hold the licence;
- The property meets the Council's current Amenity Standards for licensable houses in multiple occupation; and
- The licence holder has paid the enforcement fee

Our aim is to issue a licence within 42 days of receiving a valid application including all relevant certificates. In most cases an officer will visit an HMO to assess compliance with the licensing requirements and the number of people before a licence is granted, the HMO should be licensed for.

Fit and Proper Person Checks

The council is also required to assess whether the applicant, any manager and any person associated with them or formerly associated with them are deemed "fit and proper" persons to own or manage an HMO. A person will be considered fit and proper if the council is satisfied that they meet this set of criteria set out in legislation and associated government guidance

We rely upon any licence holder's own declaration that they are a fit and proper person, and that they are competent to manage or control a licensable property. Licence holders and managers are expected to keep themselves up-to-date with all developments in the law, changes and additions to licensing schemes and guidance on how to carry out their duties.

Duration of Licences

HMO licences are valid for up to 5 years (and conditions will be attached to it). The decision on whether to grant the full 5 years rests solely with the Council. The Council will **normally only** issue a licence for a period of 1 Year for all of the following cases:

- Your application follows an investigation made by the Council
- Where correct planning permission has not been obtained, and is required
- Your application follows a written request made by the Council for you to apply
- Where a property should in the opinion of the Council have been licensed previously

The Council will also consider reducing the licence during for the following circumstances.

- Where there is a history of statutory enforcement action against the owner or manager within the duration the previous 4 years;

- Where the owner, licence holder or manager has unspent convictions other than those considered in the fit and proper person assessment;
- If an application has been made for the Renewal of a Licence and the conditions of the existing licence have not been met at any relevant time during the period of the licence.
- If an application for a Renewal of a Licence is received after the original Licence expired. This is in addition to incurring the cost of a new application.
- If an application has been made for the Renewal of a Licence and Statutory Enforcement Action (Housing Act notices or Civil Penalty Fines) has been taken at any relevant time during the period of the existing licence.
- Where the property, in the opinion of the Council, needed significant improvements before a licence could be considered

Please also note that the council reserves the right to still take relevant legal action against a landlord who has failed to secure a relevant licence.

It is important to note that if a licence application under the Housing Act 2004 is successful, this does not grant or give the required consent that may be required from Walsall Council in terms of planning permission and/or Building Regulations approval. A grant of an HMO licence cannot be taken as any indication of the views of the Council as local planning authority as to the merits or otherwise of any planning application or other planning issues in relation to the property in question.

Licensing Conditions

Licences will specify the maximum number of occupiers or households permitted to reside in the property. The occupancy number will depend on the number and the specification of rooms available, and the kitchen and bathroom facilities. There are mandatory conditions that will be applied to **all** licences and such conditions as the Council consider appropriate for regulating the management, use or occupation of the house concerned.

Licensing Fees

There are 2 stages to the fee payment

All applicants will be charged **the first stage (administration) fee** that falls due on the application being submitted. No application will be accepted until the fee has been paid. The administration fee is non-refundable; this is irrespective of the outcome of a licence application. The fee charged is to cover the cost of processing the application.
Any person who is to be granted a licence is required to pay **the second stage (enforcement) fee**. The enforcement fee becomes payable once the licence holder has been informed that the council intends to grant a licence. If the enforcement fee is not paid, this may lead to the Council declining to issue the licence. This enforcement fee is refundable if the final licence is not granted.
The Council will usually contact the applicant (by email) to confirm when 2nd Stage fee is due. You must pay this within 14 days. Please note no licence will be issued without payment being received of the 2ndStage fee. If you operate an HMO without a licence you may be subject to legal action by the Council.

More information on the licence fee can be found under Appendix 1 of this policy.

Temporary Exemption Notices (TEN)

This is where notice is given in writing, of an intention by a person, to take steps to ensure that the property is no longer required to be licensed. A landlord must make and application and may be eligible for a three (3) month Temporary Exemption in the following circumstances:

- The property is in the process of being sold and there are signed contracts for exchange within the next three (3) months.
- The landlord has given the tenants notice to quit and the end date is within the next three (3) months. After this, the landlord will no longer let the property as an HMO / rented property.

Please note, if the house is empty then an exemption is not necessary. Please inform us of this and we will update our records.

If the licence holder dies while the licence is in force, the licence ceases to be in force on their death. During the period of three (3) months beginning with the date of the licence holders' death, the house is to be treated as if on the date of death a temporary exemption notice had been granted.

At the end of this period, if a request is made then a second temporary exemption will be granted for three (3) months. The maximum exemption period is six (6) months from the date of death.

If more than six (6) months have passed since the date of the licence holders' death, then a temporary exemption is not possible and an application for a licence must be made. This needs to be from the person managing or in control – the person to whom the rent is paid.

Breach of licence conditions and HMO Management Regulations

It is a criminal offence to operate an HMO or other licensable property without having a valid licence. Additionally, an offence is committed by a licence holder if they knowingly permit the HMO to be occupied by a number of occupants exceeding that specified on the licence or otherwise fail to comply with licence conditions. The fines for these offences are unlimited. The Council may choose to respond to any such breach or failure to license by issuing a Civil Penalty Notice. Where this course of action is taken and Civil Penalty Notices are issued and can be up to a maximum fine limit of £30,000 for each separate offence or unlimited fines if the Council convicted through the court.

The HMO Management Regulations are additional to any licence conditions and apply to all HMO properties whether licensed or not. Managers or controllers of HMOs where breaches are identified can be prosecuted or can be issued with a Civil Penalty Notice. The Council considers that the holding an HMO licence is a serious responsibility and any failing to licence and/or maintain compliance with regulations, will be regarded as a significant failing. Therefore, our financial penalties for non-licensing and breached of conditions and management regulation breaches in Appendix 3 of this policy have been set to reflect the seriousness of these responsibilities.

Renewal of Licences

The Council will continue to actively promote licensing to improve housing standards and encourage applications in all cases where owners/agents believe that a licence is required.

It is the licence holder's responsibility to maintain licensing standards and to ensure that all licensable properties have the appropriate licence at all times. This includes renewing an existing licence before it expires.
It is the Council's position that landlords who fail to apply to renew their licence before the existing licence ends, will have to make a fresh application. This is on the basis that once a licence has expired, there is no licence to renew. In exceptional circumstances the Council may permit renewals after the existing licence has expired.
The Council will consider enforcement action, including the service of a Civil Penalty Notice where the time between the existing licence expiring and any renewal or relicensing application is over 28 days, and there is no reasonable excuse for the property being unlicensed.

Variation of Licence Details

An HMO licence may be varied either by agreement with the licence holder or by the PSHA. This may arise where there has been a material change in circumstances since the licence was granted such as:

- Change of licence holder's address;
- Property altered or extended and permitted number of occupants increased; or
- Variation due to policy or legislation changes.

A variation to licence will be granted if the:

- property is suitable for the proposed changes;
- management arrangements are still satisfactory;

The consent of all relevant persons must be provided to the Council in writing before they become effective. A "relevant" person is defined at section 30 here.
The Council will follow the procedure set out in Housing Act 2004 schedule 5 where written consent has not been provided by all relevant persons.

Changing the licence holder's name cannot be achieved by variation. The Housing Act 2004 requires the licence to be revoked and a new licence issued to the proposed new licence holder. Where this is the sole reason for revoking the licence, and is not an action undertaken by the Council because the current licence holder has ceased to be a fit and proper person, the Council will not charge the new licence holder an enforcement fee.

Application of the Policy

All officers must have regard to this policy and make enforcement decisions in accordance with the Council procedures which feed into this policy

Monitoring and Review

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the

regulatory burdens they impose, where the Council has direct control of these matters. Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

Partnership Working

The housing standards team's primary focus is to carry out its core objectives. It is recognised that visits, surveys, investigations and complaints may lead to the disclosure of offences, compliance issues and concerns that fall within the remit of internal and external partner organisations. These partner organisations are not limited to:-

- Community Protection
- Money Home Job
- Planning and Building Control Services
- Adult Social Care
- Children's Services
- West Midlands Fire Services
- West Midlands Police

All officers are aware of the potential interests of partnership organisation in carrying out their enquiries; where appropriate referrals must be made, and information shared. Walsall Council recognises the need to forge positive partnership working in fulfilling its core functions (i.e. the need to inform the Fire Services of concerns during HMO licensing). There is the recognition that through genuine cooperation and partnership working, information sharing is regarded as an essential tool in tackling anti-social behaviour and the promotion of safer neighbourhoods. Walsall Council is equally committed to engaging with all stakeholders-landlords, agents, tenants, etc. to forge positive partnerships. The Council is committed to working with landlord and tenant affiliated organisations including in sharing views and contributing to the development of policies and service standards.

The Council also has a Memorandum of Understanding with the West Midlands Fire and Rescue Service which clearly distinguishes fire safety roles and responsibilities in relation to the enforcing authority for each property type. This is to avoid duplication and to be able to work together collaboratively supporting each other when required.

Publicity and Sharing of Information

We will endeavour to secure media representation at hearings in the Courts when prosecuting of offenders, with the aim of drawing the public's attention to the court case. Thereafter we will publicise any conviction, which could serve to draw attention to the need to comply with the law or, deter anyone tempted to act in a similar manner. Details of such cases will also be published on our website.

All information obtained will be treated in confidence and in accordance with UK General Data Protection Regulation (GDPR) and The Data Protection Act 2018. However, it must be recognised that the Council in some cases will share intelligence and evidence secured in the ordinary course of its business, with other statutory enforcement bodies and relevant partners. There will be circumstances where shared or complimentary enforcement action may be taken with other agencies to help target resources and activities and minimise duplication.

Complaints, Feedback or Compliments

Those persons and individuals who are regulated by this Service should expect that they will be dealt with professionally and in accordance with the Council's code of conduct for officers. In the event that an individual or company is not satisfied with the service, or if not in agreement with the action taken by the investigating officer, or if they wish to give feedback about the service they have received, they should first contact the Service Manager.

If a service user wishes to make a compliment they should also contact the Service Manager. The Service Manager can be contacted by:
Email: TacklingRogues@Walsall.gov.uk

Or by writing to
Housing Standards Service Manager
Walsall Council
Darwall Street
Walsall
WS1 1TP

If this does not resolve the complaint, the Council also has a formal complaints system. See https://go.walsall.gov.uk/your_council/contact_us/complaints_faq#9593106-how-can-i-make-a-complaint

OR

A service user can still make a complaint in cases where the Council has instigated legal proceedings. **However, making a complaint will not stop any impending legal action.**

Where statutory notices have been served, making a complaint does not replace the statutory rights of appeal or the right to make representation. Nor does it allow extra time to comply with any notice or order.

If a service user disagrees with a statutory notice then they should take action specified in the notice or order to make an appeal, if any exists. Reference should be made to the notes that accompany the notice or order for more detail.

If a summons or directions have been issued by a Court or Tribunal any recipient of the notice or order must continue to follow these. As with all cases where legal action is being taken, it will be strongly recommended that service users seek legal advice.

Appendix 1 Fees & Charges Schedule

Fees and charges are set for a range of matters. These are reviewed annually this Appendix has those fees and charges that remain in force for 2021/22 up to the 31 March 2022.

Walsall Council introduced the charging provisions of the Housing Act 2004 in April 2014 to recover the costs of:

- the enforcement action against those private sector landlords who fail to meet basic legal requirements and
- non-statutory assessment of dwellings for immigration inspections;
- assessment of applications for licensable HMO properties;

The council is committed to working with good landlords and will always seek to avoid service of legal notices wherever possible and appropriate.

A review has been undertaken to ensure that fees charged accurately reflect the full costs associated with the work.

Fees and fines from 1 April 2021 to 31 March 2022

Type of Enforcement Action	**Fee**
Hazard Awareness notice (Section 28 and 29 Housing Act 2004)	
Up to 2 bedrooms	£200
3 and / or 4 bedrooms	£225
5 or more bedrooms	£250
Improvement and suspended Notices (Section 11 and 12 Housing Act 2004)	
Up to 2 bedrooms	£275
3 and / or 4 bedrooms	£300
5 or more bedrooms	£325
Prohibition Orders (including Suspended) and Emergency Remedial Action Notices (Section 20 21 41 and 43 Housing Act 2004)	
Up to 2 bedrooms	£325
3 and / or 4 bedrooms	£350
5 or more bedrooms	£375
Request for a variation of any Housing Act 2004 Notice	£75
Fixed penalty for failure to belong to an approved redress scheme	£5,000
Non-statutory Immigration Property Inspection	
Up to 2 bedrooms	£100
3 and / or 4 bedrooms	£140
5 or more bedrooms	£160

General Information about all HMO Licence Fees

There are 2 stages to the fee payment:

The first stage administration fee payment will need to accompany the licence application.

The second stage enforcement fee payment will need to be made following the issuance of the notice of intention to issue the licence but before the final licence is issued. This 2nd stage payment will be refunded if the final licence is not granted.

The Council will usually contact the applicant (by email) to confirm when 2nd Stage fee is due. You must pay this within 14 days. Please note no licence will be issued without payment being received of the 2ndStage fee. If you operate an HMO without a licence you may be subject to legal action by the Council.

Mandatory HMO Licence Fees

First HMO Application

Accredited Landlord	1st Stage Fee	2nd Stage Fee	Total Fees
5-6 Persons accommodated	£665.00	£225.00	£890.00
7-8 Persons	£830.00	£280.00	£1,110.00
9-14 Persons	£1,225.00	£405.00	£1,630.00
15-19 Persons	£1,360.00	£450.00	£1,810.00
20-24 Persons	£1,505.00	£505.00	£2,010.00
25-29 Persons	£1,655.00	£555.00	£2,210.00
30 Persons	£1,805.00	£600.00	£2,405.00
Additional Persons charged at (each)	£70.00		

Non- Accredited Landlord	1st Stage Fee	2nd Stage Fee	Total Fees
5-6 Persons accommodated	£ 830.00	£ 280.00	£ 1,110.00
7-8 Persons	£ 1,010.00	£ 335.00	£ 1,345.00
9-14 Persons	£ 1,485.00	£ 495.00	£ 1,980.00
15-19 Persons	£ 1,600.00	£ 530.00	£ 2,130.00
20-24 Persons	£ 1,750.00	£ 580.00	£ 2,330.00
25-29 Persons	£ 1,930.00	£ 645.00	£ 2,575.00
30 Persons	£ 2,110.00	£ 700.00	£ 2,810.00
Additional Persons charged at (each)	£ 70.00		

HMO Additional Licensing Fees

Overall
These fees (and fee structure) cover the cost of managing the Additional licensing scheme, including preparing for the scheme, publicising the scheme, training staff, landlords and other stakeholders (where applicable) and the actual administrative costs of processing individual licence applications and compliance monitoring, and do not make a profit for the Council. The Council does not use the money to pay for legal enforcement work against non-compliant landlords.

The Fee structure ensures that those landlords who work diligently to submit early or on time full and correct applications are not subsidised by those who don't.

Fees for 2021/22* Stage payments				
For HMOs of 3 or 4 persons (Please note HMOs of 5 or more persons are subject to Mandatory Licensing)	**Non Accredited**		**Accredited Landlord Fee**	
	Stage 1	Stage 2	Stage 1	Stage 2
Standard Fee	£785	£260	£625	£210
	Total £1,045		**Total £835**	
Early Bird Fees A 15% reduction in relevant fee for those who apply within first 3 months of the Additional Licensing scheme going live.	£665	£225	£545	£185
	Total £890		**Total £730**	

Renewal Fees for 2021/22* including stages of payment				
For HMOs of 3 or 4 persons	Non Accredited		Accredited Landlord	
Renewal Fee (No early bird discounts apply)	Stage 1	Stage 2	Stage 1	Stage 2
	£510	£220	£410	£175
	£730		**£585**	

*Please note that fees for applications are expected to increase by circa 2% each financial year. They will be published online on the Council's website.

The above fee schedule apply to the additional licensing scheme for Palfrey, Pleck, Paddock and St Matthews. Note that the fee schedule may be different for any similar future schemes.

Fees for Renewal of a Mandatory HMO Licence

Licence holders renewing a licence for the same property will be charged a 'renewal fee', which is lower than the full HMO application licence fee, provided their application is received within time (i.e. their existing licence has not expired). If an application for renewal is received and is either incomplete or received outside the time the full application fee will apply.

Accredited Landlord Renewal Fee	1st Stage Fee	2nd Stage Fee	Total Fees
5-6 Persons accommodated	£ 455.00	£ 155.00	£ 610.00
7-8 Persons	£ 625.00	£ 200.00	£ 825.00
9-14 Persons	£ 1,010.00	£ 345.00	£ 1,355.00
15-19 Persons	£ 1,140.00	£ 380.00	£ 1,520.00
20-24 Persons	£ 1,290.00	£ 425.00	£ 1,715.00
25-29 Persons	£ 1,440.00	£ 480.00	£ 1,920.00
30 Persons	£ 1,595.00	£ 530.00	£ 2,125.00
Additional Persons charged at (each)	£35.00		£35.00

Non- Accredited Landlord	1st Stage Fee	2nd Stage Fee	Total
5-6 Persons accommodated	£625.00	£200.00	£825.00
7-8 Persons	£800.00	£265.00	£1,065.00
9-14 Persons	£1,270.00	£420.00	£1,690.00
15-19 Persons	£1,385.00	£460.00	£1,845.00
20-24 Persons	£1,540.00	£510.00	£2,050.00
25-29 Persons	£1,690.00	£560.00	£2,250.00
30 Persons	£1,841.00	£610.00	£2,451.00
Additional Persons charged at (each)	£35.00		£35.00

Licence variation

There is no fee charged for a licence variation, for example, to notify the council of a change of manager. The licence condition still requires written notification to be given to the council about material changes within 21 days of the change. Failure to make such written notification is a breach of the Licence conditions. Refer to licence conditions for further details

Fee reduction per additional HMO property for same landlord / manager

This only applies if the applications are made at the same time. A £50 reduction will be applied for each subsequent property. This will be applied to the 2nd and not the 1st stage fee and applies irrespective of whether the landlord/manager is accredited or not.

Renewal of HMO Application

Licence holders renewing a licence for the same property will be charged a 'renewal fee', which is lower than the full HMO application licence fee, provided their application is received within time (i.e. their existing licence has not expired).

If an application for renewal is received and is either incomplete or after the licence has expired then the full application fee will apply.

Licence Fees Refunds

There will be not normally be any refunds on HMO application fees.
Any refund will be at the discretion of the Council and are limited to the following two scenarios:

- Refunds of 1st Stage fees where a duplicate application has been made for a property or
- Where on review of an application (at 1st Stage) it is decided that the property does not need a license at the time of application (for example, it falls under one of the exemptions).

The refund will be up to 50% of the 1st stage fee paid and 100% of any 2nd stage fee paid. The remainder of the fee will be retained by the Council for the administrative work that has been undertaken.
There will be no refund for applications that are refused by the Council.

Promoting best practice in property management - Discounts for Accredited Landlord

The Council is committed to supporting the improvement of private renting standards within the borough and as such offers a discounted rate for 'accredited' landlords and agents where they are a full member of a national and or regional accredited landlord including:

- Midland Landlord Accreditation Scheme (MLAS)
- National Residential Landlords Association (NRLA Accreditation).

An accreditation discount will be applied if, at the time of applying, the applicant for the HMO licence owns the property and/or is a confirmed member of the Midlands Landlords' Accreditation Scheme or any other recognised national or regional scheme. Local (single council etc.) landlord accreditation schemes do not qualify for a discount. The Council has the final decision as to whether to recognise any scheme put forward by the applicant for a discount.

The accreditation discount to the HMO licence fee will NOT be applied if your application to the accreditation scheme is still pending when you make your HMO application. We will not retrospectively apply the accreditation discount to an existing application and there

is no ‘proxy’ entitlement to the accreditation discount by virtue of an ‘association’ between a non- accredited and an accredited member.

Where an applicant secures a discount based on being accredited they must retain the accreditation throughout the duration of the licensing scheme. Where their accreditation lapses they will be subject to an additional £100.00 charge.

As indicated in the tables below discounts are also provided for ‘early bird’ applicants to encourage early registration.

Pre-condition for agents and property managers.
Where an agent or a property manager is managing properties that do not belong to them they will, where required, be a member of the Letting Agents Redress Scheme. As this is a statutory requirement no additional discount will be offered to agents signed up to this.

Overseas landlords / managers distant from the property.
Where a landlord is not resident in the UK they must appoint a fit and proper UK based person to manage their HMO for them. The council will usually expect the manager to be ‘local’, ideally to the borough of Walsall so that they can attend promptly to resident and or council requests / concerns.

Appendix 2
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all tenanted premises during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

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

Enforcement

Where the Local Housing Authority has reasonable grounds to believe that;

- there are no or an insufficient number of smoke alarms or carbon monoxide detectors in the property as required by the regulations or;
- the smoke alarms or carbon monoxide detectors were not working at the start of a tenancy or licence,

Then the Authority shall serve on the landlord, in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

If after 28 days the landlord has not complied with the Remedial Notice, a Penalty Charge shall be levied through a penalty charge notice.

Level of Penalty Charge

The Penalty Charge shall be set at £1,000 for the first offence, reduced to £750 if paid within a 14-day period. It will cover the cost of all works in default, officer time, recovery costs, legal costs, an administration fee and a fine. Should the landlord not comply with future Remedial Notices then the fine shall be set accordingly:

Second offence - £2,000,
Third offence - £3,000,
Fourth offence - £4,000,
Fifth or More offences - £5,000 on each case

No discount will be given for prompt payment after the first occasion / offence.

Recovery of penalty charge

The local housing authority may recover the penalty charge as laid out in the Regulations.

Appeals in relation to a penalty charge notice.

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing

authority review the penalty charge notice. The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

Appendix 3 Financial Penalties Policy

Relating to Housing and Planning Act 2016, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Part 1

1.0 Introduction

1.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution of housing offences. These are known as Civil Penalty Notices (CPNs). On 1 June 2020, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force and CPNs were extended to include breaches under these Regulations. The Energy Efficiency Regulations 2015 establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018 and existing tenancies from 1 April 2020.

1.2 The value of the civil penalties, set by the Council and based on national guidance and legislation and a risk based process, can range from £25 to £30,000, per offence, dependent upon the nature of the offence and the resulting harm and culpability.

1.3 Importantly, once an individual is subject to a civil penalty fine for housing act offences, the Council must consider a Rent Repayment Order (RRO) to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

1.4 This policy is supplementary to the Council's published Housing Enforcement Policy, which was approved by Cabinet in October 2017.

1.5 The purpose of this Policy is to set out the framework within which decisions will normally be made to applying for a Rent Repayment Order and to issuing civil penalties in relevant cases. This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances.

This policy is designed to ensure transparency, consistency and fairness in how and when CPNs are imposed and RROs are pursued.

1.6 The list of offences under the Housing Act 2004 that that can currently be dealt with by way of a financial penalty are as follows:

- Failure to comply with
    - improvement notice (Section 30)
    - with overcrowding notice, (Section 139(7))
- Licensing of HMOs under Housing Act 2004 Part 2 (Section 72)
- Licensing of houses under Housing Act 2004 Part 3 (Section 95)
- Management regulations in respect of HMOs (Section 234)

1.7 If new legislation is introduced that permits the use of CPNs and or RROs this Policy will be used (in consultation with the relevant Portfolio Holder).

2.0 Determining the appropriate course of action

2.1 Offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 on their own are only eligible for financial penalty fines and not prosecutions.

2.2 For eligible offences, when the Council is satisfied that a relevant offence has been committed and that it is in the Public interest to proceed formally it must decide whether to prosecute or issue a civil penalty. This will be determined on a case-by-case basis but whilst not an exhaustive list, the following factors are some of the issues that will be considered in determining if a civil penalty or prosecution should be applied to an individual offence:

- The severity of the offence and the resulting potential harm
- The offending history of the alleged offender
- If the offence was committed by mistake or with knowledge
- The health and capacity of the alleged offender
- The public interest in taking the alleged offender into court where the offence will be publicised and the individual held to account in public.
- The likely impact of Court action versus a civil penalty, in deterring further offending.

2.3 The following are situations where a prosecution may be appropriate;

- The offence was serious, for example breach of a Prohibition Order or where there was imminent risk of serious injury or loss of life;
- The offender has been prosecuted for similar Housing Act offences

2.4 The following factors, whilst not exhaustive, are situations where the issuing of a civil penalty may be appropriate;

- No history of previous non-compliance with relevant legislation
- No previous convictions of relevant offences
- The offence was committed as a result of a genuine mistake or misunderstanding. This must be balanced against the seriousness of the offence.
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

3.0 Financial Penalties

3.1 The law currently allows a maximum financial penalty of £30,000 to be imposed per offence under the Housing and Planning Act 2016. The Government recommends that, to ensure that the civil penalty is set at an appropriate level, the local housing authority produce its own Policy to ensure fair and transparent application of penalties.

3.2 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and the Code for Crown Prosecutors. Due regard will also be given to any potential defences which will be considered by way of the representation received following the service of the 'Notice of Intent' to serve a CPN.

3.3 In certain circumstances, it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore the defences but this will be entirely a decision for the Council. In total, we consider the procedure for issuing these penalties to be robust enough by way of providing fairness for the Respondent.

3.4 In particular the factors set out in 3.6 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 have been incorporated into the charging table adjustments set out in Part 2 of this Appendix.

3.5 In determining the amount of penalty the Council will use the Financial Penalty Matrix (contained in Part 2 of this Appendix) which takes into account relevant matters including, but not limited to:

- The penalty should act as a deterrent to repeating the offence ,and to others from committing similar offences;
- The penalty should remove any financial benefit obtained as a result of the commission of the offence;
- The severity and seriousness of the offence;
- The culpability and past history of the offender;
- The harm ,or potential harm, caused to the tenant and the impact on the wider community;

3.6 In determining the financial value of an imposed penalty, this Council shall have regard to the charging table and guidance notes in Part 2 of this Appendix.

4.0 Process for imposing penalty charges

4.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.

4.2 A "**Notice of Intent**" shall be served on the person suspected of committing the offence. The Notice shall specify:

a. The amount of any proposed financial penalty
b. The reasons for proposing the financial penalty
c. Information about the right to make representation to the Council.

4.3 The person to whom the notice relates will be given 28 days to make **written representation** to the Council about the proposal to impose on them, a financial penalty. The representation may be via any legible written format, but to aid respondents, a template form will be included with the Notice of Intent.

4.4 Following the 28 day period the Council will decide:

a. Whether to impose a financial penalty on the person, and
b. The final value of any such penalty imposed.

4.5 If the Council decides to impose a financial penalty, a **final notice** shall be issued imposing that penalty. The final notice will specify:

a. the amount of the financial penalty,
b. the reasons for imposing the penalty,
c. information about how to pay the penalty,
d. the period for payment of the penalty,

e. information about rights of **appeal** to the First tier Tribunal
f. the consequences of failure to comply with the notice.

5.0 Consequences of non-compliance and miscellaneous provisions

5.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

5.2 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.

5.3 The Council may, at any time:

a. Withdraw a notice of intent or final notice
b. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either of these actions, it will write to the person to whom the notice was given.

5.4 Where a person has received two financial penalties under the Housing legislation in any 12 months period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State. The Government is consulting on making changes to this and any such changes will be applied as adopted under this policy.

Appendix 3 Part 2

Charging Table for determining value of Financial Penalties imposed under:

a) **Housing and Planning Act 2016,**
b) **the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the**
c) **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 including explanatory notes.**

NOTES: The following notes relate specifically to the tables of charges and would be applied as appropriate depending on the offence.

Note 1 – Offences that may be dealt with by way of imposing a financial penalty
The starting point for a financial penalty is based on the type of offence, number of previous convictions or imposition of a financial penalty for the same type or similar offence in the previous four years.

After the starting point has been determined for the relevant offences, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed. More than one premium can be added, where relevant.

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company
The Council will take into account any such convictions or financial penalties secured irrespective of the legislation and the locality (including outside of Walsall) to which the offence relates.

Note 3 - Housing portfolio of 10 or more units of accommodation
The premium is applied where the perpetrator has control or manages 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards
This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards (under the Housing Health and Safety Rating System) associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring Category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

Note 5 - Vulnerable occupant and/or significant harm has occurred as result of housing conditions
This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard. For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance. At the time of publication of this Policy, this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates Income to be less than £440/week
This premium (acts as a reduction) will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by up to 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of their income to the Council. Where the property is managed by a company then they will need to provide evidence relating to the company income. The responsibility to do this rests with the person served with the notice.

The figure of £440 per week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim by the person served with the Notice, and where this is incomplete or not sufficiently evidenced may determine that the premium / reduction in financial penalty should not be applied. This decision rests with the Council.

Note 7 - Previous history of non-compliance with these provisions
This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four (4) years. The Council will take

into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability
This premium will be applied where, the person to which the financial penalty applies, acted in the opinion of the Council in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice. This premium may also be added where the Council considers that the person / company has also sought to mislead the Council in the exercise of its statutory duties.

Tables of Civil Penalty Notice – Financial Level of Notices to be applied

A. Failure to comply with an Improvement Notice - Housing Act 2004 (Section 30)	
1st offence *(note 1)*	£5,000
2nd subsequent offence by same person/company *(note 2)*	£15,000
Subsequent offences by same person/company *(note 7)*	£25,000
Premiums **The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.**	
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Housing portfolio of 10 or more units of accommodation *(note 3)*	+£2,500
Multiple Category 1 or high Category 2 Hazards *(note 4)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week *(note 6)*	-50% of overall charge

B. Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (Section 72)	
Failure to obtain Property Licence (section 72(1)) *(note 1)*	£10,000
2nd subsequent offence by same person/company and any subsequent offences *(note 2)*	£30,000
Premiums **The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.**	
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Housing portfolio of 10 or more units of accommodation *(note 3)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week (*note 6)*	-50% of overall charge

C. Breach of Licence conditions under Part 2 and 3 of the Housing Act 2004 (Section 72(2) and (3))	£5,000 per licence breach
Premiums **The following additional charges will be added to the charges above. All relevant charges will be applied.**	
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week *(note 6)*	-50% of overall charge

D. Offences in relation to licensing of HMOs under Part 3 of the Housing Act 2004 (Section 95)	
Failure to Licence (section 95(1)) *(note 1)*	£10,000
2nd subsequent offence by same person/company *(note 2)*	£30,000
Premiums **The following additional charges will be added to the charges above. All relevant charges will be applied.**	
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Housing portfolio of 10 or more units of accommodation *(note 3)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates Income to be less than £440 per week*(note 6)*	-50%
Breach of Licence conditions (Section 95(2)) -	£5,000 Per licence breach
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440per week *(note 6)*	-50% of overall charge

E. Offences of contravention of an overcrowding notice Housing Act 2004 (section 139)	
1st relevant offence *(note 1)*	£5,000
2nd subsequent offence by same person/company *(note 2)*	£15,000
Subsequent offences by same person/company *(note 7)*	£30,000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability *(note 8)*	£2,500
Vulnerable occupant and/or significant harm occurred as result of overcrowding *(note 3)*	£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week *(note 6)*	-50% of overall charge

F. Offences of failure to comply with management regulations in respect of Houses in Multiple Occupation (HMOs) under the Housing Act 2004 (Section 234)	
1st relevant offences *(note1)*	£1,000 per offence

Second subsequent offences by same person/company for the same offence	£3,000 per offence
All subsequent offences by same person/company for the same offence	£5,000 per offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Housing portfolio of 10 or more units of accommodation *(note 3)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week *(note 6)*	-50% of overall charge

G. Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

	Relevant Offences **Note that the maximum fine per breach is £30,000**	**Relevant Regulation**	**Fine Amount**
1	Failure to obtain a report from the person conducting an inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;	(3)(a)	£5,000
2	Failure to supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;	(3)(b)	£3,000
3	Failure to supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;	(3)(c)	£2,500
4	Failure to retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test;	(3)(d)	£1,000
5	Failure to supply a copy of the most recent report to— i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.	(3)(e)	£3,000
6	Failure to ensure that further investigative or remedial work is carried out by a qualified person within— (a) 28 days; or (b) the period specified in the report if less than 28 days	(4)	£2,500
7	Failure to obtain written confirmation from a qualified person that the required further investigative or remedial work has been carried out and that— (i) the electrical safety standards are met; or (ii) further investigative or remedial work is required;	(5)(a)	£2,500
8	Failure to supply written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and	(5)(b)	£1,000

9	Failure to supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.	(5)(c)	£1,000
10	Failure to follow due process in respect of that further investigative or remedial work. Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4), (5a), (5b) and (5)(c).	(6)	£1,000 per paragraph

Premiums for offences under G **The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.**	
Acts or omissions demonstrating high culpability *(note 8)*	+£2,500
Housing portfolio of 10 or more units of accommodation *(note 3)*	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions *(note 5)*	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week *(note 6)*	-50% of overall charge

H. Offences of breaches under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

	Relevant Offences **Note that the maximum level of fines per property under these Regulations is £5,000**	**Relevant Regulation**	**Fine Amount**
1	Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months;	40(2)	Up to £2,000
2	Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more;	40(3)	Up to £4,000
3	Where the landlord has registered false or misleading information on the PRS Exemptions Register;	40(4)	Up to £1,000
4	Where the landlord has failed to comply with compliance notice;	40(5)	Up to £2,000
	Note that the Local Authority may impose a publication penalty in addition to any of the above penalties. Under these Regulations, the maximum fine imposed on a landlord per property at any one time cannot exceed £5,000.		

If the perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week *(note 6)*	-50% of overall charge

Section A.
Mitigating factors that may be considered by the council and may reduce the level of a final penalty notice.

The council in considering written representation against Civil Penalty Notices will consider the information provided, if any, by the landlord (including from their agent). Where the council is satisfied that this provides mitigation in line with one or more of the following, the council may reduce the fine levied by a rate as stated by this policy.

The decision to apply a 'Mitigating reduction' in Final Penalty Notice fine rests with the council. The council's decision will be based on the landlord's written statement and any accompanying documents provided by them. It is their duty to provide their full evidence in support of their representation and not for the council to seek it out on their behalf.

1. **Steps already taken to mitigate the offence(s) (up to 25% reduction in fine)**

This will include but not be limited to:

- Submission of valid HMO licence application including making the relevant fee. Where an incomplete and or invalid or partial application is made this will not be considered sufficient to provide mitigation (25% reduction in fine).
- Completion of all (not part only) remedial works that were required under the Improvement or Remedial Notice:
    - Outside the Improvement or Remedial Notice specified period but within the Notice of Intent Period (15% reduction in fine). This is only applicable where all the specified improvement works have been completed to the satisfaction of the council including providing certificates where relevant. The onus is on the landlord to enable the inspection of completed works within the relevant Intention Notice period of 28 days.
    - Outside the Improvement or Remedial Notice specified period and outside the Notice of Intent Period (10% reduction in fine) but before the Final Notice is issued. This is only applicable where all the specified improvement works have been completed to the satisfaction of the council and relevant certificates provided. The onus is on the landlord to enable inspection of completed works within relevant times.

2. **Full written acceptance of guilt for the offence(s) (10% reduction in fine)**

This is only applicable where landlord accepts guilt (in writing) for all offences that have been listed within the Notice of Intention by writing to the council as part of their representation.

3. **Written evidence from the landlord showing that the breach of the statutory requirements was by virtue of an omission and or an extenuating circumstance (up to 10% reduction in fine)**

An example would be where the council has advised a landlord of their duty to apply for an HMO licence and the landlord has been unable to apply within a reasonable time period due to them having a serious and documented medical condition (evidenced by a medical practitioner).

4. **Any further factor that the council considers to be sufficiently mitigating nature that is not covered above or within the culpability and harm factors. (10% reduction in fine)**

Other situations

The council is aware that in some situations the landlord and their contractors may not be able to undertake the necessary repairs within the specified period of the Improvement or Remedial Notice as a result of a circumstance beyond their normal control. This may for example, be due to the tenant not giving access to them or their contractors to provide estimates for or to undertake the specified works. The council will only accept this as a mitigation where the landlord has given the tenant the required 24 hours' notice of their intention in writing but the tenant has failed to give them access. In most instances, one unsuccessful attempt will not be considered as mitigation. In these and other circumstances, the landlord must provide the council with sufficient evidence for consideration. The council in these cases may choose to:

- Extend the time for the landlord to secure compliance or
- Either not issue or suspend the issue of a Final Notice (therefore levy no fine at the time) or
- If the council is not satisfied with the evidence, they will ordinarily continue to issue the Final notice.

It is the landlord's responsibility to provide evidence of why they have been unable to undertake the works. Statement(s) to this effect must be signed by the respondent and or their contractor. Respondents may wish to submit copies of letters / emails sent by them to their tenant seeking appropriate access to undertake the works and any responses from their tenant to the same.

Section B

Minimum fine

The decision to manage private rented properties (which is ultimately a business decision) is a choice and landlords who are unable to do this appropriately themselves are able to appoint suitably qualified and registered agents to manage their properties on their behalf.

Civil penalties are issued where the council considers that an offence has occurred. A guiding principle in the level of fine that is used by the council is that,

> *The civil penalty will be **fair and proportionate** but in all circumstances will **act as a deterrent and remove any gain** as a result of the offence(s).*

For this reason the council has set minimum fine levels as listed in **Table 1** below:

Table 1: Minimum Fines for first offences after considering mitigating factor(s)	**New Rates**
Failure to comply with an Improvement Notice - Housing Act 2004 (Section 30). Normal penalty £5,000	£2,500
Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (Section 72) Failure to obtain Property Licence (section 72(1)) Normal penalty £10,000	£5,000
Breach of Licence conditions under Part 2 and 3 of the Housing Act 2004 (Section 72(2) and (3)) Normal penalty £5,000	£2,500
Offences in relation to licensing of HMOs under Part 2 and Part 3 of the Housing Act 2004 (Section 95)	
Failure to Licence (section 95(1)) Normal penalty £10,000	£5,000
Breach of Licence conditions (Section 95(2)) Normal penalty £5,000	£2,500
Offences of contravention of an overcrowding notice Housing Act 2004 (section 139) Normal penalty £5,000	£2,500

Offences for failure to comply with management regulations in respect of Houses in Multiple Occupation (HMOs) under the Housing Act 2004 (Section 234) Normal penalty £1,000 per offence	£500 per offence
Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	£1,000

Whilst mitigating factors may be considered and agreed by the council (see section A) these will not in any situation (individually or combined) reduce a civil penalty fine below the minimum fine level shown in Table 1 above.

Section C
Early Settlement of Final Penalty Notice Fine / Invoice
The council offers a 25% discount for prompt payment of fines / invoices relating to Housing legislation and Electrical Safety Regulations.

Final penalty notices are accompanied by invoices from the Council. If a person served with a final penalty fine makes a payment to the council as follows, the remaining 'balance' of fine will be 'written off' i.e. not sought. All conditions must be complied with:

- **The payment must be made electronically (BACs only) within 14 days of the fine and invoice being issued;**
- **The payment must be to a total of 75% (rounded to the nearest whole pound) of the fine / invoice.**

Section D
Calculation of total reduction in fine due to mitigation and early payment
The council will add all relevant mitigation discounts together and then deduct the resultant percentage from the original fine level.

As an example,
The council advises a landlord that a fine of £10,000 is proposed under a Notice of Intent for a landlord who fails to licence a licensable HMO where no premiums are applicable.

The landlord makes written representation as follows:

A) Mitigation of action – submits a valid HMO application with relevant fee within the representation period of 28 days of service of the Notice of Intent.
B) Makes a written statement that they admit their guilt and the offence of not previously securing a HMO licence

The council duly considers the above and applies mitigation reductions as follows:
For A) 25% and B) 10% the council applies this in total as a 35% reduction in the final civil penalty notice. The final civil penalty notice is issued at £6,500 rather than the original £10,000. As this is above the minimum fine level (Table 1) it is considered appropriate.

The landlord makes payment in line with the council's early payment reduction initiative (i.e. electronically within 14 days of the notice) and therefore makes a payment of £4,875 (i.e. 75% of the £6,500). Therefore by making a prompt payment, they have reduced their fine below the normal minimum fine level for this type of offence.

Appendix 4 Rent Repayment Orders

1.1. Purpose

Rent Repayment Orders (RROs) can be used as a means to require a landlord to repay a specified amount of rent.

1.2. Legislation

Housing and Planning Act 2016 Part 2, Chapter 4.

1.3. Background

The Housing Act 2004 introduced RROs to require a landlord to repay the rent that had been paid in respect of a property that should have been licensed, but where he had failed to seek such a licence (and had therefore avoided the requirements to ensure that the property was well managed and of a good standard that would have formed part of the licence process).

RROs have now been extended through the Housing and Planning Act 2016 to cover a wider range of offences;

- **The Housing Act 2004**
  S.30 - Failure to comply with an Improvement Notice
  S.32 - Failure to comply with a Prohibition Order
  The offences within section 30 and 32 of The Housing Act 2004 must relate to hazards within the occupied premises let by the landlord, rather than just common parts.
  S.72 - Control or management of an unlicensed HMO
  S.95 - Control or management of an unlicensed house in a Selective Licensing designated area

- **The Housing and Planning Act 2016**
  S.21 - Breach of a banning order

- **The Criminal Law Act 1977**
  S.6 - Using violence to secure entry to a property

- **The Protection from Eviction Act 1977**
  S.1 - Illegal eviction or harassment of the occupiers of a property

1.4. Principles of Rent Repayment Orders

RRO's requiring repayment of rent to either the tenant or the Council, can be granted via application to the First-tier Tribunal. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the Council. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

A landlord does not have to have been found guilty of an offence through the courts for a RRO to be considered and made. A RRO can also be made against a landlord who has received a Financial Penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The maximum amount of rent that can be recovered is capped at 12 months. The Council must consider a rent repayment order after a person is the subject of a

successful Financial Penalty and in most cases the Council will subsequently make an application for a RRO to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

The Council may offer advice, guidance and support to assist tenants to apply for a RRO if the tenant has paid the rent themselves.

The Council may apply for a RRO at the same time as a tenant if part of the rent paid during the specified period within an application was paid from either housing benefit/universal credit.

The tribunal will calculate in applications where universal credit has been paid how much rent will be apportioned to the Council and the tenant. For those applications where a landlord has not been convicted at court, a criminal standard of proof is required. This means that the First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence, or the landlord has been convicted in the courts of the offence for which the RRO application is being made. The Council will have regard to the Crown Prosecution Service Code for Crown Prosecutors for this purpose. If the Council becomes aware that a person has been convicted through the courts of one of the above offences listed above in relation to housing in its area, the Council must also consider applying for a rent repayment order.

Procedure

1.5. Deciding whether to apply for a rent repayment order and for how much

The Council has a duty to consider applying for a RRO when one of the prescribed housing offences has been committed, these are detailed above.
Applications for RRO under these powers will only be considered in relation to an offence which was committed on or after 6th April 2017. In deciding to make an application for a RRO, the Council will have regard to current guidance given by the Secretary of State.

The Council can impose a Financial Penalty and apply for a RRO for certain offences:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to the licensing of House in multiple Occupation (s72(1))
- Offences in relation to the licensing of houses under Part 3 of The Housing Act 2004 (section 95(1)).

1.6. Deciding how much rent to recover

Where a landlord has been convicted of the offence to which the RRO relates – the First-tier Tribunal must order the maximum amount of rent is repaid (max 12 months).

Where a landlord has not been convicted of the offence to which the RRO relates, the following factors will be taken into consideration when deciding how much rent the Council should seek to recover:

a) Punishment of the offender

The government wish for RRO's to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that Council will consider are; – the conduct of the landlord and tenant – the financial circumstances of the landlord – if the landlord has been convicted of similar offences

b) Deter the offender from repeating the offence
The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.

c) Dissuade others from committing similar offences
The imposition of a RRO is in the public domain. The robust and proportionate use of RRO's is likely to help ensure others comply with their responsibilities.

d) Remove any financial benefit the offender may have obtained as a result of commuting the offence.
An important element of an RRO is that a landlord is forced to pay rent and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

1.7 Notice of Intended Proceedings

Prior to making an application to the First-tier Tribunal, the Council must issue a Notice of Intended Proceedings to the landlord. The notice may not be given after the end period of 12 months beginning with the day on which the landlord committed the offence to which it relates. The notice of intended proceedings must:

- Inform the landlord that the Council is proposing to apply for a RRO and explain why.
- State the amount that the Council seeks to recover
- Invite the landlord to make representations within a specified period of no less than 28 days from the date the notice was issued

1.8 Consideration of Representations Received

The Council will consider any representations made during the notice period before deciding to apply for a RRO.

1.9. Rent Repayment Order Application

The Council can make an application if:

- The offence relates to housing in their areas
- They have given the landlord a notice of intended proceedings.

The Council will wait until the notice period has ended before applying for a RRO. The application will include;

- A copy of the Notice of Intended Proceedings
- A copy of the Certificate of Conviction if there has been a conviction
- A copy of the Financial Penalty – Final Notice if one has been served.
- A statement from an Officer detailing whether a Financial Penalty-Final Notice was paid and any appeal outcome
- If there has been no prosecution or Financial Penalty, evidence to satisfy the Tribunal beyond reasonable doubt that the landlord has committed the offence.

1.10. Making of a Rent Repayment Order

The tribunal may make a RRO if satisfied beyond reasonable doubt that a landlord has committed a relevant offence (whether the landlord has been convicted).

1.11. Costs

The Rent Repayment Orders (Supplementary Provisions (England) Regulations 2007 provide that a LHA may apply an amount recovered under a RRO for the purposes of the reimbursement of the Council's administrative and legal costs and expenses.

1.12. Amount of order when satisfied that an offence has been committed
If the offence related to violence for securing entry/eviction/harassment, universal credit (or housing benefit) will be repaid for the period of 12 months ending with the date of the offence.

1.13. Amount of order following conviction
When there has been a conviction or a Financial Penalty (Financial Penalty Final Notice has been served in respect of the offence and; there is no prospect of appeal or any appeal has been determined or withdrawn) the Tribunal must award the maximum payable amount with no discretion. For other related offences payment will be made for a period, not exceeding 12 months, during which the landlord was committing the offence.

1.14. Rent Repayment Order Recovery
The amount payable to the Council under a RRO is recoverable as a debt.

An amount payable to the Council under a RRO does not when recovered, constitute an amount of universal credit recovered by the Council. The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, outline the provisions about how the Council will deal with amounts recovered.

The Council can apply any amount recovered under a RRO in line with the above to meet the costs and expenses (whether administrative or legal) incurred in or associated with carrying out any of its enforcement functions in relation to the private rented sector. Any amounts recovered which is not applied for that purpose must be paid into the consolidated fund.

If the final amount due remains unpaid, the Council can apply for an order for payment by the County Court. The Council should present a certificate signed by the Authority's Chief Finance Officer which states that the amount due has not been received by a specified date. It will not be necessary at this stage to submit to the Court further supporting evidence, the certificate will be treated by the Court of conclusive evidence of that fact. Any amount payable to the Council will be registered against the property as a legal charge until it has been paid.

1.15. Appeals
A person aggrieved by the decision to award a RRO by the First-tier tribunal may appeal to the Upper Tribunal.

Appendix 5 Banning Orders

1.1. Purpose

Banning Orders (BOs) can be used in relation to landlords and property managers who have been convicted of a “banning order offence”.

1.2. Legislation

Housing and Planning Act 2016, Part 2, Chapter 2

1.3 Background

A BO is an order by the First-tier Tribunal, following an application from the Council that bans a landlord or property agent (letting agents and property managers as defined in Chapter 6 Part 2 of the Housing and Planning Act 2016) from;

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work, or
- Doing two or more of those things

The Housing and Planning Act 2016 enables the Council to apply to for a BO following conviction of an individual or a company for a “banning order offence”, as defined by Regulation (see paragraph 1.4 below).

To make use of BO powers the Council is required to have in place its own policy on when to pursue a BO and to decide which option it wishes to pursue on a case-by-case basis in line with that policy. This policy takes account of the non-statutory guidance issued by the Government which makes clear that BOs are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government’s expectation that BOs will be used for the most serious offenders.

Whilst there is no statutory maximum period for a BO, it must be for a minimum of 12 months for relevant offences committed on or after 6th April 2018.

A BO can be made against a person if that person was a residential landlord or property agent at the time the offence was committed. The First-tier Tribunal will set the banning period but the Council is required to recommend a period as part of an application.

The breach of a BO is a criminal offence.

The power to apply for BOs in appropriate cases is one of a number of enforcement tools available to the Council which include prosecution, carrying out works in default, applying for Rent Repayment Orders and the imposition of Financial Penalties.

1.4 Banning Order Offences

BO offences are listed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and are divided into;

- Relevant housing offences (but not when the person has received an absolute/conditional discharge for that offence)
- Immigration Offences
- Serious Criminal Offences (when sentencing has occurred in the Crown Court).

In respect of the relevant offences that fall within the legislation below; BOs can only be sought if the offence is linked to the tenant or other occupier, or the property owned or rented out by the landlord;

- The Fraud Act 2006
- The Criminal Justice Act 2003
- The Misuse of Drugs Act 1971
- The Proceeds of Crime Act 2002
- The Protection from Harassment Act 1997
- The Anti-Social Behaviour, Crime and Policing Act 2014
- The Criminal Damage Act 1971
- The Theft Act 1968

1.5. Banning Order Applications

Walsall Council will have regard to current guidance issued by the Secretary of State in considering an application for a BO. Procedure

1.6 Determining the appropriate sanction

Walsall Council will consider the following factors when deciding whether to apply for a BO and when recommending the length of any BO;

a) The seriousness of the offence All BO offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the BO offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a BO to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a BO.

b) Previous convictions/rogue landlord database The council will check the rogue landlord database in order to establish whether a landlord has committed other BO offences or has received any financial penalties in relation to BO offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be aware of their legal obligations. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of noncompliance could also be taken into account. The Council will also consider the likely effect of the BO on the person and anyone else that may be affected by the order and will take into account the following:

c) The harm caused to the tenant This is a very important factor when determining whether to apply for a BO. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. BO offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud)

d) Punishment of the offender A BO is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether

there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) Deterring the offender from repeating the offence. The goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence

f) Deterring others from committing similar offences An important part of deterrence is the realisation that

    a. the Council is proactive in applying for BOs where the need to do so exists and
    b. that the length of a BO will be set at a high enough level to both punish the offender and deter repeat offending. Spent convictions as defined under the provisions of the Rehabilitation of Offenders Act 1974 will not be taken into account when determining whether to apply for and/or make a BO.

Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Council's Executive Director for the service area delivering private sector housing enforcement and regulation.

The Executive Director will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a BO, including the recommended duration of the ban.

Subject to consideration of relevant guidance issued by the Ministry of Justice and consultation with its legal advisors, the Council will consider publishing details of any successful BO including the names of individual landlords.

The Council will also consider making information on a BO available on request by a tenant. A BO can apply to a body corporate, and both a body corporate and an officer of a body corporate.

1.7. Notice of Intention

Prior to applying for a BO, the Council must issue the landlord/manger with a notice of its intention to do so. The Notice of Intent must be served within 6 months of the landlord being convicted of the offence. The Notice of Intent must set out;

- That the Council is proposing to apply for a BO
- The reasons for the application
- The length of each proposed ban
- Notice recipients right to make representations

1.8. Appeals

A person receiving the notice of intent can make written representations within 28 days to the Council from the date the notice was issued. Walsall Council will consider any

representations received during the 28-day period and then decide whether to pursue a BO. A landlord may also appeal to the Upper Tribunal against a decision of the First-tier Tribunal to make a BO. An appeal cannot be made unless permission is granted by either the First-tier Tribunal (FtT) or the Upper Tribunal. A person against whom a BO is made may apply to the FtT for an order revoking or varying the BO.

1.9 Request for Information

The Council may require a landlord to provide information under Section 19 of the Act to enable them to decide whether to apply for a BO. This could include requiring the landlord to provide information on all the properties that the landlord owns. It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence for a landlord to provide false and misleading information. The Council will consider exercising its powers in relation to Section 19 if a landlord or agent/manager fails to provide information or the information provided is found to be false or misleading.

1.10 Role of the First-tier tribunal (FtT)

The FtT has the power to make a BO against a landlord or property agent who has been convicted of a BO offence and who was a residential landlord at the time the offence was committed. They will do so on an application by the Council for the area in which the offence occurred. The FtT determines the length of the BO following a recommendation from the Council in its application as to the length of ban they are seeking. The minimum duration of a ban is 12 months.

1.11 Factors the FtT will consider when deciding whether to make a banning order

- The seriousness of the offence of which the person has been committed
- Any previous convictions that a person has for a BO offence
- Whether the person is or has at any time been included in the rogue landlord's database; and
- The likely effect of a BO on the person and anyone else that may be affected by the order.

The FtT can also revoke or vary a BO upon application from the person against whom the BO has been made. Examples of variations include adding new exemptions to a ban, varying the banned activities listed on the order, varying the length of the ban and varying existing exceptions to a ban. The Council cannot vary or revoke a BO.

1.12 Enforcement and Impact

A landlord subject to a BO is prevented from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work, or
- Doing two or more of those things

A landlord subject to a BO is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order.

1.13 Consequences of Banning Orders

A person who breaches a banning order commits an offence. The council can consider two options on the identification of a breach:

- Prosecution (liable on conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both)
- Financial Penalty

When a person is convicted of breaching a BO and the breach continues after conviction, the person commits a further offence and is liable on further conviction to a fine not exceeding 1/10 of level 2 on the standard scale or part of a day on which the breach continues. If the Council chooses to impose a Financial Penalty in respect of a breach then the person may not be convicted of that offence. If the person has been convicted of an offence for the same conduct, or criminal proceedings for that offence been instituted against that person and the proceedings have not been concluded then the Council may not impose a Financial Penalty.

1.14 Financial Penalty for Breach of a Banning Order

The Council may impose a Financial Penalty on a person if satisfied, beyond reasonable doubt that the person's conduct amounts to a breach of a BO. Only one Financial Penalty may be imposed in respect of the same conduct unless the breach continues for more than 6 months, when a further Financial Penalty can be imposed for each additional 6 month period for the whole or part of which the breach continues, The Council will determine the amount of the Financial Penalty in accordance with Section 2 of this Policy, and any current guidance made by the Secretary of State.

1.15 Banning Order Publicity

The Government encourages local housing authorities to publish details of successful BOs, including the names of individual landlord's and businesses, at a local level. Details of a BO will also be made available to a tenant upon request. The Council shall seek legal advice and consider local circumstances when determining whether a BO will be publicised.

1.16 Other Impacts of Banning Orders

A landlord is unable to transfer their property/ies to certain persons whilst a BO is in force. A prohibited person is:

- A person associated with the landlord (including family members, spouses and financial partners)
- A business partner of the landlord
- A person associated with a business partner of the landlord
- A business partner of a person associated with the landlord
- A body corporate of which the landlord or person mentioned above is an officer
- A body corporate in which the landlord has a shareholding or other financial interest; or
- In the case where a landlord is a body corporate, anybody corporate that has an officer in common with the landlord.

A BO does not invalidate a tenancy agreement held by the occupiers in the property regardless of whether the agreement was issued before or after the BO was made. This

is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

1.17 Management Orders

The Council will consider the use of management orders (MO) for properties affected by BOs if deemed necessary. A MO enables the Council to take over the management of a privately rented property in place of the landlord. A MO ensures that health and safety of occupiers and persons living or owning property nearby are protected, or ensures that a property is still available to rent. The ability of the Council to take over the management of a private rented home under certain circumstances was created by Part 4 of the Housing Act 2004.

Appendix 6
National Register of Rogue Landlords and Property Agents

1.1 Purpose

This section of the Policy details how the Council will use the database of rogue landlords. The database is a tool for local housing authorities in England to keep track of offences committed by rogue landlords and property agents.

The database is operated by the Secretary of State for Housing, Communities and Local Government, but local housing authorities in England have responsibility for maintaining its content. The requirements permit the Council to add entries to the database. The Council can also view all entries on the database including those made by other local housing authorities to help keep track of known rogues', especially those operating across council boundaries to allow local housing authorities to target their enforcement activities on individuals and organisations who knowingly flout their legal obligations.

As at November 2021 two landlords and one property agent have been placed on the Register by Walsall Council each for a period of 5 years.

1.2 Legislation

Housing and Planning Act 2016, Part 2, Chapter 3

1.2 Use of information in the database

The Council may only use the information obtained from the database:

- For purposes connected with its functions under The Housing Act 2004
- For the purposes of a criminal investigation or proceedings relating to a banning order offence
- For the purposes of an investigation or proceedings relating to a contravention of the law relating to housing or landlord and tenant.
- For the purposes of promoting compliance with the law relating to housing or landlord and tenant by any person in the database, or
- For statistical or research purposes

1.3 Making an entry

Government guidance has been produced to assist the Council in deciding whether to make an entry onto the database and to provide practical guidance so that the database can be used effectively.

Under section 29 of the Act the Council must make an entry on the database for a person or organisation that has received a Banning Order following an application by the Council and no entry was made under section 30 before the banning order was made, on the basis of a conviction for the offence to which the banning order relates.

An entry made under section 29 must be maintained for the period for which the banning order has effect and must then be removed under section 30 of the Act.

The Council may make an entry on the database for a person or organisation who has been convicted of a banning order offence that was committed at a time when they were

a registered landlord or property agent; and/or Who has received two or more Financial Penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or property agent.

1.4 Deciding whether to make an entry under Section 30

The Council will always consider whether it would be appropriate to make an entry on to the database when a landlord has been convicted of a banning order offence or received two or more Financial Penalties over a 12-month period.

The database is designed to be a tool which will help local housing authorities to keep track of rogue landlords and focus their enforcement action on individuals and organisations who knowingly flout their legal obligation. The more comprehensive the information on the database, the more useful it will be to the Council. Such information will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas.

The Council is required to have regard to the following criteria when deciding whether to make an entry in the database under section 30:-

- **The severity of the offence** – The more serous the offence, the stronger the justification for including the offence on the database
- **Mitigating factors** – where a less serious offence has been committed and/or there are mitigating factors, the Council may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. The Council will decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database.
- **Culpability and serial offending** – when an offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database. Conversely where it is a first offence and/or where it is relatively minor, the Council may decide that it is not appropriate to record a person's information on the database.
- **Deter the offender from repeating the offence** – the goal is to prevent landlords and property agents who have failed to comply with their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that the Council has the tools and is proactive in recording details of rogue landlord and property agents, and, that they will be unable to simply move from one local authority area to another.
- **Deter others from committing similar offences** - Knowing they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlord's from committing banning order offences in the first place.

1.5 Deciding how long a database entry under Section 30 should last

The Council will have regard to the following criteria when deciding the period to specify in a decision notice:-

- **Severity of offence** – the severity of the offence and related factors, such as whether there have been several offences over a period of time will be considered. Where an offence is particularly serious and/or there have been several previous offences;

and/or the offences) have been committed over a period of time, then the decision notice may specify a longer period of time. When one or more of those factors are absent, it may be appropriate to specify a shorter period.

- **Mitigating factors** – these could include a genuine one-off mistake, personal issues such as ill health or a recent bereavement. When this is the case, the Council may decide to specify a shorter period in the decision notice
- **Culpability and serial offending** – a track record of serial offending or when the offender knew, or ought to have known, that they were in breach of their responsibilities may suggest a longer time period would be appropriate
- **Deter the offender from repeating the same offence** – the data should be retained on the database for a reasonable time period so that it is a genuine deterrent to further offences.

1.6 Procedure for database entries under Section 30

The Council may make an entry onto the database if a person or organisation;

- Has been convicted of a banning order offence and the offence was committed at a time when the person was a residential landlord's or property agent
- Has within a period of 12 months, received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or a property agent.

A financial penalty can and will only be taken into consideration if the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn. An entry made under section 30 must be maintained for the period specified in the decision notice as described below before the entry was made (or that period as has been reduced in accordance with section 36) and must then be removed at the end of that period.

1.7 Section 30 Database Entry - Decision Notice

Prior to making an entry on the database in respect of a person under s30, the Council must issue a decision notice. The decision notice must be issued within 6 months, beginning with the day on which a person was convicted of the banning order offence to which the notice relates, or, received the second of the financial penalties to which the notice relates. The decision notice must;

- Explain that the authority has decided to make the entry in the database after the end of the period of 21 days beginning with the day on which the notice is given ("the notice period"), and
- Specify the period for which the person's entry will be maintained, which must be at least two years beginning with the day on which the entry is made.
- Summarise the notice recipients appeal rights

An entry on to the database will then be made once the notice period has ended and there is no appeal received. The Council will take reasonable steps to keep information on the database up to date.

1.8 Appeals

A person receiving a decision notice may appeal to the First-tier Tribunal against;

- The decision to make the entry in the database in respect of the person, or
- The decisions as to the period for which the person's entry is to be maintained.

An appeal must be made before the end of the notice period specified in the decision notice, however the Tribunal may allow an appeal to be made to it after the end of the notice period if satisfied that there is good reason for the persons failure to appeal within the period (and for any subsequent delay).

The Tribunal may confirm, vary or cancel the decision notice upon appeal. If an appeal is received within the notice period then the Council will not make an entry in the database until;

- The appeal has been determined or withdrawn, and
- There is no possibility of further appeal (ignoring the possibility of an appeal out of time).

1.9 Removing or Variation of an Entry

An entry made in the database may be removed or varied; If an entry was made based on one or more conviction all of which are overturned on appeal, the Council must remove the entry. The Council may remove an entry or reduce the period for which the entry must be maintained under the following circumstances: If the entry was made on the basis of;

- more than one conviction and some of them (but not all) have been overturned on appeal
- one or more convictions that have become spent (for the purposes of the Rehabilitation of Offenders Act 1974).
- that the person has received two or more financial penalties and at least one year has elapsed since the entry was made The Council also have the power under the above circumstances to;
- remove an entry before the end of the two-year period
- reduce the period for which an entry must be maintained to less than the two-year period.

1.10 Receipt and consideration of requests to remove entries or reduce entry time periods

The Council will receive requests in writing from a person in respect of whom an entry is made in the database under section 30 to remove and entry or reduce the period for which the entry must be maintained.

1.11 Request Decision notice

On receipt of a request in writing the Council must decide whether to comply with the request, and give the person notice of its decision.
If the Council decide not to comply with the request the decision notice must include the reasons for the decision and a summary of the persons rights of appeal.

1.12 Appeals against a decision not to comply with a request

Appeal by a person given a notice confirming that the Council has decided not to comply with the request can be made to the First-tier Tribunal within 21 days beginning on the day on which the notice was given. On appeal the Tribunal may order the Council to remove the entry or reduce the period for which the entry is maintained.

1.13 Power to Require Information

Under Section 35 of the Act the Council may require a person to provide specified information for the purpose of enabling them to decide whether to make an entry in the database in respect of the person. The Council may require from a person that they have made an entry about or are proposing to make an entry about, any information needed to complete the person's entry or keep it up to date. It is an offence, on conviction with a fine, for a person to fail to comply with a section 35 requirement, unless the person has a reasonable excuse for the failure. It is also an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.

Appendix 7: The Redress Scheme for Lettings Agency Work and Property Management Work

Introduction

Since October 2014 it has been a legal requirement for all lettings agents and property managers in England to join one of two Government-approved redress schemes. This requirement means that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received.

Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards.

Walsall Council 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 one of the two government approved redress scheme.
These two redress schemes are: -

- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

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

The meaning of "letting agency work"

Lettings agency work is things done by an agent in the course of a business 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 (the most common type of tenancy) except where the landlord is a private registered provider of social housing or the tenancy is a long lease.

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;
- 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 work in the course of a business will be subject to the duty to belong to an approved redress scheme. Employers who find homes for their employers or contractors; higher and further education authorities and legal professionals are excluded from the requirement.

The meaning of "property managers work"

Property management work means things done by a person in the course of a business 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.

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 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.

The requirement to belong to a redress scheme does not apply to Managers of common hold land, student accommodation and refuge homes; receivers and insolvency practitioners; authorities where Part 3 of the Local Government Act 1974 applies; right to manage companies; legal professionals and property managers instructed by local authorities and social landlords.

The meaning of "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'. 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 thank you gift; 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 looks after another landlord'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 helping out an individual as opposed to offering their services to anyone who wants to use and pay for them.

Penalty for breach of requirement to belong to a redress scheme

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, such that the fine is not appropriate to the scale or turnover of the business or that the maximum could put the business at risk of closure.

It will be up to the Council 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.

The Council 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 Council may be used by the authority for any of its functions. Where Council 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). 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.

Notices will be served by duly authorised officers of the Housing Standards Service. The Council 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 Council'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 Council'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.

Appendix 8: Mobile Homes Licensing

The Council's responsibility for the licensing of caravan sites includes the application and enforcement of appropriate conditions. The specific purposes for which conditions can be applied are set out in Section 5 of the Caravan Sites and Control of Development Act 1960. Site licence conditions may be determined with reference to national Model Standards.

The Council has a power to update site licence conditions in line with Model Standards as modified from time to time by the Government. The aim of such standards is to promote the safety and welfare of the residents. The applicable Model Standards were issued in 1983 (touring sites) 1989 (holiday sites) and 2008 (Residential Sites).

All relevant sites must have a licence to operate and the Mobile Homes Act 2013 legislates for a site licensing regime for relevant protected sites, giving councils more effective control of conditions. The Mobile Homes Act 2013 gave local authorities the powers to among other things

1) introduce fees (both on application and an annual licence fee)
2) to serve a compliance notices where there are one or more breaches of site licence conditions
3) to carry out works where the licence holder has failed to do so, and to include for the recovery of costs

A Compliance Notice must:

- Set out the condition which, in the opinion of the Council, has been breached and the details of the failure;
- Detail the steps the site operator must take to remedy the breach of the site licence condition(s); and
- Specify a time scale for completion and
- Explain the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Notice.

Enforcement

The main focus of enforcement activity will be informal advice and education, including the provision of information in leaflets, on the website and directly by telephone or in person. Formal enforcement action will be taken where necessary including when informal action has failed to secure an acceptable improvement in standards or compliance with licence conditions.

Failure to comply with a Compliance Notice within the period specified in the Notice is an offence which on summary conviction carries a level 5 fine.

As a last resort, and where the licence holder has been convicted on two or more previous occasions of failing to comply with a Compliance Notice, the Council may apply to the court for revocation of the site licence.

Following a successful prosecution for breaching a Compliance Notice the Council may enter the site and carry out the necessary works and recharge the owner. Unpaid charges can be placed as a charge against the site owner's land.

The Council may take emergency action where the site operator has failed or is failing to comply with a site licence condition and, as a result of such failure, there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

Where the Council proposes to take emergency action a notice must be served, giving the site operator reasonable notice of intended entry.

The emergency works carried out by the Council should be those works necessary to remove the imminent risk. It is possible that these works fall short of the standard required to comply with the site licence conditions. In those cases the emergency action would need to be followed up by a Compliance Notice.

Within seven days of any emergency action being started the Council must serve another notice on the site operator.
The site operator has the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) on the grounds there was no imminent risk of serious harm or the action taken was not necessary to remove the imminent risk.

Subject to any appeal decision, the Council is entitled to recover, from the site operator, expenses incurred, including interest.

Expenses include the cost incurred in:
• deciding whether to take the action
• preparing and serving any notice or a demand for expenses and taking the action

The debt will be registered as a local land charge from the time it becomes payable (after the end of the period for appealing the demand, if no appeal is brought) and removed on payment.

Public Register of Deposited Site Rules

It is a requirement under the Mobile Homes Act 2013 that where sites have site rules, that site owners must deposit a copy of their site rules with us so that we can keep a master copy on record. These rules are part of the contract between the home owner and site owner. The Council does not enforce these rules, although some rules may be a duplicate of the site licence conditions. We encourage site managers to put in place site rules to ensure that acceptable standards are maintained, which will benefit occupiers of the park.

The Council is required to keep and publish a register of the site rules. We will update the public register when we are notified by site owners that rules are in force or have changed. These rules will not necessarily reflect the views of the Local Authority.

The Mobile Homes (Site Rules) Regulations 2014 detail the procedure that a site owner must use when making, varying or deleting a site rule. They establish the process for consulting on proposed changes, grant appeals rights and require local authorities to keep and publish a register of site rules of sites in their area. More information about "Site Rules" and the process for reviewing them can be found on the following link **https://www.gov.uk/government/collections/park-homes**

The new Fit and Proper Person Regulations

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner or manager of the site is a fit and proper person to manage the site. The purpose of the fit and proper person test is to improve the standards of park (mobile) home site management.

The Regulations were made on 23 September 2020 and allow local authorities by 1 October 2021 to ensure that owners of all relevant protected sites other than non-commercial family-occupied sites must submit an application for a relevant persons to be assessed as fit and proper persons to manage the sites. These include both "residential parks", which are used exclusively residentially, and "mixed use parks", which are used for both residential and holiday purposes.

The council will publish and maintain an up to date register of all licensed sites, site rules and persons assessed as fit and proper to manage licensed sites in the area.

Fees for licences and for setting up and maintaining the public register of fit and proper persons

This fee policy applies to all sites where a licence is required and sets out:

- the fees payable for applications for an entry on the public register. Sites that are exempted by the Regulations are those that are only occupied by members of the same family and are not being run as commercial residential sites
- any additional payments that may be required by way of annual fee as a condition of registration and their frequency
- the matters and appropriate costs taken into account in setting each type of fee
- the method of apportionment of those costs in setting those fees
- such other matters as the local authority considers to be relevant

The fees we charge are limited to recovering the costs of exercising our fit and proper test function and are considered to be fair and transparent. The text below the schedule gives you information on what you are being charged for. The fees only cover the costs (or part of the costs) incurred by the council in carrying out its functions under the Regulations. The current fee schedule is as follows

Non-recurrent fees payable	**Fees for 2021/22**
Band A – 1 caravan / family Band	No charge
B – 2 to 5 caravans Band	£260.00
C – 6 to 20 caravans	£364.00
Band D – over 20 caravans	£520.00
Minor amendment of a licence	£104.00
Major amendment of a licence (Including change of ownership, change conditions or site layout).	£260.00
Deposit of site rules (including varying or deleting site rules). There is no separate charge for when these are deposited as part of a site licence application	£50.00

The government has agreed that Councils can levy what is known as an Annual Fee for Caravan (including mobile home) sites. Many local councils already charge such fees

and they are usually between £100 and £300 depending upon the number of caravans/plots at the site. Walsall Council is yet to introduce such a fee and before it considers any such introduction it will consult site licence holders on the same matter.

The overriding consideration is that our fees are reasonable, transparent and consistency in the fee structure and its application in other areas of work that we do. The scale of standard fees for a site licences is set according to the size of the site and also takes into account the time and resources spent on the following.

(a) Initial enquiries;
(b) Letter writing/ telephone calls etc. to make appointments and requesting any documents or other information from the site owner or from any third party in connection with the application process;
(c) Sending out forms;
(d) Updating files/ computer systems and websites;
(e) Processing the application fee;
(f) Land registry searches;
(g) Time for reviewing necessary documents and certificates;
(h) Preparing preliminary and final decision notices;
(i) Review by manager or lawyers (where necessary) of applications, representations made by applicants or responses from third parties;
(j) Updating the public register;
(k) Carrying out any site visits considered necessary;
(l) Reviews of decisions or in defending appeals.
(m) In addition, the council will need to make such inquiries as are necessary in connection with the application, such as those relating to the relevant person's ability to secure the proper management of the site.
(n) All time taken in establishing the information required to make an informed decision may be included in the application fee, whether or not the entry on the register is granted.

Appendix 9

Harassment, Illegal and Retaliatory Evictions

Tenants are protected from illegal eviction and harassment by law (Protection from Eviction Act (1977)). It is vitally important that tenants feel safe and secure in their home and they should not tolerate threats or harassment from their landlord. There are clear legal processes to follow if a landlord wishes to end a tenancy. If they fail to follow these steps they may be acting illegally and the Council can intervene.

I'm a tenant. When do I have to let my landlord into my home?

You don't. If you have been granted a tenancy, you have the right to exclude anybody from your property unless they are entering under a Court Order (or the Police in certain circumstances). You should definitely not permit entry to anyone who you feel threatened by. If you are suffering from threats or your landlord is entering your property without permission, changing the locks yourself is a reasonable course of action (keep in mind this could be a breach of tenancy so you should be able to evidence why you feel it was necessary to change the locks). Landlords do have a right of entry in law through the Landlord and Tenant Act (1985) which allows them entry at any reasonable time provided they have given you 24 hours' notice. This right does not give the landlord permission to enter against your will and certainly not by using force. We strongly recommend co-operating with your landlord if they are making reasonable requests to enter your property (for example to carry out periodic inspection, comply with their legal obligations & to carry out repairs). Failure to do so is likely to be a breach of your tenancy and your landlord could evict you.
If you have said the landlord cannot come in and they try to force entry you should call 999.

What is considered harassment?

Harassment can include anything done by a landlord, their agent, or any other person acting on the owner's behalf, which deliberately unsettles you in your home.

Some examples of this might be:-

- changing the locks or removing the tenant's belongings
- constant telephone calls and/or text messages
- cutting off or interfering with services
- entering the home without the tenant's permission
- harassment because of the tenant's age, race, gender or sexuality
- sending in builders without notice or visiting at unsociable hours
- stopping tenants from having visitors to stay
- threatening the tenant if they refuse to leave the property
- threats, abuse or actual violence

If you are experiencing any of these types of behaviour, you should write to your landlord in the first instance and explain that they need to stop it. If this doesn't work, please **report the matter to us**. The matter is also dealt with by the Police if your landlord makes you feel unsafe in your home or makes threats against you. If there is no immediate threat to you, calling 101 is the best course of action.

You can also apply for a harassment order or injunction from a Court, which will carry a serious penalty should your landlord breach it. You may need a solicitor to help with the application and you may be eligible for legal aid depending on your circumstances.
In circumstances where the behaviour becomes so bad that you are forced to leave your property, the matter becomes illegal eviction.

What is illegal eviction?

Illegal or unlawful eviction is when a landlord or someone acting on their behalf, unlawfully deprives a tenant of all or part of their home, or attempts to force tenants to leave without following the correct legal procedures.
Some examples of this might be:

- changing the locks
- moving into part of the home
- physically throwing the tenants out - you should call 999 if the landlord or people acting for the landlord attempt to do this.
- stopping tenants from using part of their home

Only a bailiff acting under a Court Order can forcibly evict you from your home.
Illegal eviction is a criminal offence which can be punishable with a prison sentence. If you have been illegally evicted, please contact our Housing & Welfare Service. You can also make a report directly to us using the section 'Dealing with Enquiries'.
The Council deal with legal enforcement of the Protection from Eviction Act (1977) and are likely to ask you for a witness statement concerning what has happened. Please retain any communication you have received from your landlord leading up to the eviction as this can form important evidence for us to use in the case.

Shelter can provide very helpful support and information to tenants who have been the victim of illegal eviction and can provide legal assistance in taking your own legal action against your landlord.

Taking your own action
Officers within the Council are only able to enforce statutory laws regarding eviction and harassment (this means the laws that Government have formed and tasked local authorities with enforcing). We are not able to make applications for compensation and injunctions although these can be useful actions in dealing with illegal evictions.

Injunctions can be sought from the County Court. National Charity **Shelter** give more on the subject. This can be a complex process so we advise using a solicitor unless tenants are confident in dealing with their own case. Tenants can find a solicitor to help you with this sort of claim by visiting the Law Society website. Injunctions can be used to cause your landlord to let you back into the property (officers from the Council can be influential in gaining you access back into your property and you should ask about this, if you want to move back in) or to prevent a landlord from engaging in harassment.

You can take your landlord to court if you wish to claim compensation for harassment, illegal eviction or even disrepair. You can do this yourself or you can ask for assistance from a solicitor (some legal firms operate this service on a "no win, no fee" basis). Some tenants will be eligible for legal aid for this type of action. Court fees are chargeable for this type of action, however there maybe exemptions.

Other Criminal Remedies

The Police have powers under the Protection from Harassment Act 1997, the Criminal Justice and Police Act 2001 and the Criminal Law Act 1977 to investigate and prosecute a range of criminal offences which may arise when a residential occupier is unlawfully evicted. These include:

1. Harassment of an individual;
2. Harassment of two or more persons;
3. Stalking;
4. Stalking involving fear of violence or serious alarm and distress;
5. Harassment of a person in their own home;
6. Using violence to secure entry to premises;
7. Threatening violence to secure entry to premises.

Any suspected offence should be reported to the Police immediately. The Council will assist the residential occupier to do so if required.

Enforcement Options

The Council regards enforcement from a holistic view whilst encompassing all actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other summary action. The following options will be available:

- Mediation & negotiation
- Simple Cautions
- Prosecution

Walsall Council Service Criteria for dealing with these cases

Aims to mediate and negotiate in cases of serious landlord and tenant disputes in the rented housing sector. Where mediation fails or is inappropriate, the Council may decide to pursue an investigation which may lead to a criminal prosecution under the Protection from Eviction Act 1977.

The Council will deal with cases of: -

1) Unlawful eviction of tenants by private and registered social landlords or people acting on their behalf
2) Serious cases of harassment of tenants by their landlord or people acting on their behalf. Serious could be violence, threats of violence, abusive, discriminatory, aggressive or intimidatory behaviour
3) Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf

Any enquiries over general terms and conditions of tenancy will be dealt with through the Walsall Housing Welfare & Support Service.

Issues to be taken into account

In deciding whether a case is suitable for the application of a caution or prosecution the Authority will take a number of issues into account, and these are outlined below;

- Strength of evidence obtained
- The severity of the offence and the circumstances of the case
- Voluntary disclosure

- Social factors

A case will not be deemed unsuitable for a prosecution or caution simply because the Landlord or their agent has allowed or is about to allow a displaced residential occupier back into a property. When considering which cases to prosecute consideration will be given to: - the merits of each case - the code of practise for Crown Prosecutors - The Criminal Procedure and Investigations Act 1996

Any case will need to meet both the Evidential Test and also the Public Interest Test in that if there is sufficient evidence of a suitable quality to give a realistic prospect of conviction, consideration will also be given as to whether a prosecution will serve the public interest. A prosecution will usually take place unless public interest criteria are against it.

Appendix 10 Empty Homes

Where the Council becomes aware of an empty dwelling we will aim to bring it back into appropriate use as soon as reasonably practicable.

The key priority (and statutory duty) for Housing Standards is to tackle dangerous occupied dwellings (principally private rented) and this work must always take precedence over tackling empty dwellings that are secure from unlawful access.
Housing Standards staff undertake checks to identify the owners of long-term empty dwellings and send out letters seeking to know the intentions of the owners. The same letters advice the owners of the powers the council has available to it should they not willingly bring the properties back into use.

We will prioritise our activity on those properties which have been vacant for the longest period and or create the most detrimental impact on the immediate neighbourhood.
We will firstly try to do this through negotiation to bring action by the owner. Any formal enforcement action aimed at bringing an empty property back into use will only be used when repeated attempts to encourage the owner of an empty property to bring it back into use voluntarily have failed.

When considering enforcement options for empty homes, each case will be assessed on its merits and will only be recommended for enforcement action where there are clear benefits to the neighbourhood or it could address a housing need.

If enforcement action is necessary the following routes can be taken:-

- Service of notice under the Town and Country Planning Act 1990 to require the owner to properly maintain land/property to remove the dis-amenity to the local area
- Serve notice under the Building Act 1984 for ruinous and dilapidated buildings to require the owner to carry out works to either restore the property or demolish it completely
- Serve notice under the Local Government (Miscellaneous Provisions) Act 1982 to secure the building. However if there is an immediate risk to the public we are not required to give notice
- Negotiated purchase with the co-operation of the owner or in extreme cases serving a Compulsory Purchase Order (CPO)
- Secure management of the empty property by use of Empty Dwelling Management Orders (EDMOs) under sections 133-138 of the Housing Act 2004 and associated Regulations

Our approach and the options available to bring empty homes back into use

Local authorities have the above mentioned legal powers to ensure that empty homes are brought back into use, however there is no statutory duty to do so. We have limited resources available so we must focus our work and prioritise the properties that we target for action. With this in mind our approach will depend on the associated risks and severity of the impact that an empty home is having on those affected by it and the availability of resources to deal with it. The various stages of our approach are as follows:-

a) **Identification, evidence, awareness and review**

Identifying empty properties will be an ongoing process, one that will depend upon the cooperation of the public. Members of the public can report an empty property to the council in various ways, details are available on our website6 and on receipt of the enquiry we will check whether the property is on the Empty Homes Register and consider the need for action. The council will also use the information sources we have available internally, particularly council tax information and links with other services including planning enforcement and environmental health to identify and record evidence relating to empty properties. We will establish ownership (where possible) and make contact with owners to encourage them to take action and to update our records accordingly. The council Tax service also sends out letters to owners of empty homes to establish if the properties remain empty, and to apply where possible, the relevant empty home premium. This is often a great disincentive to leave the home empty.

b) **Working with empty property owners.**

The council will try to give the homeowner every opportunity to bring their property back into use on a voluntary basis. The council will seek to work with the owner to identify the range of options available to them and to help meet their needs and preferences. This can sometimes include putting empty home owners in contact with potential buyers. If the owner does not respond or implement any agreed option to bring the property back into use, the council will consider options for any enforcement action.

Key aims and objectives

Walsall Council aims is to bring its empty residential properties back into use. This may help to alleviate growing housing need and offer more choice in the market, it will also help us to maintain our neighbourhoods and prevent the blight that is a factor of empty homes.

To achieve this aim, it is important to set some clear objectives. These objectives are:

1. To raise awareness of private sector empty properties across the borough and gain cooperation and commitment necessary to tackle the issues from both within the council and externally from all involved partners.
2. To bring empty properties back into use and to increase housing supply.
3. To promote the range of advice and assistance available to owners of empty private sector properties.
4. To minimise the number of properties becoming empty long-term through the use of early intervention initiatives.
5. To obtain clear and accurate information relating to empty private sector homes and monitor trends in order to establish priorities for interventions.
6. To enhance the process for managing the identification, assessment and prioritisation of cases to enable the most appropriate course of action to be taken by the council.

To reduce the number of empty residential dwellings across the borough we will:

1. Monitor the number of empty properties quarterly, paying particular attention to new additions so that we can target our resources accordingly.

2. Ensure that we contact all owners of empty property to advise them of options and initiatives aimed at bringing the properties back into use.
3. Pro-actively use the full range of tools available to the Council which are aimed at bringing long-term empty properties back into use, including Compulsory Purchase Orders, Enforced Sale Procedures and Empty Dwelling Management Orders.
4. Target all properties which are having an adverse effect on the sustainability of neighbourhoods.
5. Where resources permit, to further develop existing initiatives and options available to owners of empty properties to make it easier for them to bring their properties back into use.

Delivering our objectives and the resources available

Prioritisation of dealing with empty properties

The council will prioritise the work it undertakes on empty homes based on consideration of the following factors:

1. Health and safety risk to the public
2. Impact on the environment
3. Impact on neighbouring property owners and area
4. Opportunity to bring properties back into use that would meet local housing need
5. Clear evidence
6. Length of time left empty without action by the owner
7. The likelihood of the owner undertaking works without council action

When targeting a particular property we consider the above factors and assess each individual property on its own merit. This helps us to decide if the proposed outcome outweighs the resources that we will need to put into it.

The majority of empty properties are not problematic and remain empty without being a cause of major concern to the general public. However, in terms of the need for housing in the borough it is also unacceptable for new build and existing properties to remain empty over an extended period. It is the council's view that valuable housing resources should be used for housing wherever practical and the council is prepared to take action to bring these properties back into use when owners are unwilling to achieve a voluntary solution.

Most properties are usually occupied within one year and are considered "transactional" properties. For this reason, it is proposed that the Council do not take action on properties empty less than one year unless the condition of the property dictates that enforcement action is a necessity (e.g. causing statutory nuisance to a neighbouring property).

The council considers that in the majority of cases, bringing empty properties back into use will provide much needed specific types of property and bridge a gap between supply and demand generally thereby enabling others right to a home.

The proposed procedure for dealing empty properties is set out as follows:

1) Initial letter sent to obtain circumstances, reasons and proposals/ leaflet included.

2) Satisfactory responses received, i.e. owners have a plan in place to bring the property back into use or reasons as to why this can't be done e.g. waiting for probate to be granted. Monitor progress
3) No reply or unsatisfactory response. Owner not prepared to bring property back into use.
4) Consider prioritisation as set out in this policy.
    a. Warning of Compulsory Purchase Order or other action
    b. Explain voluntary options.
5) If voluntary solutions agreed - monitor progress
6) If no solutions agreed - Formal notices including possibly Interim Empty Dwelling; Management Order.
7) If voluntary solutions agreed - monitor progress
8) If no solutions agree - Compulsory Purchase, Enforced Sale or Final Empty Dwelling Management Order - Property managed by council or agent - All costs recovered.

Walsall Council recognise the detrimental impact empty properties can have on communities, both in terms of blight and the waste housing resource at a time of growing

Existing powers

The council as a whole has a range of powers to use in bringing empty properties back into use and to protect the public from the potential risks arising from the same. These powers are spread across different service areas. Some of the powers applicable to empty properties include the following.

Council Service area	**Power**
Council Tax	Empty home premiums
	Enforced sale of the property
Housing Standards	Compulsory Purchase Orders (CPOs)
	Empty Dwelling Management Orders (EDMOs)
Legal	Assist in the drawing up the Orders to the issued by Housing Standards
Community Protection	Enforcement action against the owners of the properties including where the empty property is - **Not secured against unauthorised access** - **Rubbish accumulation and or fly tipping** - **Overgrown vegetation that is harbouring pests or vermin**
Planning	Where the property is detrimental to the amenity of the area
Building control	Where the building structure is potentially unsafe to the public

Enforcement Options

A range of different Council services will use the full range of powers available to tackle empty residential dwellings including enforcement measures where negotiation fails, including the use of Improvement Notices, Compulsory Purchase Orders, Enforced Sale Procedures and Empty Dwelling Management Orders. Each empty property will be considered on its own merits and the Council will take what it considers to be best course of action to achieve the most positive outcome for the neighbourhood.

Details of the enforcement powers that can be used are as follows:

Housing Act 2004 Improvement Notices

Improvement notices under this act require the property owner(s) to bring the property up to a habitable standard within a given period of time. These will be used for properties where owners are not making reasonable progress themselves to bring the property up to habitable standard. This action would normally be a pre-cursor to use of EDMO and ESP powers.

Problem	**Legislation**	**Power Granted**	**Council Service**
Dangerous or dilapidated buildings or structures.	Building Act 1984, ss77 & 78. Housing Act 2004, Part 1.	To require the owner to make the property safe (Section 77) or enable the Local Authority to take emergency action to make the building safe (Section 78). Under the Housing Health and Safety Rating System local authorities can evaluate the potential risks to health **and safety arising from** deficiencies within properties and take appropriate enforcement action.	**Building Control** **Housing Standards**
Unsecured properties (where it poses the risk that it may be entered or suffer vandalism, arson or similar).	Building Act 1984, s78. Local Government (Miscellaneous Provisions) Act 1982, s29.	To allow the Local Authority to fence *off* the property. To require the owner to take steps to secure a property or allow the Local Authority to board it up in an emergency.	**Community Protection**
Blocked or defective drainage or private sewers.	Local Government (Miscellaneous Provisions) Act 1976, s35. Building Act 1984, s59 Public Health Act 1961, s17	To require the owner to address obstructed private sewers. To require the owner to address blocked or defective drainage. To require the owner to address defective drainage or private sewers.	**Community Protection**

Fly tipping and or Vermin (where it is either present or there is a risk of attracting vermin that may detrimentally affect people's health	Public Health Act 1961, s34 Prevention of Damage by Pests Act 1949, s4. Public Health Act 1936 s83, Environmental Protection Act 1990, s80 Building Act 1984, s76.	To require the owner to remove waste so that vermin is not attracted to the site, to destroy an infestation and to remove any accumulation prejudicial to health.	**Community Protection**
Unsightly land and property affecting the amenity of an area	Public Health Act 1961, s34 Town and Country Planning Act 1990, s215 Building Act 1984, s79.	To require the owner to remove waste from the property (see above). To require the owner to take steps to address a property adversely affecting the amenity of an area through its disrepair. To require the owner to address unsightly land or the external appearance of a property.	**Community Protection** **Planning** **Planning**

Enforced Sale Procedure (ESP)
The Enforced Sale Procedure uses powers under Section 103 of the Law of Property Act 1925 and offers an option to recoup debts above £1000.00 and bring empty properties back into use through forcing a change in ownership. This is less complicated than Compulsory Purchase and can be used in conjunction with carrying out Works in Default where notices have been served on owners requiring works to be done to resolve any visual detriment being caused by the empty property. If these notices are not complied with, the Council has the right to carry out the works and seek to recover the debt. A charge is placed against the property and the Council then forces the sale of the property to recover the outstanding debt for the works unless the property owner has paid that debt.

Compulsory Purchase Order (CPO)
The Housing Act 1985, Section 17 allows the Local Authority to acquire underused or ineffectively used property for residential purposes if there is a general housing need in the area. In addition Section 226 of the Town and Country Planning Act 1980 (as amended by Section 99 of the Planning and Compulsory Purchase Act 2004) allows Local Authorities to acquire land or buildings if acquisition will allow improvements or redevelopment to take place. CPO is intended to prompt the owner to enter into constructive dialogue with the Local Authority and to avoid the need to resort to such measures.

Empty Dwelling Management Orders (EDMO)
Empty Dwelling Management Orders were introduced in July 2006 under the provisions of the Housing Act 2004. The intention of an EDMO is to bridge the gap between voluntary measures and existing enforcement procedures. It will provide an effective back up to such arrangements where owners have turn down offers of assistance and do not have plans of their own to bring the property back into use. The threat of an EDMO is intended to put pressure on the owner to enter into constructive dialogue with the Local Authority with

the object of agreeing the best course of action to secure occupation, thereby avoiding the need for an order to be made.

Use of other Enforcement powers

The use of other powers will be considered where appropriate and best course of action taken to resolve empty property issues; the aim being the achievement of the Council's wider strategic objectives around sustainable communities' local environmental improvements and regeneration of the borough. Examples include Section 215 of the Town and Country Planning Act 1990 which will be considered where the condition of an empty property is considered to be adversely affecting the amenity of an area, or the use of Section 79 of the Building Act 1984 which addresses defective premises and ruinous and dilapidated buildings.

Other powers available include the requirement to secure a property against intruders using the Local Government (Miscellaneous Provisions) Act 1982 Section 29 and the power to require works to clear rubbish and treat for vermin using the Prevention of Damage by Pests Act 1949 section 4.