

AGENDA

CABINET

MONDAY, 11 JULY 2022

2.00 PM

**COUNCIL CHAMBER, FENLAND HALL,
COUNTY ROAD, MARCH**

Committee Officer: Linda Albon

Tel: 01354 622229

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Whilst this meeting is being held in public, we encourage members of the public to view the meeting via our YouTube channel: https://youtu.be/rsnd7_E7Ull

- 1 To receive apologies for absence
- 2 Previous Minutes (Pages 5 - 8)

To confirm and sign the public minutes of 13 June 2022.
- 3 To report additional items for consideration which the Chairman deems urgent by virtue of the special circumstances to be now specified
- 4 To receive members' declaration of any interests under the Local Code of Conduct or any interest under the Code of Conduct on Planning Matters in respect of any item to be discussed at the meeting
- 5 Annual Report 2021/22 (Pages 9 - 30)

To present the Annual Report of the Council for Cabinet to note the achievements made in delivering the Council's corporate priorities in 2021/22.
- 6 Treasury Management Annual Report 2021/22 (Pages 31 - 40)

To consider the overall financial and operational performance of the Council's treasury management activity for 2021/22.

7 Financial Outturn Report 2021/22 (Pages 41 - 48)

To inform Cabinet of the income and expenditure (known as "Outturn") for the Council for 2021/22 and reasons for variations.

8 Capital Update Report (Pages 49 - 58)

To consider the updated capital programme and variations in resources since February 2022.

9 Shared Prosperity Fund (Pages 59 - 80)

To provide an overview of the UK Shared Prosperity Fund and to consider and recommend the five proposed Fenland UK shared prosperity fund projects submitted to the CPCA for inclusion in the CPCA Local Investment Plan to be submitted to the Department for Levelling Up, Housing and Communities.

10 Housing Enforcement Policy (Pages 81 - 246)

To consider revisions to the Housing Enforcement Policy that has been in operation since July 2018.

11 Draft 6 Month Cabinet Forward Plan (Pages 247 - 248)

For information purposes.

12 Items which the Chairman has under item 3 deemed urgent

13 24 High Street Wisbech - Award of Contract and Approval of Associated Finance and Officer Delegations (Pages 249 - 280)

To provide Cabinet with an update on progress related to the 24 High Street Project and for Cabinet to consider recommending to Full Council increased funding within the capital programme to fund the project and to recommend to Full Council that the Council enters into a construction contract for 24 High Street.

Schedules 1 to 3 comprise exempt information - to exclude the public (including the press) from a meeting of a committee it is necessary for the following proposition to be moved and adopted: "that the public be excluded from the meeting for Items which involve the likely disclosure of exempt information as defined in the paragraphs 3 and 5 of Part I of Schedule 12A of the Local Government Act 1972 (as amended) as indicated."

CONFIDENTIAL - ITEMS COMPRISING EXEMPT INFORMATION

To exclude the public (including the press) from a meeting of a committee it is necessary for the following proposition to be moved and adopted: "that the public be excluded from the meeting for Items which involve the likely disclosure of exempt information as defined in the paragraphs 3 of Part I of Schedule 12A of the Local Government Act 1972 (as amended) as indicated."

14 Confidential Minutes (Pages 281 - 286)

To confirm and sign the confidential minutes of 13 June 2022.

Friday, 1 July 2022

Members: Councillor C Boden (Chairman), Councillor Mrs J French (Vice-Chairman), Councillor I Benney, Councillor S Clark, Councillor Miss S Hoy, Councillor Mrs D Laws, Councillor P Murphy, Councillor C Seaton and Councillor S Tierney

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CABINET



MONDAY, 13 JUNE 2022 - 4.00 PM

PRESENT: Councillor C Boden (Chairman), Councillor Mrs J French (Vice-Chairman), Councillor I Benney, Councillor Mrs D Laws, Councillor A Lynn, Councillor P Murphy, Councillor C Seaton and Councillor S Tierney

APOLOGIES: Councillor S Clark and Councillor Miss S Hoy

CAB1/22 PREVIOUS MINUTES

The minutes of the previous meeting held 12 May 2022 were agreed and signed.

CAB2/22 APPOINTMENTS TO OUTSIDE BODIES

Members considered the Appointment to Outside Bodies report presented by Councillor Boden.

Councillor Boden added that there are some additional positions to fill on the drainage boards but as some members have expressed an interest, there should soon be a full complement. Councillor Mrs French stated that as she had attended five IDB meetings over the last few weeks, more names do need to come forward to fulfil these vacancies.

Proposed by Councillor Mrs French, seconded by Councillor Boden and AGREED:

- 1. The proposed nominations in respect of Outside Bodies which require Fenland District Council representation.**
- 2. To note where requirements to provide representatives on outside organisations cannot currently be fulfilled**
- 3. To delegate to the Corporate Director and Monitoring Officer in consultation with the Leader of the Council and Group Leaders the addition or deletion of outside bodies as the need arises during the municipal year and appointment of members to vacancies on outside bodies during the municipal year.**

CAB3/22 CIVIL PARKING ENFORCEMENT UPDATE

Members considered the Civil Parking Enforcement update report presented by Councillor Mrs French.

Councillor Murphy asked when the end date of this would be. Councillor Mrs French said she understands it to be going to Government in October with applications only being able to be sent twice a year, in April and October, and it should then be implemented in September 2023.

Councillor Tierney commended the work done by Councillor Mrs French and officers as this is not an easy project to get through. This is quite ground-breaking and difficult, but it is well worth doing right which is why it has taken time.

Councillor Mrs Laws agreed with Councillor Tierney and expressed her thanks to Councillor Mrs French, officers and all involved saying this has been a difficult task and it cannot come quickly

enough.

Proposed by Councillor Mrs French, seconded by Councillor Benney and AGREED to note the progress being made by FDC and CCC in respect of moving the introduction of CPE forward.

CAB4/22 WISBECH LEVELLING UP FUND BID PROJECT SELECTION

Members considered the Wisbech Levelling Up Fund Project Selection report presented by Councillor Seaton.

Councillor Tierney commended Councillor Seaton and the officers involved for some fine work. There are some members of the public viewing this meeting who do not quite know how these things work and may get quite disillusioned, as they either do not see plans coming or coming in a different way. He would like them to understand that what happens is that the Government or other authorities makes money available, set some criteria on it, which the Council must then bid for. If we win the bid, the Council works to deliver a project with whatever money is set. The projects set this time are excellent and he hopes that they are all successful. It is not easy, but we must keep trying. Councillor Seaton thanked Councillor Tierney.

Councillor Lynn thanked Phil Hughes and Simon Bell for the time they had spent with himself, Councillor Hoy and Councillor Tierney looking at various places in Wisbech in need of development and listening to how they as members felt about them and then putting those comments in the projects. Everyone had all had a say, which was good for the town and very refreshing.

Councillor Tierney agreed, saying this is the first time he has seen projects come back reflecting what had been said, which in turn had been because of listening to what people had told them.

Proposed by Councillor Seaton, seconded by Councillor Mrs Laws and formally AGREED:

- 1.1 the projects being put forward as part of the Council's Levelling Up Fund bid to Government, namely:**
 - **Castle visitor centre and improved public realm linking the castle and Market Place**
 - **Old Market Place including street greening and public realm enhancements between the town centre Old Market Place and Nene Waterfront**
 - **College of West Anglia – green skills centre**
- 1.2 to authorise the Portfolio Holder for Heritage and Social Mobility to work with Wisbech members, officers and consultants to submit a LUF bid to Government by 6 July 2022**
- 1.3 to note that the College of West Anglia project's inclusion in the Council's LUF bid is contingent on a successful, formally approved, funding bid to the CPCA in the region of £2m.**

CAB5/22 DRAFT 6 MONTH CABINET FORWARD PLAN

Councillor Boden presented the draft six-month Cabinet Forward Plan for information.

(Councillor Boden moved this item on the agenda).

Members considered the Draft Local Plan report presented by Councillor Mrs Laws.

Councillor Boden stated that members were in receipt of an exempt Schedule 1 and although the preference is to remain in public session for as much of the debate as possible, if any member wishes to discuss the content of Schedule 1 then they would have to consider moving into private session. Members agreed to stay in open session.

Councillor Boden proposed various amendments to the Draft Local Plan, which was seconded by Councillor Mrs Laws. Councillor Boden stated that this is such a technical matter that the Council need to get it right and be as transparent as possible given it is such a lengthy document. He added that six amendments are being proposed, however he will not be moving the sixth amendment.

Councillor Boden proceeded to read out some of the proposed amendments to the Draft Local Plan in turn, stating that this is what is being proposed for consultation and the Council will take all comments made by the public and officers into account.

Members made comments, asked questions and received responses as follows:

- Councillor Seaton stated that in respect of Amendment 1 regarding Policy LP1 Settlement Boundaries, it is important to have this flexibility for the rural areas. There needs to be an opportunity for limited development where appropriate, otherwise it is too rigid. Therefore, he is behind using flexibility within reason to promote certain types of development that will benefit rural areas. Councillor Tierney agreed, saying that the Council must allow for special circumstances that are beneficial to a community that may not have been considered or was not expected.
- Councillor Tierney commented that in respect of the proposed Amendment 2 regarding Policy LP10 Shop Frontages, Security Shutters and Canopies, it is his view that people should be able to put up what restrictions or shutters they like but he will support this. It is an improvement and a step forward although not as far as he would have gone. Councillor Seaton agreed that flexibility is required in this area of planning, and it is important for planning officers to use the flexibility with discretion, and although he would not go as far as Councillor Tierney, he appreciated his thoughts. Councillor Mrs Laws said in respect of this proposed amendment, the Council has listened to businesses and members. She would suggest that Councillor Tierney's view is rather extreme, particularly for Conservation Areas, but the Council must look at the criminal element that causes destruction and, in the aim to support businesses and shopkeepers, this is a good compromise.
- Councillor Boden commented that he is not putting forward Amendment 6 in respect of Policy LP46, Residential Site Allocations in Chatteris. He stated that both he and Councillor Mrs Laws have been rigorous in their focus on the housing element of the Draft Local Plan as they want to ensure deliverability and it is pointless allocating sites that either cannot or will not be delivered. The Council is obliged to deliver approximately 550 homes per year for 20 years and having sites in the Local Plan which make up those numbers which then cannot be delivered leads to a danger that the Council will lose its land supply. Councillor Boden added that both he and Councillor Mrs Laws have agreed to remove all the areas that are broad locations for growth which had been identified in the previous Local Plan but had not been developed and where there was no planning application for any development, with some of the areas having been in the plan since 1994, which is long enough for them to have been developed if they could be. Therefore, there has been a number of removals or partial removals of areas which are currently in the 2014 plan identified as being broad locations for growth on housing.

- Councillor Boden added that when an application came forward for Chatteris East it made sense for that policy to be adopted for that location and for that area to be allocated for housing. It came so late in the day, however, that the Council did not have time to change the report, so it was included in the maps. Since then, the application has not come before Planning Committee which suggests that there is uncertainty as to why it has not come forward. It may be that it will come to Planning Committee soon, but members must make a decision today based how things are at the moment. Councillor Boden added that for this reason both he and Councillor Mrs Laws agreed to remove this site from the Local Plan given the uncertainty with the planning application and to have a consistent policy.

Proposed by Councillor Boden, seconded by Councillor Mrs French and agreed to Amendments 1 to 5 of the Draft Local Plan.

Councillor Boden expressed his enormous thanks to Councillor Mrs Laws for her dedication to this process and to the officers involved, particularly Gemma Wildman, Simon Machen and officers within the Planning Team. He cannot emphasise enough their tremendous amount of assistance, their professionalism and dedication.

Councillor Mrs Laws stated that she had a close working relationship with officers and would like to record principal names, particularly Simon Machen, Gemma Wildman, Ed Dade, Gareth Martin, Nick Harding, Carol Pilson and Dan Horn. They had been the principal leaders, but a lot of work had been undertaken by other officers behind the scenes. She could not express the amount of work though very challenging times during Covid to assess the sites with the number of hours and the work undertaken having been beyond duty and it is all appreciated.

Proposed by Councillor Mrs Laws, seconded by Councillor Boden and Cabinet AGREED to approve the Local Plan for consultation, as amended in accordance with amendments 1 to 5 in the Proposed Amendments to Draft Local Plan document, starting in July 2022 and to delegate authority to officers to make minor, inconsequential amendments to the document prior to its publication (in order to correct matters such as fact or aid clarity to the reader).

(Councillors Murphy, Benney, Lynn and Mrs French left the room for this item by virtue of the fact they are members or substitutes of the Planning Committee and took no part in the discussion on voting thereon).


CAB7/22 24 HIGH STREET, WISBECH - AWARD OF CONTRACT AND APPROVAL OF ASSOCIATED FINANCE & OFFICER DELEGATIONS

Members considered the 24 High Street Wisbech report presented by Councillor Seaton.

Proposed by Councillor Seaton, seconded by Councillor Mrs French and AGREED to:

- **Note the current position in relation to the 24 High Street project**
- **Note the outcome of the tender evaluation process**
- **Authorise officers in consultation with the Leader and Portfolio Holder for Social Mobility and Heritage to undertake approval of the award of a construction contract to the preferred bidder on or before 11 July 2022.**

(Members resolved to exclude the public from the meeting for discussion on Schedule 1 to the report on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)

Agenda Item No:	5	
Committee:	Cabinet	
Date:	11 July 2022	
Report Title:	Annual Report of the Council 2021/22	

1 Purpose / Summary

To present the Annual Report of the Council for Cabinet to note the achievements made in delivering the Council's corporate priorities in 2021/22.

2 Key issues

- The Annual Report of the Council 2021/22 describes the performance of the Council over the last year, linking to the priorities detailed in our Business Plan. These are designed to deliver outcomes that improve the quality of life for Fenland residents and are listed under the key headings of Communities, Environment, Economy and Quality Organisation.
- The achievements listed in the Annual Report are not exhaustive but reflect some of our successful projects over the last year. Notable examples are given of how we have worked closely with the community and partners to tackle important local issues in a collaborative and efficient way.
- As like other local authorities, Fenland District Council faces significant financial challenges due to the impact of Covid and increased demand upon services. Nevertheless, we continue to provide high quality services whilst keeping our budget balanced.
- Our Cabinet members have selected a number of projects to contribute towards our 'Council for the Future' agenda. These projects have a variety of aims, from tackling areas of particular need within the district, to transforming services and the wider organisation sustainability to be fit for the future. Some of these projects are also interlinked with our corporate priorities. A new section of the report has been developed to detail progress on these projects over the past year.

3 Recommendations

It is recommended that Cabinet approves the Annual Report of the Council 2021/22.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	Councillor Boden, Leader of the Council Cabinet Members
Report Originator(s)	Paul Medd, Chief Executive Peter Catchpole, Corporate Director David Wright, Head of Policy & Communications

Contact Officer(s)	Paul Medd, Chief Executive Peter Catchpole, Corporate Director David Wright, Head of Policy & Communications
Background Paper(s)	Business Plan 2021/22

1 Background / Introduction

- 1.1 The Annual Report of the Council 2021/22 summarises key examples of the Council's performance against each of our corporate objectives over the past year. This document is published and circulated on an annual basis to provide a summary of performance for Councillors, customers and partners.
- 1.2 In addition to our corporate priorities, our Cabinet members have selected a number of projects to contribute towards our 'Council for the Future' agenda. These projects have a variety of aims, from tackling areas of particular need within the district, to transforming services and the wider organisation sustainability to be fit for the future. Some of these projects are also interlinked with our corporate priorities. A new section of the report has been developed to detail progress on these projects over the past year
- 1.3 The Council continues to deliver high quality services and effective projects within each of its corporate priorities. Key examples include:

2 Communities - highlights

- 2.1 Our Housing Options team received 1,905 requests for homeless advice and assistance; 1,200 of these approaches were resolved through the advice provided. 335 households were prevented from becoming homeless.
- 2.2 We continued to provide Health and Wellbeing support for Fenland residents and businesses surrounding Covid-19. Self-isolation support through the pilot Enduring Transmission project was provided to over 200 Fenland residents, with a total funding allocation of over £57,000.
- 2.3 As soon as it was safe to do so, we re-established Fenland's Four Seasons events to provide local businesses opportunities to trade again. Supported by Government Welcome Back funding, we bolstered the re-opening of Fenland's high streets through additional pop-up events, business support, shop local marketing and town centre aesthetic improvements.

3 Environment - highlights

- 3.1 More than 2.9 million bin collections were made across the district in all weathers, with recycling waste generating £475,000 of recycling credits to support services as a result. Our Cleansing and Rapid response team continued to provide an excellent seven-day street sweeping and litter picking service, responding to over 1,200 service requests and undertaking over 1,300 inspections.
- 3.2 Our Street Scene team spent over 3,400 hours on patrol in Fenland; working closely with the community to tackle environmental and anti-social behaviour problems.
- 3.3 Our shared CCTV service with Peterborough City Council maintained its 100% service function, 24 hours a day, 365 days a year, despite the pressures of Covid-19. The service conducted over 6,000 pro-active camera patrols, detected over 1,000 incidents of crime and disorder across the district and supported our policing partners to make 86 arrests for offences, helping to make our towns and public spaces safer.

4 Economy - highlights

- 4.1 Our Finance and Business teams distributed £7.094million in Government coronavirus business grants in 2021/22 to help businesses impacted by trading restrictions and the emerging Omicron variant. During this period over 1,300 grants were given.
- 4.2 Our Planning service processed over 750 planning applications and dealt with over 900 other 'non-traditional' types of application. They also investigated and resolved 218 cases of unauthorised development that was reported to them.

- 4.3 Work continues on the £8.4million March Future High Streets Fund project, funded by the Government and the CPCA. Together with the March Area Transport Study (MATS), the project will transform March town centre through pedestrian, public realm and traffic flow changes to the Broad Street, Riverside and Market Place areas.

5. Quality Organisation - highlights

- 5.1 We collected over £61 million in Council Tax and £21 million in Business Rates. This plays a major part in funding the key services we provide to the community.
- 5.2 Our website received 849,000 hits and a record number of 23,000 online form submissions across 48 different topics. As part of our ongoing work to improve our digital services and user journeys, we launched a suite of improved online forms that integrate with back-office systems and provide real-time information to teams in the community.
- 5.3 Our Licensing team issued 461 licenses for a variety of services including Taxi, Premises, Alcohol, Scrap Metal and Animal Licensing, to help ensure such businesses are well managed and operating safely and legally. They also worked closely with partners during the pandemic through a variety of channels to support businesses to operate safely and take enforcement action when required.

6 Consideration

- 6.1 The Annual Report of the Council 2021/22 shows clear performance towards the achievement of our corporate priorities. It is only a summary document; many more projects are ongoing that aim to improve quality of life for Fenland residents.

7 Effect on Corporate Objectives

- 7.1 The Annual Report 2021/22 sets out the progress made in achieving the Council's corporate objectives.

8 Community Impact

- 8.1 The projects detailed in the Annual Report 2021/22 illustrate how the Council is contributing to improving quality of life in Fenland.

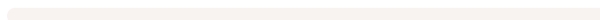
9 Conclusions

- 9.1 The projects detailed in the Annual Report 2021/22 are some examples of how the Council has delivered successful projects - meeting corporate objectives and securing the best possible life chances for local people.

Fenland District Council

Annual Report

2021/2022



CONTENTS

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- 8 Our priorities: Economy
- 9 Our priorities: Quality Organisation

Introduction by the Leader and Chief Executive

Welcome to Fenland District Council's Annual Report for 2021/22

The cost of living is skyrocketing across the board. Energy, fuel, food, national insurance, mortgage rates and rents, against a backdrop of soaring inflation.

People might have expected us to raise our Council Tax too, but as the cost of living crisis began to bite at the start of 2022/23, Members determinedly froze Fenland's portion of the Council Tax for the fourth consecutive year.

Here, as we outline our achievements for 2021/22, we're proud to have maintained excellent public services and pushed forward with ambitious plans for the future, while consistently offering our residents a year-on-year, real-terms cut in their Council Tax.

Despite many national and global challenges in recent years, and resulting strains on our finances, the Council has remained innovative, resilient, and steadfast in its determination to improve the lives of Fenland residents. We have continued to ensure the needs of our residents and communities are recognised and responded to, put arrangements in place to secure on-going improvement, delivered vital public services to the highest of standards and, with reduced budgets, provided better value for money each year.

We have supported vulnerable members of our community; led emergency responses and built resilience; prevented and tackled homelessness; helped people to live in good quality, safe housing; worked with the police to prevent and tackle crime and anti-social behaviour; encouraged our residents to live healthier, more active lifestyles; protected and enhanced our parks and green spaces; cleaned streets and dealt with the district's waste and recycling; promoted and lobbied for infrastructure improvements; improved our air quality; secured investment in the district and held numerous community events all across Fenland.

Our Annual Report gives a summary of this work, outlines what we have achieved in the past year and how we have spent the money we receive, and charts progress made against the ambitions and commitments set out in our Business Plan 2021/22.

Key highlights include progress on numerous regeneration programmes such as our Railway Stations Masterplans, Wisbech High Street Project and March Future High Streets Fund work, the launch of several new online service request forms to make it even easier for people to access council services, tackling more rogue landlords who breached housing and safety legislation, expanding the district's air quality monitoring network, distributing more coronavirus business grants, and playing a key role in the Government's Homes for Ukraine scheme by supporting Ukrainians seeking refuge from war.

We hope the report demonstrates the huge breadth of work we undertake with partners and the voluntary sector to make a positive difference to the lives of Fenland residents, and to ensure the district is well prepared for the future.



Paul Medd
Chief Executive

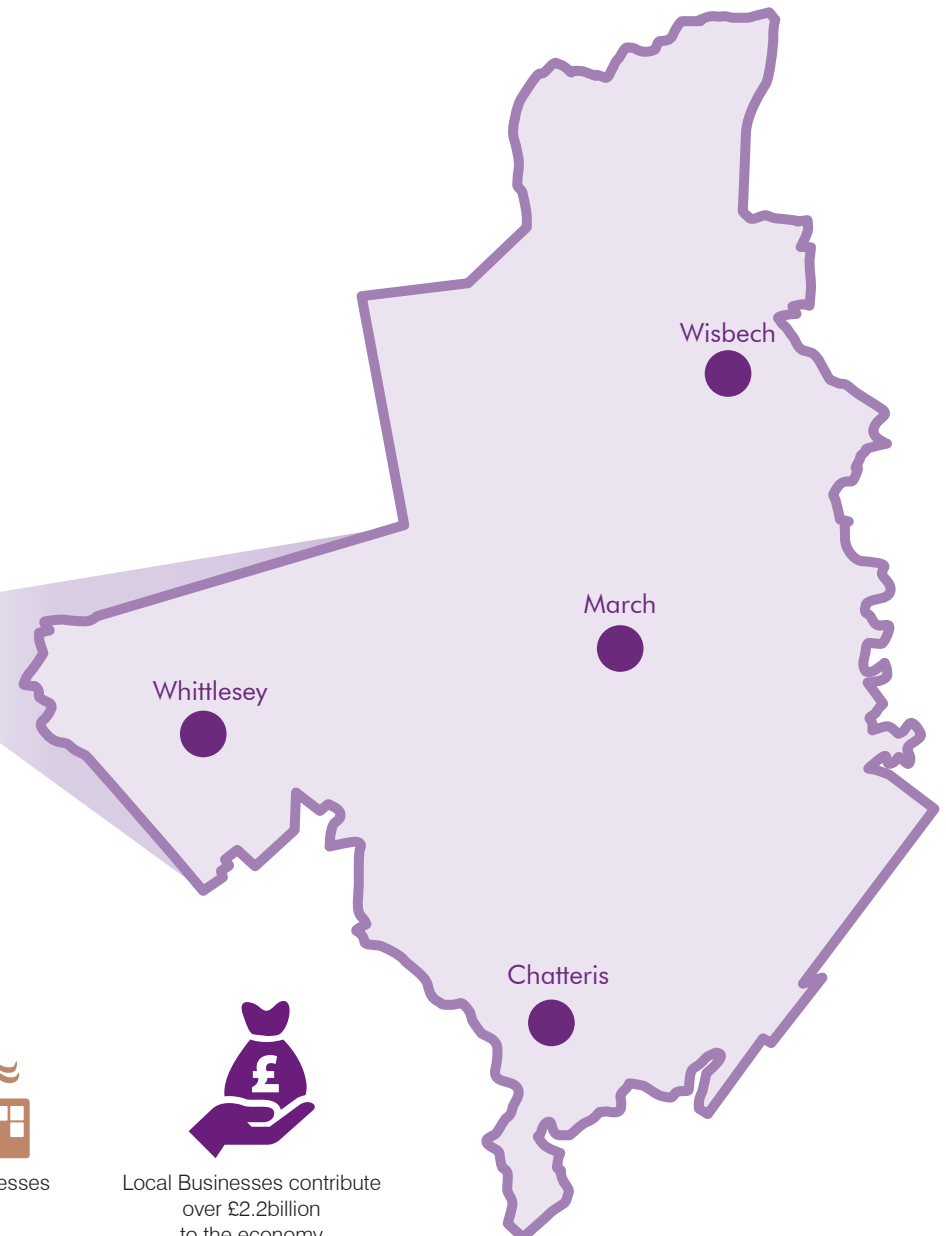


Chris Boden
Leader of the Council

About Fenland

Fenland is a district within North Cambridgeshire. 75% of residents live within our four market towns of Chatteris, March, Whittlesey and Wisbech. Our beautiful rural landscape is home to 29 villages and attracts visitors from nationwide.

- Over 102,800 people living in Fenland
- Fenland covers approximately 211 square miles
- Over 200 miles of beautiful waterways
- Over 135 hectares of open green space
- Over 3,400 businesses in Fenland
- Local businesses contribute over £2.2billion to the economy
- Key sectors: Agri-food, manufacturing, financial and business services, wholesale and retail



Alongside our community, businesses and partners, we are working together to enable residents to access the support they need and to improve the quality of life for local people.



Fenland covers approximately 211 square miles



Over 200 miles of beautiful waterways



Over 135 hectares of open green space



Over 3,400 businesses in Fenland



Local Businesses contribute over £2.2billion to the economy

Our Councillors by Ward

Cabinet



Chris Boden
Leader of the Council
Bassenhall
(Whittlesey)



Jan French
Deputy Leader of the Council
March West



Ian Benney
Birch
(Chatteris)



Sam Clark
Roman Bank
(Wisbech)



Sam Hoy
Octavia Hill
(Wisbech)



Dee Laws
Stonard
(Whittlesey)



Andrew Lynn
Clarkson
(Wisbech)



Peter Murphy
Wenneye
(Chatteris)



Chris Seaton
Roman Bank
(Wisbech)



Steve Tierney
Medworth
(Wisbech)

Other Councillors



Alex Miscandlon
Benwick, Coates
and Eastrea



Bob Wicks
Benwick, Coates
and Eastrea



Anne Hay
The Mills
(Chatteris)



Daniel Divine
Slade Lode
(Chatteris)



David Connor
Doddington and
Wimblington



Maureen Davis
Doddington and
Wimblington



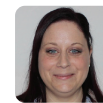
Michelle Tanfield
Elm and Christchurch



Will Sutton
Elm and Christchurch



Charlie Marks
Manea



Kim French
March North



Mike Cornwell
March North



Steve Count
March North



Fred Yeulett
March East



John Clark
March East



Mark Purser
March East



Rob Skoulding
March West



Simon Wilkes
March West



Gavin Booth
Parson Drove and
Wisbech St Mary



Sarah Bligh
Parson Drove and
Wisbech St Mary



Kay Mayor
Bassenhall
(Whittlesey)



Jason Mockett
Lattersey
(Whittlesey)



David Mason
St Andrews
(Whittlesey)



David Patrick
Kirkgate
(Wisbech)



Susan Wallwork
Octavia Hill
(Wisbech)



Nick Meekins
Peckover
(Wisbech)



Michael Humphrey
Roman Bank
(Wisbech)






David Topgood
Staithe
(Wisbech)



Andy Maul
Waterlees Village
(Wisbech)



Billy Rackley
Waterlees Village
(Wisbech)

Conservative 
Independent 
Green 
Liberal Democrat 

Money Matters

Where your Council Tax goes

In 2021/22, the Band D Council Tax bill was set at £1,981.35 (plus Parish amounts). In 2022/23, this increased to £2,062.62 (plus Parish amounts). Fenland District Council collects money through Council Tax on behalf of other authorities, as shown on the diagram.

Fenland District Council froze its element of Council Tax in 2020/21, 2021/22 and again in 2022/23 (the seventh time our element has been frozen in ten years). Just 12% of each household's Council Tax bill goes to Fenland District Council, with the remainder going to the other authorities.

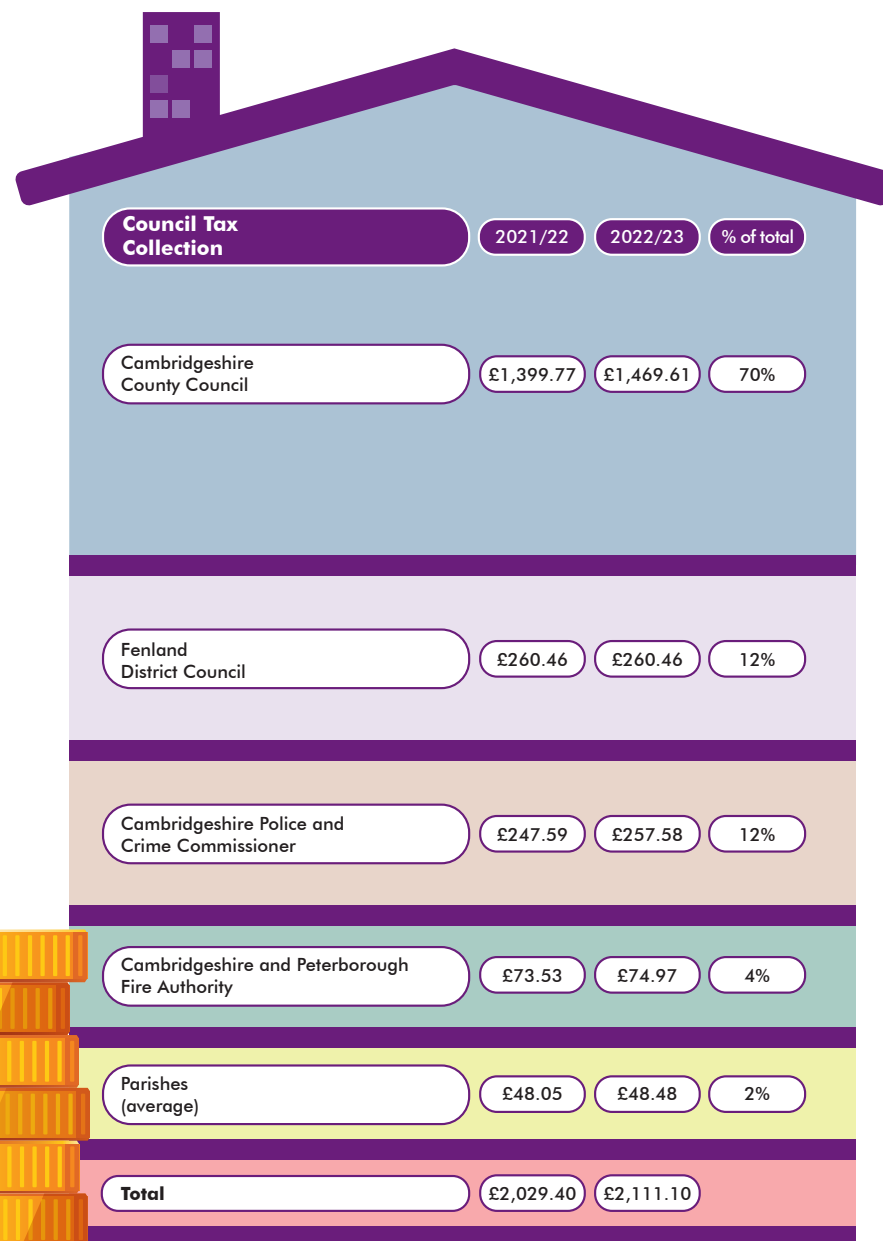
The numbers above relate to a Band D property. However, 82% of properties in Fenland are in Bands A-C. The average Council Tax per property in Fenland was £1,351.16 in 2021/22 and will be £1,415.21 in 2022/23.

Our finances

The Council's revised estimate for spending on services in 2021/22 was £13.65m. This sum is principally financed by the Council's share of Business Rates (£5.116m) and Council Tax (£7.851m). At the December 2021 Cabinet meeting, a net deficit of £987k was forecast for the year. At the budget meeting in February 2022, a net deficit of £243k was forecast for the year. We returned a surplus of £584k which is to be transferred to the budget equalisation reserve. The budget equalisation reserve represents the amount taken in tax which has not been spent and now stands at £1.067m.

Full details of the Council's Budget for 2021/22 and Medium Term Financial Strategy can be found at: www.fenland.gov.uk/finance

You may also wish to read our Business Plan. This explains our organisational priorities for the next financial year: www.fenland.gov.uk/businessplan



Council for the Future

Our Cabinet members have selected a number of projects to contribute towards our 'Council for the Future' agenda. These projects have a variety of aims; from tackling areas of particular need within Fenland, to sustainably transforming services and our organisation to be fit for the future. Although these are influenced by external factors, the aim is to have a programme of projects completed by the end of the current Council leadership term in 2023. Projects vary in scope and complexity, with some requiring close partnership working with external organisations and changes in policies before their aims can be delivered.

Modernising council services Councillor Steve Tierney

- ❶ Over 63,000 answered phone calls to contact centre and 99.5% of customer queries resolved at first point of contact in 2021.
- ❷ Our My Fenland team has transformed, bringing together 5 admin services, 29 staff have new roles, including technical officers to answer more detailed queries.
- ❸ Our Transformation team have completed 136 process maps, including redesigning 333 processes. These benefit either staff, our customers or both.

Safer homes for tenants Councillor Samantha Hoy

- ❶ 277 properties where positive action from the team helped resolve issues.
- ❷ £122,252 fines given to landlords not complying with housing and safety legislation.
- ❸ Proactive support given to tackle Covid regulations in HMO (Houses of Multiple Occupation) accommodation.

CCTV service Councillor Andrew Lynn

- ❶ Business continuity maintained 24/7, 365 days a year, for the CCTV service during the pandemic.
- ❷ 1,233 incidents captured on CCTV to support police outcomes, leading to 105 arrests being made.
- ❸ 4,633 (13 per day) pro-active camera controls completed, supporting early detection of community issues and crime reduction.

Planning for the future Councillor Dee Laws

- ❶ Completion of "call for sites" appraisal to inform consultation on the Local Plan in 2022/23.
- ❷ Development of Local Plan Policies to inform Local Plan consultation in 2022/23.
- ❸ Development of the evidence base to inform Local Plan consultation in 2022/23.

Better online services **Councillor Steve Tierney**

- ❶ Launch back-office integrated Missed Bins and Environmental Service requests forms, enabling real-time notifications of issues and reducing processing time.
- ❷ New Digital Journeys back office integrated forms launched for 17 licensing processes, enabling residents to apply for certain Taxi and Premises licenses online for the first time.
- ❸ 1,300 successful Covid business grant applications were made through our online forms resulting in over £7million of payments made to local businesses.

Clamping down on poor parking **Councillor Jan French**

- ❶ Completed on-street site surveys of all existing Traffic Regulation Orders in the district. This will identify works needed surrounding sign and line discrepancies.
- ❷ Working with Cambridgeshire County Council, we have prepared a draft application for the Department of Transport for the implementation of Civil Parking Enforcement.
- ❸ We wrote to all statutory consultees to find out any comments or objections in relation to the above draft application. Responses will inform the final application.

Competitive trade waste service **Councillor Peter Murphy**

- ❶ Modernisation of the service by introducing the 'Bartec' system to manage invoicing and collection schedules. Ensuring all collections are recorded accurately for invoicing, which is produced automatically via a direct connection with the finance system.
- ❷ 50 new customers joined our service from other providers.
- ❸ Increased income year on year; income in 2021/22 was £369,000 – up 12% from 2019/20.

Bringing empty homes back into use **Councillor Samantha Hoy**

- ❶ Implementation of new empty homes premium suspension scheme to encourage homes back into use. 8 suspensions awarded since September 2021 with 2 renovations completed, bringing properties back into use, and 2 due to complete by the end of May 2022.
- ❷ 77 homes brought back into use.
- ❸ £93,099 benefit from New Homes Bonus.

Protecting our environment

Councillors Peter Murphy and Samantha Hoy

- ❶ Successfully prosecuted a dark smoke offence and resolved a contaminated land incident caused by a leaking oil tank.
- ❷ 720 cleansing inspections undertaken to audit the cleanliness of the district.
- ❸ Undertook 14 interviews under Caution with individuals who we believe may help us/have been responsible for fly-tipped waste. Issued 12 Fixed Penalty Notices for Fly-tipping or Duty of Care offences (allowing fly-tipping to happen).

Better railways for Fenland

Councillor Chris Seaton

- ❶ The Platform 1 building project at March Station is complete. This has redeveloped the entire station to create an open-plan ticket hall and waiting area, accessible modern toilet facilities and retail outlets.
- ❷ Significant progress has been made on the construction of a car park for Manea Station.
- ❸ The existing car park refurbishment and extension at March Station is complete.

Healthy You

Councillors Sam Clark

- ❶ Re-start, continuation and new launches of Active Fenland sessions post lockdowns and Covid-19 restrictions. Fifteen different programmes in total.
- ❷ Creation and delivery of two multi-day social media campaigns as a digital offer for health and wellbeing providing key national messages and resources.
- ❸ Delivery of healthy eating workshops by Active Fenland across Key Stage 1&2 as part of Health and Wellbeing school days in various Fenland primary schools.

A more commercial outlook

Councillors Chris Boden, Ian Benney & Steve Tierney

- ❶ Received a full year's rent (£230,000) from the Wisbech property investment acquired in March 2021.
- ❷ Progress being made towards gaining outline planning permission for two Council owned development sites.
- ❸ Strategically purchased a property in March to support the Council's commercial investment strategy.

Our Communities

Support vulnerable members of our community

• Since its launch in March 2020, our **Covid-19 Community Hub** has provided a lifeline to those most at risk during the outbreak. Co-ordinating the support available from over **80 different organisations**, the Hub supported vulnerable residents with food shopping, medicine collection, general errands and money and employment advice. Since the Hub's launch, over **2,300 requests for support** have been received.

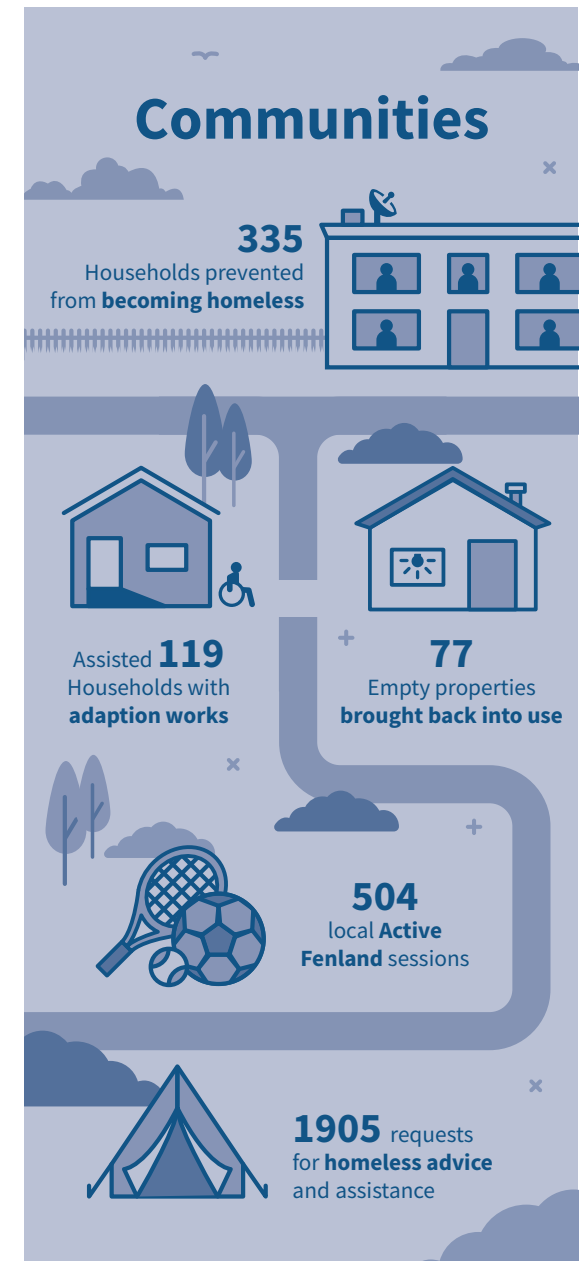
• Our Housing Options team received **1,905 requests for homeless advice and assistance**; 1,200 of these approaches were resolved through the advice provided. **335 households were prevented from becoming homeless**. Supported by our Housing Enforcement Policy, we issued a significant number of civil penalty notices to landlords choosing to flout regulations and legislation. We continue to support the increasing number of proactive landlords who request help from us to ensure their properties meet appropriate standards before being let. Hosting bi-annual landlord forums, detailing legislative amendments relevant to the private rented sector, also provides useful support to landlords.

• Through our Disabled Facilities Grants scheme, the Council provides **adaption works for elderly and disabled householders** to remain safe, secure and protected in their own homes. Last year **we assisted 119 households with adaption works**. These included the **installation of walk-in showers, stairlifts, ramped** access facilities and specialist equipment such as person hoists.

• The **14th annual Pride in Fenland awards** took place in November to celebrate the incredible contributions of unsung heroes from across the district. Organised by Fenland District Council and the Fenland Citizen newspaper, this year's online awards were **dedicated to those who went above and beyond during the pandemic**. Judges heard many inspiring stories of kindness and selfless support across five categories: Community Group, Young Person in the Community, Good Friend, Special Judges' award and the Community Covid awards.

• The **Whittlesey Big Bash** took place on September 12th at Whittlesey Manor Leisure Centre. The Golden Age team and 17 partners took part in the event, with a **great turnout of over 200 people** visiting in the space of 2 hours. As the event was not just a Golden Age fair, many partners commented on the great opportunities they had to speak with family members of older residents who were going to pass vital information on.

• As the terrible events in Ukraine unfolded in February 2022, we **pledged to provide support for Ukrainian refugees** as soon as the Government's extended safe routes opened. As part of the Cambridgeshire and Peterborough Ukraine Refugee Response group, we arranged for property checks to be undertaken at sponsors' homes, support sponsors to undertake the DBS process and developed a welcome pack with information about essential and local services.



Promote health and wellbeing for all

- The Freedom team have worked exceptionally hard to encourage people back into Fenland's leisure centres following the pandemic. There has been considerable success with **growth in the Swimming Lesson programme** now at almost double the number of participants compared with pre-pandemic. Casual swimming and membership levels are back above 90% of the pre-pandemic levels. The pandemic did allow people time to reassess their health and **the four leisure centres in Fenland are playing a significant role in helping people become healthier.**

- Health and Wellbeing support** for Fenland residents continued to focus on **Covid-19**. Businesses were offered guidance surrounding Covid secure practices in the workplace, access testing for staff, risk assessments and wellbeing visits by public health staff to discuss vaccination concerns and broader issues such as long covid. This has helped deliver businesses continuity; especially for many of our larger food/product producers and packers. **Self-isolation support through the pilot Enduring Transmission project** was provided to over 200 Fenland residents (where Covid-19 rates remained stubbornly high), with a total allocation of over £57,000. We also continued to provide support for vaccination centres including agreeing locations, monitoring uptake and accessibility.

- The pandemic made clear to our community how important open spaces are to having a happy and healthy life. Together with our contractor Tivoli, we've **continued to provide excellent open spaces across Fenland**. Work in the past year has included the improvement of several play areas with resulting increases in use by children and their families.

Work with partners to promote Fenland through culture and heritage

- Following financial support from Arts Council England, we have appointed an officer to **work with local cultural and creative organisations and individuals to develop an action plan to amplify creativity and cultural opportunities in Fenland**, raising the profile of the many activities already taking place.

- We worked hard to **support the community by promptly re-establishing Fenland's Four Seasons events** providing opportunities for businesses to trade again. Christmas Markets were delivered in Wisbech and March, followed by March St George's Fayre. This had a bumper turn out and received extremely positive feedback. We also made use of **Government Welcome Back funding to bolster re-opening of Fenland's high streets** through a series of additional pop-up events, business support, shop local marketing and town centre aesthetic improvements including floral displays and enhanced cleaning.

Performance

	Target 2021/22	Performance
Total number of private rented homes where positive action has been taken to address safety issues	250	277
Proportion (%) of households presenting to the Council as homeless whose housing circumstances were resolved through Housing Options work	New PI	57%
Number of empty properties brought back into use	70	77
New Homes Bonus achieved as a result of bringing empty homes back into use	£50,000	£93,099
Number of Active Health local sessions per year that improve community health	225	504
Customer feedback across Freedom Leisure facilities in Fenland	90%	85%*

* Performance/service impacted by COVID-19 restrictions

Our Environment

Deliver a high performing refuse, recycling and street cleansing service

- Core services continued without issue this year with over **2.9million bin collections** made across the district. Customers continued to recycle their waste well, generating £475,000 of income to support services as a result. Customer satisfaction with our Refuse and Recycling and Garden Waste (Brown Bin) services remains high at 96% and 97% respectively. The Garden Waste service has continued to grow with subscriptions at an all-time high of over 23,000 in 2021/22.

- Our trained '**Getting It Sorted**' volunteers supported recycling in Fenland with events, activities, education packs for schools to use, videos and online training courses. They also kept the Council's multi-lingual recycling website, www.gettingitsorted.org, up-to-date and regularly posted recycling messages on social media to help residents recycle right at home.

- Our Cleansing and Rapid Response team continued to provide the usual seven-day street sweeping, litter picking and fly-tipping removal service in our towns and villages. Last year they **responded to over 1,200 service requests**: 95% on the same or next day. Over **1,300 quality inspections** were made in areas of high footfall – 99% met cleansing standards first time.

Work with partners and the community on projects that improve the environment and our street scene

- As Covid restrictions gradually eased we continued to **work with community environmental volunteering groups** as permitted, with many smaller litter picks still able to take place. This year saw Gorefield Street Pride celebrate their 10th anniversary and a growth in Street Pride group numbers, now totalling 18. **Over £37,000 was awarded** to community groups living within the vicinity of wind turbines to improve their local environment. Projects included switching to LED lighting, solar powered mobile vehicle activated signs and enhancements to green spaces.

- Our Street Scene team spent **3,400 hours on patrol**. They work closely with the community to help protect our environment with a focus on preventing fly-tipping, littering and dog fouling. Over the past year they have visited over **600 sites of reported fly-tipping** to try and gather evidence that will help identify who's responsible. They investigated **241 reports of abandoned vehicles**, undertook **352 dog related actions** (including speaking to dog owners, refreshing signs in reported areas for dog fouling and working with the Green Dog Walkers volunteers), made **3015 memorial safety inspections** and investigated **137 matters relating to litter**.



Work with partners to help keep people safe in their neighbourhoods by reducing crime and anti-social behaviour and promoting social cohesion

- Our **shared CCTV service** with Peterborough City Council maintained its 100% service function 24 hours a day, 365 days a year. The service conducted **over 6,000 pro-active camera patrols, detected over 1,000 incidents of crime and disorder across the district** and supported our policing partners to make **86 arrests** for offences, helping to make the district safer.

- Working with internal and external partners, our Community Safety team have been involved in the **investigation of 211 reports of anti-social behaviour**, nuisance and other quality of life concerns. Examples include youth anti-social behaviour and crime in Wisbech and Chatteris, vehicle related nuisance in a public car park in Chatteris and concerns linked to highway obstruction and hoarding in Wisbech. The team is also part of the Fenland Community Safety Partnership, which have undertaken projects raising awareness of illegal money lending, loan sharks, domestic abuse and coercive control, modern day slavery, child exploitation and road safety. As well as engaging the community, training sessions were delivered to support the development of frontline professionals who work within the Fenland community surrounding domestic abuse, hate crime, cybercrime and substance abuse.

Performance

	Target 2021/22	Performance
Rapid or Village Response requests actioned the same or next day	90%	95%
% of inspected streets meeting our cleansing standards (including graffiti and flyposting)	93%	99%
% of collected household waste recycled through the Blue Bin service	28%	28%
Customer satisfaction with Refuse and Recycling services	90%	96%
Customer satisfaction with Garden Waste service	85%	97%
Number of Street Pride, Green Dog Walkers and Friends of Community environmental events supported	204	191*
% of local businesses who thought they were supported and treated fairly	90%	100%
% of those asked who are satisfied with Fenland District Council's events	90%	N/A

* The number of events held is significantly less than in previous years due to the pandemic. Restrictions were in place at the beginning of April 2021 which either prohibited groups meeting at all or meant that only groups of 6 or 30 volunteers could meet.

Our Economy

Attract new businesses, jobs and opportunities whilst supporting our existing businesses in Fenland

- Our Finance and Business teams worked together to distribute **£7.094million in Government coronavirus business grants** in 2021/22. These have been paid to help businesses impacted by trading restrictions and the emerging Omicron variant. During this period over **1,300 grant payments** were made.
- We continued to **support businesses with COVID-19 guidance**, including reducing the risk of infection spreading in the workplace and compliance with the NHS COVID Pass regulations introduced in December 2021.
- **Following the closure of major employer** Alan Bartlett and Sons in Chatteris in June 2021, our Economic Growth team worked to ensure the site was reoccupied as soon as possible. It also helped new tenants, The Turmeric Co., with access to grant funding, recruitment, and business support opportunities.
- Our **Economic Growth Strategic Refresh** was approved by Cabinet in February. This sets out how our Economic Growth team, partners and wider Council teams will support local businesses to grow, local people to start a business and other businesses to relocate to the area. The **Start & Grow programme** is also underway, estimated to deliver around **£650,000 worth of business support and grants into Fenland** through a number of sources. The 'Start' programme is for individuals wanting to explore enterprise and offers intensive pre-start business information sessions, online learning, mentoring, networking and peer support. The 'Grow' programme aims to support existing early-stage micro-businesses to expand into new markets, create new jobs or increase profitability and productivity. The programme will run until July 2022.

Promote and enable housing growth, economic growth and regeneration across Fenland

- Our **Planning team determined over 750 planning applications** - between 72% and 92% of these were decided on time, depending on application type. Whilst not all internal performance targets have been met, we have continued to exceed national performance targets. We lost no major planning appeals over the last 24 months, and for non-major planning appeals our performance has not exceeded 0.5% (performance cannot exceed 10%). Our team dealt with nearly 900 other types of application (such as discharge of condition, general enquiries, pre-application and licensing requests) in addition to 'traditional' planning applications. **We investigated and resolved 218 cases of unauthorised development** reported to us.



- Work continues on projects outlined in our **Growing Fenland masterplans**, part of the CPCA's (Cambridgeshire and Peterborough Combined Authority) strategic Market Town Masterplans, including:
 - Installation of interactive highways flooding signs in Whittlesey
 - Progress on the Whittlesey Heritage Walk
 - Improvements to Wisbech Market Place
 - Funding for local skills development in Chatteris
 - Match funding to progress the March Future High Streets Fund project
- Work continues on the £8.4million **March Future High Streets Fund** project, funded by the Government and the CPCA. Together with the March Area Transport Study (MATS), the project will transform March town centre through pedestrian, public realm and traffic flow changes to the Broad Street, Riverside and Market Place areas.
- Our **Wisbech High Street Project**, funded by the National Lottery Heritage Fund, continues to make progress. Highlights from 2021/22 include:
 - Major regeneration works completed at 13-17 High Street with grant funding
 - Extensive repairs carried out at 18 High Street with grant funding
 - Series of free online traditional construction and heritage skills training sessions launched
 - Local heritage book, 'Lost Images of Wisbech' published

Promote and lobby for infrastructure improvements across the district

- Supported by CPCA funding, work continues to improve transport connectivity in Fenland. Progress is being made on the:
 - £32million Kings Dyke Crossing Project, due to open by the end of 2022
 - £25million A47 Guyhirn roundabout
 - Fenland Railway Station Masterplans project, aiming to improve stations at March, Manea and Whittlesey and provide better railways for Fenland
 - March Area Transport Study (MATS) infrastructure improvements

Performance

	Target 2021/22	Performance
% of major planning applications determined in 13 weeks (or with extension of time)	75%	92%
% of minor applications determined in 8 weeks (or with extension of time)	80%	72%*
% of other applications determined in 8 weeks (or with extension of time)	90%	84%*
% occupancy of our Business Premises estate	92%	91%**
% occupancy Wisbech Yacht Harbour	85%	94%
Number of local businesses supported and treated fairly	90%	100%

* The reduced performance was as a result of rising workloads and resource challenges. It should be noted that performance remains above the national performance target of 70%

** Business unit occupancy has fluctuated during Covid. However, as we emerge from Covid we continue to see a steady uptake in occupancy.

Quality Organisation

- We **collected over £61million in Council Tax and £21million in Business Rates**. This plays a major part in funding the key services we provide to the community. A large share of this money is also passed onto the Police, Fire Service, County and Parish Councils – see the 'Money Matters' section for more information.
- Our My Fenland team has been transformed, bringing together **5 admin services and 29 members of staff** have new roles, including the development of technical officer roles to answer specialised, more detailed queries. In addition to the team answering more than **63,000 phone calls and resolving 99.5% of customer queries at first point of call**, the transformation team have also **completed 136 process mapping tasks**, including redesigning 33 processes. These benefit either the staff, our customers, or both. We have had **15,450 payments** made via PayPoint, with over £1.84m in payments.
- Our website received **849,000 hits** and a record number of **23,000 online form submissions** across 48 different topics. As part of our ongoing work to improve our digital services and user journeys, we launched a suite of improved online forms. Our **new missed bin and environmental service request forms** (covering issues including dog fouling, fly-tipping, litter, abandoned vehicles and graffiti) are now easier to use and automatically transfer information received directly to teams on the ground and into back-office systems. This gives teams real-time notification of issues so that they can respond quickly and save hours of resource in processing time. Six new online forms have also been developed as part of our licensing service, enabling residents to be able to complete new tasks online including applying for a taxi license and premises licence.
- Our **Social Media** channels remain popular, with **8,768 Twitter followers and 5,800 Facebook followers**. Over the past year we have used our social media channels to quickly publicise and signpost the latest Covid information, including changing restrictions and availability of business grants and support. We have also increased our use of video on our social media channels to develop our online engagement with residents.
- The Licensing team **issued 461 licenses** for a variety of services including Taxi, Premises, Alcohol, Scrap Metal and Animal Licensing, to help ensure such businesses are well managed and operating safely and legally. They also worked closely with partners during the pandemic through a variety of channels to support businesses to operate safely and take enforcement action when required.
- We **consulted with residents, stakeholders and partners about a wide range of topics** to help us understand local people's priorities and shape our service. Consultations included the concept of a Broad Concept Plan to shape future development in West March, development of a heritage walk in Whittlesey, plans for a new Community Hub in Wisbech Park and improvements to cycling, walking and mobility access across the district.



• **We were recredited with the Customer Service Excellence (CSE) award** last year. This is a Government standard that recognises the high quality, customer focused services that we provide. The independent assessor said the Council had continued to meet the **'gold standard' for customer service delivery** and that our ongoing transformation programme is clearly delivering significant benefits to customers.

• As Covid restrictions started to lift, our **Environmental Health** team focused their Public Health role to **support the Covid vaccination programme** reaching communities. As businesses could get back to normal, they supported the registration of new food businesses and the inspection of existing food businesses, whilst catching up on postponed inspections. They also visited and risk assessed all of Fenland's high risk food premises (Approved Premises). All Environmental Permitted sites were also inspected, and new operators supported through the application process. In addition, all skin piercing businesses – including tattooing, acupuncture, botox and eyebrow blading – were inspected and licensed. The team continues to deal with a wide range of **statutory nuisance and public health issues**, from noise and pest control to infectious diseases.

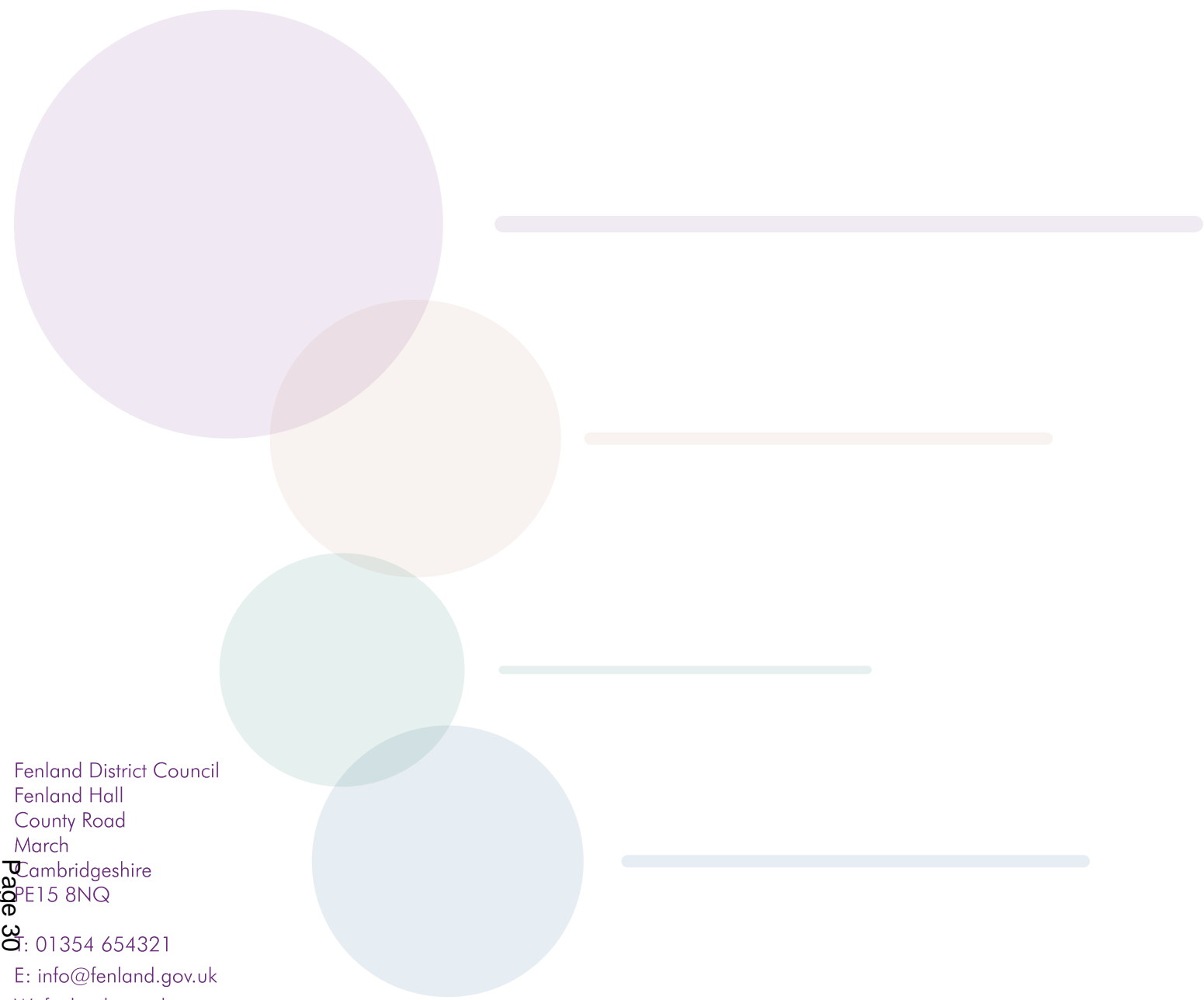
Performance


	Target 2021/22	Performance
% of customer queries resolved at the first point of contact	85%	99.5%
% of customers satisfied by our service	90%	91.3%
% of contact centre calls answered within 20 seconds	46.5%	30.45%*
% of contact centre calls handled	80%	75.94%**
Days taken to process Council Tax Support new claims and changes	8.0 days	5.6 days
% of Council tax collected	96.77%	96.7%
Council Tax net collection fund receipts	£61,172,317	£61,692,720
% of NNDR Collected	97.25%	96.04%***
NNDR net collection fund receipts	£18,341,776	£22,579,308
Number of visits to our website	825,000	849,000

*The dip in performance was anticipated due to the implementation of a major change initiative resulting in a new structure with new job roles, more efficient processes and more effective use of technology. The Team were also adversely affected by the COVID pandemic as this resulted in higher than predicted call volumes but also an increase in staff absence due to Covid. The new working practices are now well established and performance is consistently improving.

**Performance in relation to the percentage of contact centre calls handled was achieved within 5% of the target figure, which is testament to the hard work of the team when dealing with both the direct impact (in terms of staff absence) and indirect impact (in relation to higher than predicted call volumes) of the COVID pandemic.

*** Whilst the NNDR Collection fund continues to meet targets, the in-year collection rate is below target due to the backdated large assessment which created a large debt to be collected within the last quarter of the year.



Agenda Item No:	6	
Committee:	Cabinet	
Date:	11 July 2022	
Report Title:	Treasury Management Annual Review 2021/22	

Cover sheet:

1 Purpose / Summary

The purpose of this report is to consider the overall financial and operational performance of the Council's treasury management activity for 2021/22.


2 Key issues

- In accordance with the Treasury Management Strategy approved in February 2022, Cabinet receives an annual review of its' treasury management activities after the financial year-end.
- The Treasury Management Annual Review 2021/22 as presented to Audit and Risk Management Committee on 4 July 2022 is attached.
- The report highlights all the key activities carried out within the Treasury Management function during 2021/22. All activities have been conducted in accordance with the approved strategy and policies.

3 Recommendations

- It is recommended that members note the report.
- It is recommended that Council receive the Treasury Management Annual Report.

Wards Affected	All
Portfolio Holder(s)	Cllr Chris Boden, Leader & Portfolio Holder, Finance
Report Originator(s)	Peter Catchpole, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant
Contact Officer(s)	Peter Catchpole, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant
Background Paper(s)	Treasury Management and Annual Investment Strategy 2021/22

Agenda Item No:	7	
Committee:	Audit and Risk Management Committee	
Date:	4 July 2022	
Report Title:	Treasury Management Annual Review 2021/22	

Cover sheet:

1 Purpose / Summary

The purpose of this report is to consider the overall financial and operational performance of the Council's treasury management activity for 2021/22.

2 Key issues

- Outstanding loans and finance lease liabilities of £7,905,799 and temporary investments of £31,850,000 as of 31 March 2022.
- The Council invested £4M, split equally, into the Federated Hermes and Patrizia Hanover, Property Unit Trusts, in late March 2022. No distributions were paid in 2021/22 due to the timing of the investments
- No new borrowing was undertaken and the authorised limit was not breached during 2021/22.
- The investment activity during the year conformed to the approved strategy and the Council had no liquidity difficulties.
- Amount received from external investments totalled £52,375 (compared with an estimate of £40,000).
- Overall interest rate achieved from investments 0.1349% (7 day backward looking SONIA un compounded rate for 2021/22 0.1355%).

3 Recommendations

- It is recommended that members note the report.
- It is recommended that Cabinet receive the Treasury Management Annual Report.

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Contact Officer(s)	Peter Catchpole, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant
Background Paper(s)	Treasury Management and Annual Investment Strategy 2021/22

Report:

1 Introduction

- 1.1 The Council is required through regulations issued under the Local Government Act 2003 to produce an annual treasury management review of activities and the actual prudential and treasury indicators for 2021/22. This report meets the requirements of both the Chartered Institute of Public Finance and Accountancy (CIPFA) Code of Practice on Treasury Management (the Code) and the CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code).
- 1.2 During 2021/22 the minimum reporting requirements were that Council should receive the following reports:
- an annual Treasury Strategy in advance of the year (Council 23/02/2021);
 - a mid-year treasury update report (Council 08/12/2021);
 - an Annual Review following the end of the year, describing the activity compared to the strategy (this report).
- 1.3 The regulatory environment places responsibility on members for the review and scrutiny of treasury management policy and activities. This report provides details of the outturn position for treasury activities and highlights compliance with the Council's policies previously approved by members.
- 1.4 The Council confirms that it has complied with the requirement under the Code to give prior scrutiny to all of the above treasury management reports by the Audit and Risk Management Committee before they were reported to Council.

2 The Council's Capital Expenditure and Financing

- 2.1 The Council undertakes capital expenditure on long-term assets. These activities may either be:
- Financed immediately through the application of capital or revenue resources (capital receipts, capital grants, revenue contributions etc.), which has no resultant impact on the Council's borrowing need; or
 - If insufficient financing is available, or a decision is taken not to apply resources, the capital expenditure will give rise to a borrowing need.

The actual capital expenditure forms one of the required prudential indicators. The table below shows the actual capital expenditure and how this was financed.

	2020/21 Actual £000	2021/22 Revised Estimate £000	2021/22 Actual £000
Capital expenditure	6,678	12,816	11,583
Financed In Year	2,775	10,804	9,936
Unfinanced capital expenditure	3,903	2,012	1,647

3 The Council's Overall Borrowing Need

- 3.1 The Council's underlying need to borrow to finance capital expenditure is termed the capital financing requirement (CFR).
- 3.2 **Gross borrowing and the CFR** - in order to ensure that borrowing levels are prudent over the medium term and only for a capital purpose, the Council should ensure that its gross external borrowing does not, except in the short term, exceed the total of the capital financing requirement in the preceding year plus the estimates of any additional capital financing requirement for the current (2022/23) and next two financial years.
- 3.3 In February 2020 Council allocated £25m in the capital programme to enable the Council to take forward projects linked to its Commercial and Investment Strategy (CIS). At the 31.3.2022 £4.024m has been spent on two acquisitions approved by the Investment Board in accordance with the CIS. This impacts on the Capital Financing Requirement as explained in the table below. Currently both acquisitions have been funded from internal borrowing, i.e. no specific external borrowing to fund the investments has been undertaken, but the Council retains the flexibility to externalise the associated borrowing if it is deemed appropriate to do so.
- 3.4 The table below highlights the Council's gross borrowing position against the CFR (See Appendix A).

	31 March 2021 Actual £000	31 March 2022 Revised Estimate £000	31 March 2022 Actual £000
CFR opening balance	2,274	6,177	6,177
Capital expenditure – Capital Programme	553	1,682	1,322
Capital expenditure – Commercial and Investment Strategy	3,699	330	325
Less Minimum Revenue Provision	(349)	(368)	(366)
CFR Closing balance	6,177	7,821	7,458
of which: Capital Programme	2,478	3,802	3,444
Commercial and Investment Strategy	3,699	4,019	4,014
Gross Debt (see table at 4.1 below)	8,043	8,236	7,906

- 3.5 The CFR includes finance leases. A finance lease is a commercial arrangement between the Council and a lessor (finance company), where in consideration for a series of payments the Council has the right to use an asset (e.g. refuse vehicle) for the lease duration (typically 7 years). The annual lease payment is made up of a capital and interest repayment.
- 3.6 Although legally the Council doesn't own the asset during the lease duration, International Accounting Standards require that the Council capitalise the asset and liability on its balance sheet, much like a loan. Whilst this increases the CFR, the nature of the finance lease agreement doesn't require the Council to separately borrow to fund the asset.
- 3.7 The authorised limit - the authorised limit is the "affordable borrowing limit" required by s3 of the Local Government Act 2003. Once this has been set, the Council does not have the power to borrow above this level.

- 3.8 The operational boundary – the operational boundary is the expected borrowing position of the Council during the year. Periods where the actual position is either below or over the boundary are acceptable subject to the authorised limit not being breached.
- 3.9 Neither the authorised limit nor operational boundary were breached during 2021/22.

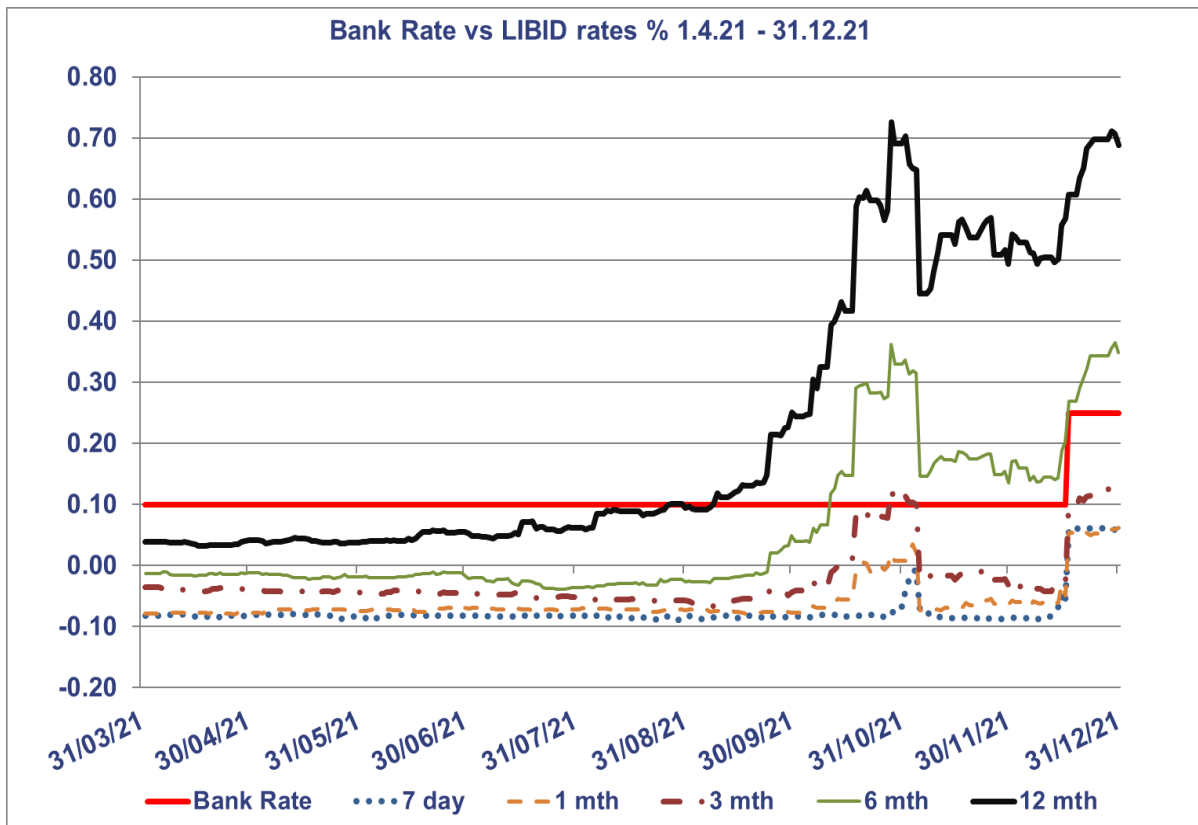
4 Overall Treasury Position as at 31 March 2022

- 4.1 At the beginning and end of 2021/22, the Council's treasury position was as follows.

	31 March 2022 Principal £000	Rate / Return	Average Life years	31 March 2021 Principal £000	Rate / Return	Average Life years
Fixed rate funding						
• PWLB	4,500	7.29%	8.40 yrs	4,500	7.29%	9.40 yrs
• Market	3,300	4.70%	31.96 yrs	3,300	4.70%	32.96 yrs
• Finance Leases	106	3.59%	1.14 yrs	243	3.71%	1.56 yrs
Total debt	7,906			8,043		
Investments						
• Banks/Building Societies	(31,850)	0.13%		(24,000)	0.25%	
• Property Funds	(4,066)	N/A		0		
Total Investments	(35,916)			(24,000)		
Net debt /(Investments)	(28,010)			(15,957)		

- 4.2 In line with the Treasury Management Strategy and Annual Investment Strategy approved by Council on 23 February 2021, the Council invested £4M, split equally, into the Federated Hermes and Patrizia Hanover, Property Unit Trusts, in late March 2022. No distributions were paid in 2021/22 due to the timing of the investments.
- 4.3 All other investments held at 31 March 2022 are fixed term or callable deposits due for repayment within the next twelve months.

5 The Strategy for 2021/22



Investment Strategy

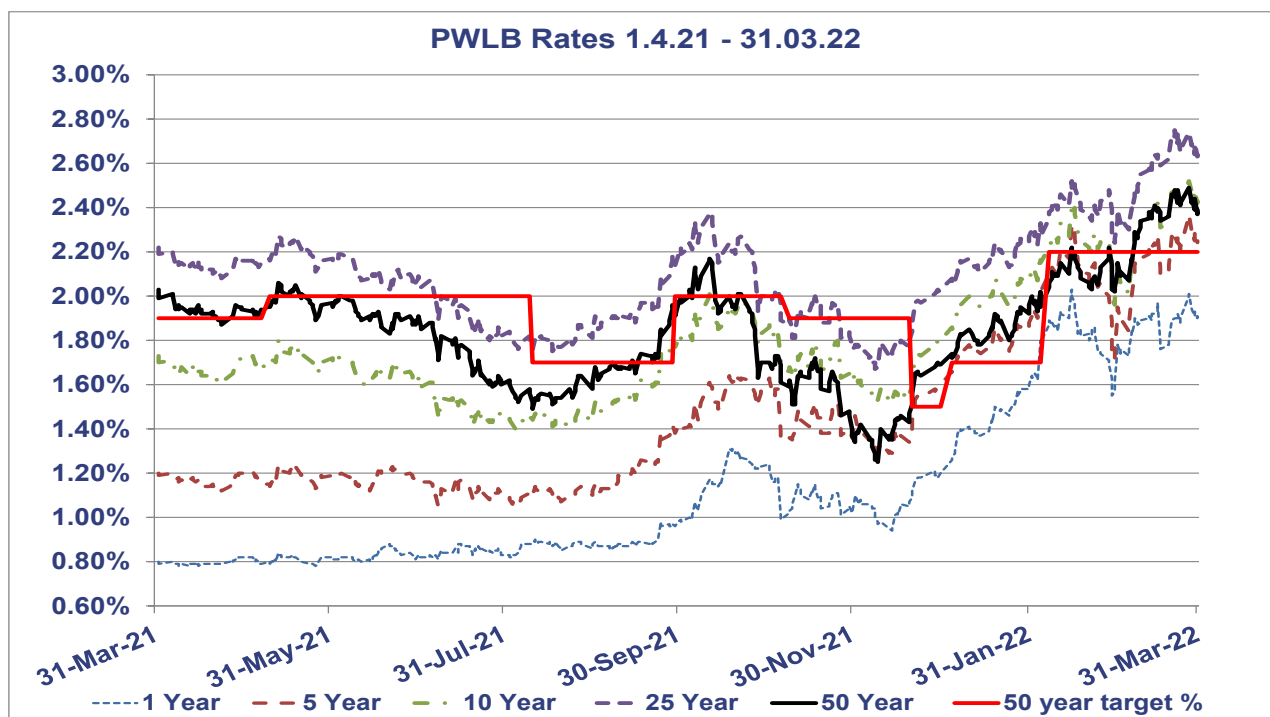
- 5.1 Investment returns remained close to zero for much of 2021/22. Most local authority lending managed to avoid negative rates. The expectation for interest rates within the treasury management strategy for 2021/22 was that Bank Rate would remain at 0.1% until it was clear to the Bank of England that the emergency level of rates introduced at the start of the Covid-19 pandemic were no longer necessitated.
- 5.2 The Bank of England and the Government also maintained various monetary and fiscal measures, supplying the banking system and the economy with massive amounts of cheap credit so that banks could help cash-starved businesses to survive the various lockdowns/negative impact on their cashflow. The Government also supplied huge amounts of finance to local authorities to pass on to businesses. This meant that for most of the year there was much more liquidity in financial markets than there was demand to borrow, with the consequent effect that investment earnings rates remained low until towards the turn of the year when inflation concerns indicated central banks, not just the Bank of England, would need to lift interest rates to combat the second-round effects of growing levels of inflation (CPI was 9% in April).
- 5.3 While the Council has taken a cautious approach to investing, it is also fully appreciative of changes to regulatory requirements for financial institutions in terms of additional capital and liquidity that came about in the aftermath of the financial crisis. These requirements have provided a far stronger basis for financial institutions, with annual stress tests by regulators evidencing how institutions are now far more able to cope with extreme stressed market and economic conditions.
- 5.4 Investment balances have been kept to a minimum through the agreed strategy of using reserves and balances to support internal borrowing, rather than borrowing externally from the financial markets. External borrowing would have incurred an additional cost, due to the differential between borrowing and investment rates as illustrated in the charts shown above and below. Such an approach has also provided benefits in terms of

reducing the counterparty risk exposure, by having fewer investments placed in the financial markets.

Borrowing Strategy

- 5.5 The Council was 'over borrowed' during 2021/22 the Council's gross debt exceeded its CFR, as has been the case since 2007 when the Council decided not to repay £7.8m of PWLB debt, following the Council's stock transfer.
- 5.6 Therefore, as opposed to taking on additional loan debt to fund capital expenditure in 2021/22, the Council followed a strategy of using cash, supporting the Council's reserves, balances and cash flow as an interim measure. The strategy was prudent as investment returns were low and to reduce counterparty risk on placing investments.
- 5.7 The policy of avoiding new borrowing by running down spare cash balances, has served well over the last few years. However, this was kept under review to avoid incurring higher borrowing costs in the future when this authority may not be able to avoid new borrowing to finance capital expenditure and/or the refinancing of maturing debt.
- 5.8 Against this background and the risks within the economic forecast, caution was adopted with the treasury operations. The Chief Finance Officer therefore monitored interest rates in financial markets and adopted a pragmatic strategy based on managing interest rate risk, if it had been felt that there was a significant risk of a much sharper rise in long and short term rates than initially expected, perhaps arising from an acceleration in the start date and in the rate of increase in central rates in the USA and UK, an increase in world economic activity or a sudden increase in inflation risks, then the portfolio position would have been re-appraised. Most likely, fixed rate funding would have been drawn whilst interest rates were lower than they were projected to be in the next few years.
- 5.9 Interest rate forecasts expected only gradual rises in medium and longer term fixed borrowing rates during 2021/22 and the two subsequent financial years until the turn of the year, when inflation concerns increased significantly. Internal, variable, or short-term rates, were expected to be the cheaper form of borrowing until well in to the second half of 2021/22. Financial estimates were based on the interest rate forecasts in the table below.

Link Group Interest Rate View 20.12.21														
	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22	Mar-23	Jun-23	Sep-23	Dec-23	Mar-24	Jun-24	Sep-24	Dec-24	Mar-25
BANK RATE	0.25	0.25	0.50	0.50	0.50	0.75	0.75	0.75	0.75	1.00	1.00	1.00	1.00	1.25
3 month ave earnings	0.20	0.30	0.50	0.50	0.60	0.70	0.80	0.90	0.90	1.00	1.00	1.00	1.00	1.00
6 month ave earnings	0.40	0.50	0.60	0.60	0.70	0.80	0.90	1.00	1.00	1.10	1.10	1.10	1.10	1.10
12 month ave earnings	0.70	0.70	0.70	0.70	0.80	0.90	1.00	1.10	1.10	1.20	1.20	1.20	1.20	1.20
5 yr PWLB	1.40	1.50	1.50	1.60	1.60	1.70	1.80	1.80	1.80	1.90	1.90	1.90	2.00	2.00
10 yr PWLB	1.60	1.70	1.80	1.80	1.90	1.90	2.00	2.00	2.00	2.10	2.10	2.10	2.20	2.30
25 yr PWLB	1.80	1.90	2.00	2.10	2.10	2.20	2.20	2.20	2.30	2.30	2.40	2.40	2.50	2.50
50 yr PWLB	1.50	1.70	1.80	1.90	1.90	2.00	2.00	2.00	2.10	2.10	2.20	2.20	2.30	2.30



- 5.10 PWLB rates are based on gilt (UK Government bonds) yields through H.M.Treasury determining a specified margin to add to gilt yields. The main influences on gilt yields are Bank Rate, inflation expectations and movements in US treasury yields
- 5.11 Gilt yields fell sharply from the spring of 2021 through to September and then spiked back up before falling again through December. However, by January sentiment had well and truly changed, as markets became focussed on the embedded nature of inflation, spurred on by a broader opening of economies post the pandemic, and rising commodity and food prices resulting from the Russian invasion of Ukraine.
- 5.12 At the close of the day on 31 March 2022, all gilt yields from 1 to 5 years were between 1.11% – 1.45% while the 10-year and 25-year yields were at 1.63% and 1.84%.
- 5.13 There is likely to be a further rise in short dated gilt yields and PWLB rates over the next three years as Bank Rate is forecast to continue to increase throughout 2022. Medium to long dated yields are driven primarily by inflation concerns and the Bank of England has said it wouldn't decide to sell down its gilt holdings, whereby the Bank's £895bn stock of gilt and corporate bonds will be sold back into the market over several years, until after its August MPC meeting. The impact this policy will have on the market pricing of gilts, while issuance is markedly increasing, is an unknown at the time of writing.

6 Borrowing Outturn

- 6.1 No long term or temporary borrowing was taken during 2021/22. The approach during the year was to use cash balances to finance new capital expenditure, so as to run down cash balances that were earning low investment returns and to minimise counterparty risk incurred on investments. Additionally, it is important to note that Council had abnormally high cash balances due to the receipt of significant funds from government in respect of both schemes to support businesses to recover from the economic impact of the pandemic and funding received in advance to enable the Council to deliver grant-funded schemes included in its capital programme.
- 6.2 The Council has not borrowed more than, or in advance of its needs, purely in order to profit from the investment of the extra sums borrowed.

- 6.3 No rescheduling was completed during the year as the average 1% differential between PWLB new borrowing rates and premature repayment rates and the penalty position which can arise from early repayment of debt, made rescheduling unviable.

7 Investment Outturn


- 7.1 The Council's investment policy is governed by the Department for Levelling Up, Housing and Communities investment guidance, which has been implemented in the annual investment strategy approved by Council on 23 February 2021. This policy sets out the approach for choosing investment counterparties and is based on credit ratings provided by the three main credit rating agencies, supplemented by additional market data (such as rating outlooks, credit default swaps and bank share prices etc).
- 7.2 The investment activity during the year conformed to the approved strategy and the Council had no liquidity difficulties.
- 7.3 The Council maintained an average balance of £32.183m of internally managed funds. The internally managed funds earned an average rate of return of 0.1349% (£52,375). The comparable performance indicator is the average 7-day backward looking SONIA rate, which was 0.1355%.
- 7.4 In line with the Treasury Management Strategy and Annual Investment Strategy approved by Council on 23 February 2021. Officers, in conjunction with Link Group, its external treasury advisors, carried out a detailed, financial and qualitative review into a number of property funds, before selecting the Federated Hermes and Patrizia Hanover, Property Unit Trusts, in late March 2022. £4m was invested, split equally, between these two funds. No distributions were paid in 2021/22 due to the timing of the investments.
- 7.5 Updates on the performance of these funds will be provided to the Audit and Risk Management Committee as part of future reporting. It is important to note investment in property funds is a long-term investment so the value of the Council's underlying investment may increase and decrease over the period the Council maintains its investment. The benefit to the Council of investing in property funds is that it will receive a quarterly cash distribution reflecting rental income collected by the fund manager from tenants and the potential for capital growth should the value of the Council's holding exceed the amount the Council originally invested.

8 Prudential and Treasury Indicators

During 2021/22 the Council complied with its legislative and regulatory requirements.

Appendix A - Prudential Indicators

Prudential Indicators		2020/21 Actual £000	2021/22 Revised Estimate £000	2021/22 Actual £000
1	Capital Expenditure (including Commercial and Investment Strategy)	6,678	12,816	11,583
2	Ratio of Financing Costs to Net Revenue Stream (borrowing costs – investment income)	7.03%	8.27%	8.13%
3	Gross Borrowing and the Capital Financing Requirement			
	Gross Debt	8,043	8,236	7,906
	CFR	6,177	7,821	7,458
<hr/>				
Treasury Management Indicators		2020/21 Actual £000	2021/22 Revised Estimate £000	2021/22 Actual £000
4	Authorised Limit for External Debt			
	Borrowing	17,000	17,000	17,000
	Other Long-Term Liabilities	1,000	1,000	1,000
	Commercial Activities	25,000	21,302	21,302
	Total	43,000	39,302	39,302
5	Operational Boundary for External debt			
	Borrowing	12,000	12,000	12,000
	Other Long-Term Liabilities	1,000	1,000	1,000
	Commercial Activities	25,000	21,302	21,302
	Total	38,000	34,302	34,302
6	Actual External debt (as at 31 March)			
	Borrowing	7,800	8,130	7,800
	Other Long-Term Liabilities	243	106	106
	Total	8,043	8,236	7,906

Agenda Item No:	7	
Committee:	Cabinet	
Date:	11 July 2022	
Report Title:	Council Revenue and Capital Outturn 2021/22	

Cover sheet:

1 Purpose / Summary

To inform Cabinet of the income and expenditure (known as “Outturn”) for the Council for 2021/22 and reasons for variations.

2 Key issues

Revenue

- The Council’s provisional General Fund services net underspend is £584,010 for the financial year 2021/22. This is an improvement of £826,696 compared to the projected shortfall of £242,686 as reported to Council in February 2022.
- The under-spend of £584,010 has been transferred to the Budget Equalisation Reserve in accordance with the decision made by Council at their meeting on 9th January 2020 which established this reserve and approved that any underspend at financial year-end be transferred to this reserve. As at 31 March 2022, this reserve has a balance of £1,066,644.
- The General Fund balance at 31 March 2022 remains at the approved minimum level of £2m.
- Given the scale of the challenges faced by the Council in 2021/22, the financial position at the year-end represents a considerable achievement and demonstrates the focus from Members and officers throughout the Council in delivering the required savings.
- As a result of continuing prudent financial management, improved income performance and additional government grants, the Council is in an improved position to deal with the significant ongoing financial challenges in 2022/23 and over the medium term.
- The Council’s Statement of Accounts 2021/22 (subject to external audit) has to be signed off by the Corporate Director and Chief Finance Officer by 31 July 2022 as required by the Accounts and Audit (Amendment) Regulations 2021. The Council’s external auditors, Ernst & Young (EY) are due to begin their audit work on 31 October 2022. EY’s Audit Results Report is scheduled to be presented to Audit and Risk Management Committee on 19 December 2022 with the final audited accounts being published soon after, following receipt of the auditor’s opinion.
- The Statement of Accounts 2021/22 will incorporate all the outturn figures, revenue and capital presented in this report.

Capital

- The Capital Programme has been underspent by £1,233,000. This compares with an under-spend of £1,548,000 in 2020/21. The variation principally relates to the re-profiling of several of the high-profile grant-funded regeneration schemes which the Council is currently delivering at various locations across the District. Additionally, the timing and extent of capital works which need to be undertaken at Council-owned buildings and facilities has been reviewed and this has resulted in changes in the budget required. These changes are reflected in the update to the capital programme which is included as a separate item on today's agenda. There is no loss of resources arising from the re-phasing set out shown in Appendix B(i).

3 Recommendations

- It is recommended that :-
 - (i) The Outturn for the Council's General Fund services in 2021/22, as detailed at Appendix A and Section 2 of this report be noted and that Members note the transfer of the underspend to the Budget Equalisation Reserve;
 - (ii) The reasons for the variations from revised estimate be noted;
 - (iii) The proposed Capital Funding schedule for 2021/22 at Appendix B(i) be approved.

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Cllr Chris Boden, Leader & Portfolio Holder, Finance
Report Originator(s)	Peter Catchpole, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant
Contact Officer(s)	Paul Medd, Chief Executive Peter Catchpole, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant
Background Paper(s)	Budget Setting Reports Monthly Budgetary Control Reports 2021/22 Final Accounts Working Papers 2021/22

1 Introduction

- 1.1 The Council's income and expenditure figures for General Fund services and the Capital Programme for the financial year 2020/21 (known as 'Outturn') are presented in this report.
- 1.2 The Accounts and Audit Regulations 2015 require that the Council's Statement of Accounts be signed off by the Corporate Director and Chief Finance Officer by the end of May following the financial year ended 2020/21 and for the final audited Statement of Accounts to be published by the end of July.
- 1.3 The Accounts and Audit (Amendment) Regulations 2021 extends these deadlines for the 2020/21 and 2021/22 accounts. For these years, the draft accounts must be signed off by 31 July following the year-end by the Corporate Director and Chief Finance Officer and the publication of the final audited accounts moved to 30 September for the 2020/21 accounts. The proposed Accounts and Audit (Amendment) Regulations 2022 extends the publication deadline to 30 November 2022 for the 2021/22 accounts.
- 1.4 To meet the agreed timetables, the draft Statement of Accounts for 2021/22 are currently being prepared and will be signed off by the Corporate Director and Chief Finance Officer by 31 July 2022. These draft accounts, which are subject to external audit, will be published on the Council's website along with the required notice of the Exercise of Public Rights to inspect the accounts (30 days from 1 August 2022).
- 1.5 The figures presented are all provisional pending audit by the Council's external auditors EY (Ernst & Young), who are scheduled to begin their work on 31 October 2022. EY's Audit Results Report is currently scheduled to be presented to Audit and Risk Management Committee on 19 December 2022, where the Committee will also be presented with the final Statement of Accounts. Following receipt of the external auditor's opinion, the final audited Statement of Accounts 2021/22 will be published on the Council's website. The information in this report is therefore provisional with any significant or material changes reported back to Members at a later stage.
- 1.6 As a result of EY's scheduled timescale for completing the audit, the publication of the final audited accounts for 2021/22 will be later than the 30 November date specified in the proposed regulations. EY will present their Audit Plan for the 2021/22 accounts to the Audit and Risk Management Committee on 19 September 2022 where they will explain their reporting timetable and the reasons for not meeting the 30 November date. There are no consequences to the Council of these revised audit dates.

2 The Revenue Budget

- 2.1 In February 2022 the Council's year end position was estimated as a shortfall of £242,686. It is important to note that this figure was based on projections as at the end of December 2021 and the report to Council also noted that there were still many uncertainties around the year-end position, particularly around projected income levels, government grants for new burdens and the projected support required by Freedom Leisure.
- 2.2 Following the closure process, the full position shows a net underspend of £584,010, an improvement of £826,696 compared to the previous projection. The net underspend of £584,010 represents 2.06% of the gross budget of £28.3m and compares with an underspend of £167,326 in 2020/21.
- 2.3 An analysis of the overall position is shown at Appendix A(i) and explanations of variances are detailed in Appendix A(ii).

- 2.4 Of the additional under-spend for the year, one-off variations total £704k. Of this amount,
- £332k relates to additional fees and charges received,
 - £99k relates to additional government grants, mainly for new burdens administration of the various business grant schemes, Test and Trace scheme, Licensing and Transparency,
 - £57k relates to a refund from HM Courts and Tribunals Service of overcharged magistrates court fees paid for council tax liability orders applied for between April 2014 and July 2018,
 - £14K relates to higher income from Investments and the RTB/VAT sharing arrangement with Clarion and
 - £202k relates to higher than expected management fees received from Freedom Leisure.
- 2.5 Service underspends amount to £123k, which includes lower employee costs (-£125k) across a variety of services. Lower Premises costs (-£18k) and Supplies and Services costs (-£196k) have been off-set by higher Transport costs (£44k) and Third Party payments (£172k).
- 2.6 Together with the projected shortfall of £242,686 (as detailed in the budget report to Cabinet and Council on 24 February 2022), the additional underspend of £826,696 (detailed in 2.3 above) brings the total underspend in 2021/22 to £584,010. This has been transferred to the Budget Equalisation Reserve in accordance with the decision made by Council at their meeting on 9th January 2020 which established this reserve and approved that any underspend at financial year-end be transferred to this reserve. As at 31 March 2022, this reserve has a balance of £1,066,644.
- 2.7 As a result of continuing prudent financial management together with better than expected income performance and the receipt of additional funding from government, the Council is in an improved position to deal with the significant ongoing financial challenges in 2022/23 and over the medium term.
- 2.8 The Council's reserves will be reviewed again as part of the 2023/24 budget process during the Autumn of 2022.

3 Capital Programme

- 3.1 The Capital Programme has been underspent by £1,233,000. This compares with an under-spend of £1,548,000 in 2020/21. The variation principally relates to the re-profiling of several of the high-profile grant-funded regeneration schemes which the Council is currently delivering at various locations across the District. Additionally, the timing and extent of capital works which need to be undertaken at Council-owned buildings and facilities has been reviewed and this has resulted in changes in the budget required.
- 3.2 There is no loss of resources arising from this re-phasing as shown in Appendix B(i), which has been input to the 2022/23 programme as appropriate.
- 3.3 The updated Capital Programme for 2022-25 is included as a separate agenda item.

FENLAND DISTRICT COUNCIL

Summary of Revenue Estimates

	Revised Estimate 2021/22 £	Outturn 2021/22 £	Variation compared with Revised £
Service Summary			
Growth & Infrastructure	1,423,950	1,193,580	-230,370
Communities, Environment, Leisure & Planning	4,909,288	3,820,859	-1,088,429
Resources & Customer Services	7,956,190	8,362,420	406,230
NET COST OF GENERAL FUND SERVICES	14,289,428	13,376,859	-912,569
Corporate Items			
Contributions to/ (from) Earmarked Reserves	-336,019	-294,435	41,584
Contributions to/ (from) Business Rates Reserve	-2,002,224	-2,130,356	-128,132
Cambridgeshire Horizons - Share of Surplus - FDC Use	-2,841,500	-2,841,500	0
Cambridgeshire Horizons - Share of Surplus - A14 Contribution	-1,050,000	-1,050,000	0
Investment Income	-40,000	-52,375	-12,375
RTB/VAT Sharing Income	-160,000	-161,722	-1,722
Drainage Board Levies	1,594,010	1,594,005	-5
Financing Charges - <i>Interest/Minimum Revenue Provision</i>	857,065	858,129	1,064
New Homes Bonus	-874,916	-874,916	0
A14 Contribution	74,000	74,000	0
Business Rates - net additional income above baseline <i>(government grants for reimbursement of reliefs, growth less levy payments)</i>	-1,521,878	-1,377,028	144,850
Business Rates - reimbursement of additional Covid-19 reliefs	-1,211,278	-1,168,350	42,928
Business Rates Pool - FDC Share of Benefit	-300,000	-359,646	-59,646
Government Grant - Covid-19 General Grants for spending pressures	-634,010	-634,010	0
Government Income Compensation Scheme	-88,000	-88,223	-223
Lower Tier Services Grant	-157,697	-157,697	0
FFL - Officer Time Recharge	-100,000	-100,000	0
Corporate Adjustments	-8,792,447	-8,764,124	28,323
Net Expenditure	5,496,981	4,612,735	-884,246
Core Funding			
Business Rates Baseline Funding	-3,701,878	-3,701,878	0
Business Rates Collection Fund Deficit (+)	3,620,772	3,620,773	1
Council Tax Collection Fund Deficit (+)	43,723	43,723	0
Council Tax	-7,851,042	-7,851,042	0
Surplus(-)/Shortfall(+)	-2,391,444	-3,275,689	-884,245
Balance of Cambridgeshire Horizons money set aside for future FDC use	2,634,130	2,691,679	57,549
Net Surplus(-) / Shortfall(+)	242,686	-584,010	-826,696
<i>Surplus at year end transferred to Budget Equalisation Reserve</i>			

Summary of Revenue Provisional Out-turn 2021/22 - Main Variances

		Over(+) / Under spend (-) £000 £000	
Service Area	Description		
<u>One-Off Variations</u>			
Fees and Charges	Income variations across a variety of services		
	Enforcement Fees (Housing Standards)	-17	
	Marine Services	-18	
	Planning & Pre-App Fees	-102	
	Court Costs raised	-30	
	Waste Services - bulky waste and recycling	-19	
	Trade Waste	-11	
	Search Fees	-17	
	Cemeteries	-20	
	Economic Estates	-53	
	Other services	-45	
			-332
Other Income/Costs	Additional Government New Burdens - Business Grants administration, Test & Trace, Licensing, Transparency etc		-99
	HM Courts & Tribunals Service - Refund of overcharged magistrate court fees paid for Council Tax liability orders		-57
	Investment Income/RTB/VAT Sharing arrangement with Clarion		-14
	Leisure Contract - Management Fee received from Freedom Leisure		-202
	Sub-Total One-Off Variations		-704
<u>Service Base Variations</u>			
Employee Costs	Variance across a variety of services mainly resulting from vacancies	-125	
Premises Costs	Lower costs across a variety of services	-18	
Transport Costs	Lower car allowance & mileage costs across a variety of services	-24	
	Higher vehicles/vessel maintenance costs	68	
Supplies and Services	Lower ICT costs - Telephones/Software/Maintenance	-78	
	Homelessness & Rough Sleepers - lower accommodation costs	-55	
	Lower costs across all services	-63	
Third Party Payments	Net impact of Housing Benefit subsidy claim and overpayments	127	
	Other costs across services	45	
	Sub-Total Service Base Variations		-123
	Additional Surplus		-827
Projected Deficit 2021-22 at Revised Estimate (Cabinet/Council February 2022)			243
Net Surplus 2021-22	Transferred to Budget Equalisation Reserve		-584
Net savings as a % of Gross Budget (£28.299m for 2021/22)		2.06%	
	Balance on Budget Equalisation Reserve as at 01.04.21		483
	Transfer of Surplus in 2021-22		584
	Balance on Budget Equalisation Reserve as at 31.03.22		1,067

CAPITAL PROGRAMME AND FUNDING OUTTURN 2021/22

	Budget £000	Actual £000	Variance £000
Capital Programme (excluding Commercial and Investment Strategy Schemes)	12,486	11,258	-1,228
Commercial and Investment Strategy	330	325	-5
TOTAL EXPENDITURE	12,816	11,583	(1,233)
RESOURCES AVAILABLE			
Capital Grants	10,165	9,171	(994)
Usable Capital Receipts - In Year	150	106	(44)
Reserves used in year to fund Capital	463	584	121
Section 106's and Other Contributions	26	75	49
Borrowing (Internal and Prudential)	2,012	1,647	(365)
Total Available Resources to fund Expenditure	12,816	11,583	(1,233)

GENERAL FUND CAPITAL EXPENDITURE VARIATIONS 2021/22

SCHEME	VARIATION £000	REASON
Leisure Centres		
Building Improvements	-216	Roofing works at Hudson Leisure centre are ongoing and due to complete in the first six months of this financial year. This reflects £150K of the variance identified. Other scheduled improvement works have been deferred to the 2022/23 financial year
Regeneration Programme		
Fenland Renaissance and Place Shaping	-16	Funding allocated not yet awarded. Allocation carried forward to 2022-23
Heritage Lottery Fund - Non-FDC Properties	-135	13-17 High Street is the major non-FDC owned property which is being developed as part of the project. Works at the site were delayed due to issues relating to utility companies but are now nearing completion. Some minor works to other privately-owned properties on the High Street have been re-profiled to reflect revised timelines received from property owners.
Heritage Lottery Fund - 24 High Street, Wisbech	79	Preparing the site for future development has necessitated expenditure on professional fees and these have been funded from the total budget set aside following discussion at Cabinet in February 2022. Separate updates on proposals for the site have been considered by Cabinet in June and July 2022 and allocations for future years will be updated on the basis of decisions taken by Cabinet.
Railway Station Master-Planning	-168	Poor weather conditions in the winter months have delayed the completion of grant-funded works at Manea Railway Station Car Park. These works are now scheduled to be completed in the first six months of 2022/23 and the budget has been re-profiled accordingly.
Future High Street Fund, March	-165	Following discussion with the Department for Levelling Up, Housing and Communities (DLUHC) planned works have been re-profiled to reflect officers' best assessment of the timescales for each project included in the programme. These changes have no impact on the Council's overall financial position.
Growing Fenland - Capital Grants	-33	Work remains ongoing to finalise the allocation of funds to local businesses in line with applications received and assessed during 2021-22.
Highways		
Growing Fenland - Civil Parking Enforcement	-52	This is a complex CPCA-funded project involving close liaison with the Highways team at Cambridgeshire County Council and external consultants. The profiling of the budget is subject to regular review and budget has been allocated over the life of the project.
Street Name Plates/District Council signage	-18	Expenditure re-profiled and due to be incurred over the life of the project
Street Light Improvements - Contribution to Parish Category 2 Replacements	-6	Allocations not utilised
Huntingdon Road Improvements, Chatteris	-9	Investigatory and design works commenced as scheduled in the 2021/22 financial year. The Capital Update report which is being considered as a separate item at today's Cabinet meeting explains the additional budget that will need to be allocated in order to complete the proposed scheme of works.
Office Accommodation		
Fenland Hall	-200	The development of the Council's Accommodation Strategy has necessitated a pause in the commissioning of works at Fenland Hall except where these are deemed essential for reasons linked to health and safety. Future budgets will be refined based on whatever decision is taken by Members regarding the Council's future accommodation needs.
Environment		
Replacement Litter Bins	-53	Supply chain issues impacted the receipt of replacement bins prior the year-end. The required bins are on order which is expected to be fulfilled in the early part of the 2022-23 financial year.
Port		
Boat/Vessels - Replacement Deck, Hull and Engines	-9	Work re-profiled and will be completed in 2022/23 financial year
Wisbech Port Structural Works	-8	Work completed and delivered with a small underspend.
Improvement of Assets		
Sewage Treatment Works Refurbishment	150	The appointed contractor made faster progress delivering tendered works than had been anticipated. The budget for the remaining works which are delivered in the 2022/23 financial year has been reduced accordingly.
Birch Fen Silt Removal and Outfall Maintenance	-19	The timing of works is determined by ecological considerations. Initial work was completed prior to the end of the financial year but the remaining works will be delivered in Autumn 2022. Budgets have been re-profiled accordingly.
ICT System Replacement Programme & Infrastructure Upgrades		
Information Technology	-58	This scheme reflects a multi-year investment in the Council's transformation programme. Total planned investment across three years to 31 March 2023 remains unchanged.
Economic Estates		
South Fens Business Park Expansion	-95	The underspend reflects revised timescales for completing the project. Cabinet is due to consider a report in August 2022 relating to this scheme. The report will explain progress to date and provide a summary of timescales for completing the project.
Private Sector Housing Support		
Disabled Facilities Grants	-185	Expenditure dependant on throughput of grant applications. Remaining budget committed but not spent and carried forward to 2022/23
Other Minor Variations		
Various	-17	Minor budget variations.
Total	-1,233	

Key

- indicates the scheme is underspent by the amount shown
- + indicates scheme is overspent by the amount shown

Agenda Item No:	8	
Committee:	Cabinet	
Date:	11 July 2022	
Report Title:	Capital Programme Update	

Cover sheet:

1 Purpose

- To consider the updated capital programme and variations in resources since February 2022.

2 Key issues

- An updated capital programme and resources statement for 2022-25 is presented.
- The programme agreed in February 2022 has been updated and re-profiled in accordance with the 2021-22 capital outturn.
- The capital programme continues to reflect the Council's commitment to deliver a range of major externally funded capital schemes, including the March Future High Street project and Wave 1 of the Social Housing Decarbonisation Fund.
- A separate report on Wisbech High Street is included on the agenda for today's meeting. Should Members decide to recommend to Council the allocation of further capital funds, over and above those approved in earlier iterations of the capital programme, further updates shall be made to the capital programme.
- Like much of the private and public sector, the Council finds itself subject to significant inflationary pressures with the cost of materials, labour and finished goods all exhibiting significant price increases. Officers have worked with the finance team to identify and implement strategies to deliver schemes within budget wherever possible and/or identify alternative sources of funding. In some cases, it has been necessary to allocate additional funds and commentary on these changes is included in the report.
- Officers and Members have been working with the Council's professional advisors to develop an Accommodation Strategy. An options appraisal is currently being developed. Until Members determine their preferred options the impact on the capital programme cannot be determined. However, given information obtained from recent condition surveys the capital cost of whichever option is chosen is likely to be significant. These capital costs will need to be financed in the medium term.
- Remedial works on a section of operational land of the quay at the Port of Wisbech were undertaken in 2020/21 and 2021/22. A further survey on the remaining operational land was undertaken in 2021/22. Officers are awaiting an assessment of the cost of works identified in the survey as being necessary on health and safety grounds. Details will be provided as part of a future report to Cabinet.

- The Council's capital programme will continue to be part-funded by applying capital receipts. Some use of internal and external borrowing is still anticipated. This is reflected in the Council's current medium-term financial strategy (MTFS). Where schemes are funded principally from external borrowing Members are asked to note that interest rates on external borrowing are expected to rise in line with the Bank of England's strategy to address the current level of inflation. The Council continues to work closely with its treasury advisors to identify the most effective strategy to address the Council's borrowing needs.
- A broader update of the capital programme and available resources will be undertaken during the autumn of 2022 as part of the budget setting process for 2023/24.

3 Recommendations

- It is recommended that the updated capital programme as set out in Appendix A, which includes alterations to those schemes not funded from grant which consequently require additional capital expenditure not specifically budgeted for but remain within the overall capital budget, is approved.

Wards Affected	All
Portfolio Holder(s)	Cllr Chris Boden, Leader and Portfolio Holder, Finance
Report Originator(s)	Peter Catchpole, Chief Finance Officer and Corporate Director Mark Saunders, Chief Accountant
Contact Officer(s)	Peter Catchpole, Chief Finance Officer and Corporate Director Mark Saunders, Chief Accountant
Background Paper(s)	2022/25 Capital Programme working papers

Report:

4 Introduction

- 4.1 The Council's 2021-25 capital programme was approved by Cabinet and Council in February 2022. The capital outturn for 2021/22 forms part of a separate item on the agenda for today's meeting.
- 4.2 This report addresses amendments to the programme since February, including re-profiling schemes from 2021/22 and a re-assessment of resources available in the period 2022-25.
- 4.3 A broader update of the capital programme and available resources will be undertaken during the autumn of 2022 as part of the budget setting process for 2023/24.

5 Updated Capital Programme – Council Assets

- 5.1 The updated programme detailed at Appendix A is fully-funded subject to the realisation of £465,000 of capital receipts by 31 March 2025. This estimate excludes any receipt linked to the disposal of development land to Fenland Future Limited. This is because whilst land is scheduled to be transferred in this financial year, it is possible that receipt of the agreed sale price will be deferred until such time that the land has been developed. When capital receipts are deferred, the Council is only able to apply those receipts to fund the capital programme when the cash falls due.
- 5.2 The following developments have impacted significantly on the Council's capital programme ('the programme').

Accommodation Strategy

- 5.3 Members will be aware that the programme includes provision for work to be undertaken at Fenland Hall and The Base reflecting the likely cost of addressing findings set out in the condition surveys obtained by officers in previous years. Currently members and officers are working closely with the Council's professional advisors to produce an Accommodation Strategy. The decisions taken will inform the level of work required at Fenland Hall and The Base over the life of the capital programme. When decisions are taken regarding members' preferred option/s the capital programme will be adjusted accordingly. On this basis commitments relating to Fenland Hall and the Base have been removed from the current programme.

Leisure Centres – Condition Survey Works

- 5.4 The capital programme was updated in December 2021 to reflect the anticipated cost of completing condition survey works identified in a condition survey of the Council's leisure centres undertaken by CIPFA. Good progress has been made on one of the most significant projects which related to urgent works to the roof at the Hudson Leisure Centre. Officers and the accountancy team have reviewed the anticipated timing and costing associated with future tranches of work and updated the programme accordingly.
- 5.5 Following discussion with Freedom, a phased approach to roofing works has been agreed recognising the assessed priority of the remedial works required at each location. Working with the consultancy that successfully managed the improvement works at the Hudson Leisure Centre, Freedom and the Council have agreed that works on the roof at the Hudson Leisure Centre should be undertaken in this financial year. The estimated cost of these works exceeds the budget originally set aside for condition survey works in 2021/22 so further funds have been allocated in the updated programme to reflect the expected cost of the work required.

Structural Works – Port of Wisbech

- 5.6 Major capital works commenced in the 2020/21 financial year to address health and safety risks identified following a survey of Crab Marsh quay. These works completed within budget in the 2021/22 financial year. During the 2021/22 financial year a further survey was commissioned covering the remaining stretch of operational quay at the Port of Wisbech. Officers are working with external consultants to determine the cost of rectifying the structural deficiencies identified. A separate report will be brought to Cabinet when further information is available.

Highway Improvements, Huntingdon Road, Chatteris

- 5.7 Members and officers have been aware of a long-standing issue concerning the condition of the access route into the play area at Huntingdon Road in Chatteris. In February 2022 funding of £35,000 was included in the capital programme to make the necessary improvements to the access route. Since that funding was allocated, further investigations on site have identified drainage issues which render the original solution proposed to be unsuitable. The revised solution is more costly and consequently an additional £55,000 has been allocated in the programme set out in the appendix.

Commercial and Investment Strategy Schemes

- 5.8 From February 2020 the programme has reflected the Council's decision to allocate £25m to take forward schemes in accordance with the Council's Commercial and Investment Strategy. The remaining allocation has been profiled to reflect the anticipated timing of future projects, including those due to be delivered by Fenland Future Limited. However, the Investment Board retains the discretion to vary when the available funds are utilised over the life of the programme.

6 Updated Capital Programme – Grant-Funded Schemes

Brownfield Development Fund

- 6.1. In collaboration with the County Council, the Council was successful in securing an allocation of £200,000 from the government's One Public Estate – Brownfield Land Release Fund to fund improvements to infrastructure at the Nene Waterfront site. The programme has been updated to reflect the design and construction work necessary to install an additional electricity substation on the site. Delivering these improvements will facilitate further development of the site in line with proposals already approved by the Council's Investment Board.

Wisbech High Street

- 6.2 Cabinet has continued to receive regular updates regarding the complex and ambitious project to transform neglected properties in Wisbech High Street using funding provided by the National Heritage Lottery Fund. A more detailed report explaining the status of the project is included as part of the agenda for today's meeting. The programme will be updated once decisions have been taken by Council and Cabinet. Further updates to the programme may be required if opportunities to develop 11-12 High Street come to fruition. Such developments would impact not only the value of the programme but also the total value of grant-funding available to the Council to support the overall project.

Wisbech Water Park and Pavilion

- 6.3. 1 Cabinet has previously been informed of the Council's success in securing funding from the County Council and the Combined Authority to make two landmark

investments in Wisbech Town Park. The funding awarded is finite and the timescales for completing both projects in line with the funders' stipulations are tight. Good progress has already been made with much of the physical works to install the water park having been tendered and designs for the pavilion agreed with stakeholders. At this stage of both projects, it is apparent that the external funding provided will be insufficient to cover the full costs of completing each project.

- 6.3.2 Officers have worked with accountancy to identify alternative sources of funding within the parks and open spaces service to minimise the impact on the Council's capital resources of delivering both projects in their current form. This includes the application of section 106 monies recently received by the Council and use of a grant to fund works to create an accessible toilet in the pavilion building. Work on the water park is scheduled to complete over the summer months so the amount committed in the programme is understood to reflect the expected cost of delivering the scheme. The construction of the pavilion has not yet gone out to tender. Should costs exceed those set out in the programme a further report will be presented at a meeting of Cabinet.

Future High Street Fund, March

- 6.4 Members have received regular updates regarding the delivery of improvements in March using funding provided by government as part of the Future High Streets Fund initiative and match-funding from the Combined Authority. The profiling of spend on the different elements of the overall project has recently been updated in line with assessments from officers and colleagues at the County Council who are providing design and procurement expertise. Linked to the investment in March are some ancillary projects which sit outside the bid submitted to government but nevertheless represent investment which is considered necessary to ensure residents and businesses secure optimal benefit from the High Street fund investment. Once costings have been confirmed updates will be provided to Members as part of a future report to Cabinet.

Railway Station Master-planning

- 6.5 Members will be aware of the major redevelopment works which have recently been completed at March station using grant-funding provided by the Combined Authority. Alongside this project, the Council has been constructing a car park adjacent to Manea railway station. Due to poor weather conditions in the autumn and winter of 2021/22, the Manea car park project is behind schedule. The delays, together with some necessary variations to the programme of works, mean the budgeted cost will exceed that envisaged in the original grant agreement which the Council entered into with the Combined Authority. Officers are negotiating with the Combined Authority about whether there is scope to cover the overspend but these discussions are ongoing. Therefore the programme reflects the Council's potential exposure to approximately £33k of capital expenditure which is not funded from grant.

Disabled Facilities Grants

- 6.6 The updated programme reflects the Council's 2022/23 allocation from the local Better Care Fund (£1.215m) for the provision of Disabled Facilities Grants, together with grant received but not spent in previous years. In this area grants are typically committed before works can be undertaken on site and this means there is often an overlap between financial years.

Social Housing Decarbonisation – 'Wave 1' Funding

- 6.7 During the 2021/22 financial year the Council worked with Clarion to deliver improvements to reduce the carbon footprint of social housing using funding provided as part of a government initiative known as the Social Housing Decarbonisation Fund.

In early 2022 the Council was informed that it had secured funding to enable Clarion to deliver a subsequent round of decarbonisation improvements known as Wave 1. This was reported to Cabinet at its meeting held on 24th February 2022. This project is reflected in the capital programme and involves works to 450 properties, of which 200 are in Fenland. The work is scheduled to complete by 31 March 2023. The value of the programme.

7. Financing the Capital Programme

- 7.1 Cabinet and Council approved in February 2022 the use of borrowing (both internal and prudential) to fund the capital programme totalling £31.443m over a four-year period ending on 31 March 2025. The capital outturn included on the agenda for today's meeting indicates that £1.647m of the capital programme delivered in 2021/22 was funded from internal borrowing. The updated programme shows that the Council is likely to continue to need to fund a substantial proportion of its capital programme from internal or external borrowing.
- 7.2 Members are also reminded of the impact on the revenue account of using uncommitted capital resources. Whilst they remain uncommitted, the resources are invested and generate revenue income to the general fund. Rates of return on short-term investments are starting to improve as interest rates increase and the Council is set to benefit from distributions it will receive following a recent investment in property funds. Whilst there is scope for the Council to consider additional use of reserves to fund its capital programme as this reduces the need to borrow externally at a time when PWLB interest rates are also climbing, there is an opportunity cost associated with the use of reserves to fund the programme as any funds deployed in this way are not available to fund the Council's transformation programme, its Commercial and Investment Strategy and future revenue cost pressures which might arise in the medium-term.

CAPITAL PROGRAMME AND FUNDING 2021 - 2025

	2022/23 £000	2023/24 £000	2024/25 £000
Capital Programme (excluding Commercial and Investment Strategy Schemes)	16,398	10,111	1,779
Commercial and Investment Strategy Schemes	2,477	13,500	5,000
CURRENT FORECAST EXPENDITURE	18,875	23,611	6,779

FORECAST RESOURCES AVAILABLE

Capital Grants	10,528	8,055	950
Usable Capital Receipts - In Year	265	100	100
Reserves used in year to fund Capital	255	0	0
Section 106s and Other Contributions	217	5	0
Borrowing (Internal and Prudential)	7,610	15,451	5,729
Total Forecast Resources	18,875	23,611	6,779

CAPITAL PROGRAMME SUMMARY 2022/23 - 2024/25

	2022/23 £000	2023/24 £000	2024/25 £000	Total Cost £000	FDC Funding £000	External Funding £000	External Funders and FDC Reserves/S106
Leisure Centres							
1 Condition Survey Improvements	821	1,266	464	2,551	2,551		
Regeneration Programmes							
2 Fenland Renaissance and Place Shaping	16			16	16		
3 Heritage Lottery Fund - Non-FDC Properties	135			135	81	54	£54k HLF Grant.
4 Heritage Lottery Fund - 24 High Street, Wisbech	1,271			1,271	1,033	238	£238k HLF Grant.
5 Railway Station Master-Planning	350			350	73	277	£277k CPCA Grant, £40k S106
6 Future High Street Fund, March	1,367	7,005		8,372	197	8,175	£2,000k CPCA, £6,122k DLUHC Future High Streets, £53k
7 Growing Fenland - Capital Grants	33			33		33	DLUHC 'Changing Places' Grant £33k CPCA Grant
Cemeteries							
8 Cemetery Chapels Condition Survey Works	315			315	315		
9 Remedial Works in Closed Cemeteries	130	240	50	420	420		
Highways							
10 Category 2 Street Lights - FDC Lights	174			174	174		
11 Street Name Plates/District Facilities Signage	18			18	18		
Street Light Improvements - Parishes (Contribution to Cat 2							
12 Replacements)	6			6	6		£6k Capital Contribution Reserve
13 Growing Fenland - Civil Parking Enforcement	252	100		352		352	£352k CPCA Grant
14 Huntingdon Road Improvements, Chatteris	90			90	90		
Environment							
15 Replacement and Grant-Funded Additional Litter Bins	53			53	53		
Port							
16 Boat/Vessels - Replacement Deck, Hull and Engines	47			47	47		
Sub Total	5,078	8,611	514	14,203	5,074	9,129	

	2022/23 £000	2023/24 £000	2024/25 £000	Total Cost £000	FDC Funding £000	External Funding £000	External Funders and FDC Reserves/S106
Brought Forward	5,078	8,611	514	14,203	5,074	9,129	
Parks and Open Spaces							
17 Parks, Play Areas and Open Space - Chatteris	40			40	40		£6k S106 money
18 Parks, Play Areas and Open Space - Doddington	75			75	75		£21k S106 money
19 Parks, Play Areas and Open Space - Guyhirn	48			48	48		£48k S106 money
20 Parks, Play Areas and Open Space - Wisbech	20	20	15	55	55		£25k S106 money
21 Parks, Plays Areas and Open Space - Whittlesey	45			45	45		
22 Wisbech Water Park	245			245	95	150	£148K CPCA Grant, £2K Wisbech Town Council, £41k S106
23 Wisbech Park Pavillion	640			640	41	599	£240K Cambs CC Capital Communities Fund Grant, £299K CPCA Grant, £60K DLUHC Changing Places Grant, £41k S106
Vehicles and Plant							
24 Vehicles	364	80	200	644	644		
ICT System Replacement Programme & Upgrades							
25 Replacement & Upgrade Programme	348	200	100	648	648		£249k Management of Change Reserve
Improvement of Assets							
26 Sewage Treatment Works Refurbishment	507	250		757	757		
27 Birch Fen Silt Removal and Outfall Maintenance	19			19	19		
28 March Moorings Renewals	24			24	24		
29 Lattersley Nature Reserve - Capping Layer	40			40	40		
30 Energy Efficiency Improvements to Clarion Properties	5,203			5,203		5,203	£5,203k BEIS 'Wave 1' Funding
31 Nene Waterfront Infrastructure Improvements	200			200		200	£200k Brownfield Land Release Fund
Car Parks							
32 Eastwood, Chatteris	100			100	100		
Economic Estates							
33 Replacement of AV Equipment at Business Centres	50			50	50		
34 South Fens Business Park Expansion	1,941			1,941	1,000	941	£941k CPCA 'Business Space' Funding
Private Sector Housing Support							
35 Private Sector Renewal Grants	240	40	40	320		320	£320k Govt Grant
36 Disabled Facilities Grants	1,171	910	910	2,991		2,991	£2991k Govt Grant
Total - Approved Programme	16,398	10,111	1,779	28,288	8,755	19,533	

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Agenda Item No:	9	
Committee:	Cabinet	
Date:	11th July 2022	
Report Title:	UK Shared Prosperity Fund	

1 Purpose / Summary

- 1.1 The UK Shared Prosperity Fund (UKSPF) is the government's domestic replacement for the European Structural and Investment Programme which the UK continues to participate in until 2023.
- 1.2 All areas of the UK are receiving an indicative allocation of the fund via a funding formula where the funding available to Fenland District is approximately £1.3m and £8.78m across the Cambridgeshire and Peterborough Combined Authority (CPCA) over a 3-year period from 2022-23 to 2024-25.
- 1.3 The proposal is to submit to the CPCA five projects totalling £1.299m – a financial summary of the proposed Fenland UKSPF projects can be found in Schedule 1.

2 Key Issues

- 2.1 These are indicative allocations and are not guaranteed. Fenland District will submit bid proposals to CPCA meeting our requirements plus UKSPF criteria.
- 2.2 The CPCA will collate all Cambridgeshire and Peterborough local authority proposals into a Local Investment Plan for presentation to the Department for Levelling Up, Housing and Communities (DLUHC) that will make the decision on UKSPF allocations.

3 Recommendations

- 3.1 Cabinet is requested to consider and recommend the five proposed Fenland UK Shared Prosperity Fund projects to the CPCA for inclusion in the CPCA Local Investment Plan to be submitted to the Department for Levelling Up, Housing and Communities.

Wards Affected	All
Forward Plan Reference	KEY10JUN22/03
Portfolio Holder(s)	Cllr Ian Benney
Report Originator(s)	Anna Goodall, Assistant Director Simon Jackson, Economic Growth Manager
Contact Officer(s)	Simon Jackson, Economic Growth Manager
Background Papers	UK Shared Prosperity Fund: prospectus - GOV.UK (www.gov.uk)

Report:

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 The UK Shared Prosperity Fund (UKSPF) is part of the government's Levelling Up Agenda. The fund covers a three-year period from 2022-23 to 2024-25. Funding is allocated annually, with the majority of the funding being available in the final year of the programme, as European Union structural funds come to an end. It is mainly a revenue-based fund, with only a limited allocation for capital projects. Some of this allocation may be used for programmes which deliver across more than one local authority area.
- 1.2 All areas of the UK are receiving an allocation of the fund via a funding formula where the funding available to Fenland District is approximately £1.3m and £8.78m across the Cambridgeshire and Peterborough Combined Authority (CPCA) over a 3-year period to 2024-25.
- 1.3 Key points to note regarding UKSPF include:
 - 1.3.1 The indicative funding is not guaranteed and is subject to approval by the Department for Levelling Up, Housing and Communities (DLUHC).
 - 1.3.2 Projects must meet the requirements of the funding programme and support the growth and prosperity of the district. They should align with one or more of the three pillars of the UKSPF which are:
 - Communities & Places (Pillar 1),
 - Local Business Investment (Pillar 2), and
 - People & Skills (Pillar 3).
 - 1.3.3 For the first 2 pillars funding is available for all 3 years. For the 3rd pillar (People & Skills), funding is only available in year 3 (2024-25) with the exception of ongoing projects that are already funded by the European Social Fund and also submitted by a voluntary or community organisation.
- 1.4 The UKSPF will support the UK government's wider commitment to level up all parts of the UK by delivering on each of the levelling up objectives:
 - Boost productivity, pay, jobs and living standards by growing the private sector, especially in those places where they are lagging.
 - Spread opportunities and improve public services, especially in those places where they are weakest.
 - Restore a sense of community, local pride and belonging, especially in those places where they have been lost.
 - Empower local leaders and communities, especially in those places lacking local agency.
- 1.5 The primary goal of the UKSPF is to build pride in place and increase life chances. The fund will improve the place people live in, and support individuals and business.

- 1.6 The CPCA have asked all constituent Councils to complete bid documents for their allocated funding amount and these are being collated by the CPCA into a UKSPF Local Investment Plan (LIP) for Cambridgeshire and Peterborough. The Cambridgeshire Public Service Board (CPSB) will approve the LIP to be submitted to DLUHC in August 2022 for their consideration and it is hoped that this will be approved for delivery from October 2022 onwards.
- 1.7 Fenland UKSPF proposals – completed bid forms can be found in Schedule 2:
- 1.7.1 Fenland - Investment in Business £949k (BUS7)
- This project will provide access to the appropriate expertise and pump-priming grant funding for Fenland businesses to drive local economic growth, productivity, R&D, energy saving and business innovation to secure access to market opportunities. The project will proactively prioritise sectors that are important drivers for economic growth in Fenland including food processing and its supply chain, distribution and precision engineering sectors, however, there will be no sectoral restrictions for the project. The project will bring together all the best practice learned delivering recent grant-based projects. It will bring skills development and business investment together in one scheme through a 'pre-qualification' process for grant awards. We will seek the involvement of the North Cambridgeshire Place Development Board in assessing grant bids. Moreover, the project also includes providing the administrative support to assist the incipient North Cambridge Place Development Board in putting local business development at the core of its work.
- 1.7.2 Amplifying Community Arts and Culture £120k (COM14)
- The local creative and culture steering group would utilise the funding to engage local creative providers to develop more opportunities for the local community to engage in creative activities. This work would include upskilling the creative community with regard to communication and advertising of creative opportunities to ensure activity remains sustainable through an increased number of attendees. Further the project will upskill the creative community with regards to grant funding - both searching for and applying successfully for such funding to further amplify what is available to Fenland's local community. A small capital funding element will be used to purchase necessary assets used for display and performance purposes; these to be available to the creative community across Fenland to facilitate community activities.
- 1.7.3 Supporting and developing Whittlesey's heritage and community offer £94k (COM15)
- Whittlesey Town Council is developing a heritage centre in Whittlesey. This project is very significant for the town and will support the local visitor economy, learning opportunities for local school children. The project will support some initial fit out for the centre in year 1, as well as the covering staffing costs as well as energy costs in years 2 and 3. This support will lead to a sustainable heritage centre that is self-sufficient after the initial start-up years and this supportive funding.
- 1.7.4 Increase in ASB issues across Wisbech £34k (COM 10)
- Working with Blackfield Creatives, Clarion Housing, Clarion Futures, local schools and the police to develop creative and engaging ways to divert young people from ASB.
- 1.7.5 Safer Wisbech - Addressing perceptions of low level crime and ASB in Wisbech £50k (COM13)

Following public consultation Wisbech has been identified as an area where residents feel 'unsafe' and therefore the Safer Wisbech group has been formed including partners such as Clarion, Cambridgeshire Police, Fenland District Council and Cambridgeshire County Council. Three projects have been identified to work with young people using detached youth work as well as art/culture activities to divert them from ASB.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The UKSPF provides an opportunity for Fenland to attract funding to support the delivery of its corporate objectives including economic growth.
- 2.2 The proposed projects have the greatest potential to deliver new, inclusive and sustainable growth opportunities for the District's residents and businesses, with alignment and impact against the overall objectives of the UKSPF.

3 CONSULTATION

- 3.1 Engagement with partners and evaluation on current projects such as Growth Works and Growth HUB Start & Grow pilot has enabled external views and policies to be incorporated into the proposed UKSPF projects.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The UKSPF is a specific funding opportunity with no comparable alternative options.

5 IMPLICATIONS

5.1 Legal Implications

- 5.1.1 Powers: If successful in the bid, FDC will enter into the funding arrangements with CPCA and grant recipients using its powers under section 1 of the Localism Act 2011.
- 5.1.2 Contracting: If successful in the bid, it will be important to ensure that the grant funding agreement with FDC does not impose any unacceptable risks or obligations on FDC and that, to the extent feasible, risks and obligations will flow down to the end grant recipients through appropriate grant funding agreements to mitigate FDC's risk.
- 5.1.3 Procurement: If successful in the bid, the awards will be made via a grant funding agreement as opposed to a contract for services, so there will be no relevant public procurement implications.
- 5.1.4 Subsidy control: The potential awards have been briefly considered for subsidy control compliance. The likely regime to be in place at the time of award will be the Subsidy Control Act 2022. There will be no subsidy to FDC as FDC will be acting in the course of its public functions and, in any event, will not receive any economic advantage from the grants. It is likely (on the basis of information currently available) that either there will be no subsidy to the end recipients or the grants will be provided by way of the minimal financial assistance allowance under the Act. However, should

the bid be successful, a further, more detailed review of the subsidy control position will be undertaken to ensure that no unlawful subsidies are awarded to end recipients.

5.2 Financial Implications

- 5.2.1 The programme is externally funded and the administration costs incurred by the CPCA and Fenland District will be included in the LIP. The amount of £52k or 4% has been identified shared between Fenland Council and CPCA. In addition, each individual project can allocate funds to go towards the costs of administration of each project.

5.3 Equality Implications

- 5.3.1 All individual projects and services have been assessed to ensure equality of access, etc.

6 SCHEDULES

Schedule 1 - Financial Summary - Fenland proposed UK SPF bids

Schedule 2 - Fenland proposed UK SPF bids

SCHEDULE 1

Financial Summary - Fenland proposed UK SPF bids

Project Ref	Project Name	SPF Pillar	Year 1 Revenue	Year 1 Capital	Year 2 Revenue	Year 2 Capital	Year 3 Revenue	Year 3 Capital	Total Project Funding
BUS 7	Investment in Business	Business	£142k		£263k		£544k		£949k
COM 10	ASB Wisbech	Community	£14k		£10k		£10k		£34k
COM 13	Safer Wisbech	Community	£17k		£17k		£16k		£50k
COM14	Amplifying Community Arts and Culture	Community	£25k	£5k	£40k	£5k	£40k	£5k	£120k
COM 15	Whittlesey Heritage Centre	Community		£10k	£39k		£45k		£94k
Profiled FDC annual funding			£213k		£374k		£660k		£1.247m
									plus 4% admin £52k
Cambs & Peterborough			£1.48m	17%	£2.6m	30%	£4.7m	53%	£8.78m

SCHEDULE 2
Fenland proposed UK SPF bids

Project Name:	Fenland - Investment in Business						
Project Value:	£949,000						
Project Intervention Codes:	E18 E19 E20 E21 E23 E28 E29 E30						
Identified Local Issue:	Fenland's specific long-known deficit in high-skilled, highly-paid employment together with helping cutting-edge businesses and business practices to form an increasing part of our local economy, with the additional advantage of keeping more highly skilled Fenland residents (particularly younger residents) in Fenland. This project will target local businesses with a desire to grow, expand into new markets, create more jobs, increase profitability and productivity, but simply do not know how to do so and/or requiring pump-priming grant funding to enable the growth to happen.						
Opportunity or Challenge the Project addresses:	The project creates a significant grant fund open to Fenland businesses to reduce barriers to entry to innovation, to apply skills (particularly but not exclusively digital skills) and automation to improve productivity, to expand local R&D, energy saving and to boost long-term skilled employment in Fenland. The biggest challenges businesses face is leadership and management skills, knowledge and funding deficits. This project will also target companies that may have started trading without having a business plan or the business acumen needed to optimise their sustainability and growth potential. Fenland has the existing businesses to take up this support and drive forward economic growth in the district.						
Links to other Funds (Levelling-up, Towns fund, Home Office, ICS prevention etc.)							
Project Description:	<p>This project will provide access to the appropriate expertise and pump-priming grant funding for Fenland businesses to drive local economic growth, productivity, R&D, energy saving and business innovation to secure access to market opportunities. The project will proactively prioritise sectors that are important drivers for economic growth in Fenland including food processing and its supply chain, distribution and precision engineering sectors, however, there will be no sectoral restrictions for the project. The project will bring together all the best practice learned delivering recent grant based projects. It will bring skills development and business investment together in one scheme through a 'pre-qualification' process for grant awards. We will seek the involvement of the North Cambridgeshire Place Development Board in assessing grant bids. Moreover, the project also includes providing the administrative support to assist the incipient North Cambridge Place Development Board in putting local business development at the core of its work. The project is designed to deliver on the Council's corporate objective of supporting economic growth and is one of the key workstreams in the Council's refreshed Economic Growth Strategy 2022-2025.</p> <p>This programme responds to the priorities of the SPF through investment in local business; it equips existing Fenland businesses with the business skills, expert advice and grant funding they need for sustainable growth and through this will safeguard jobs and increase employment opportunities across Fenland.</p> <p>The project will support existing businesses with the desire to grow, expand into new and priority markets, create more jobs, increase profitability, competitiveness and productivity, but without the skills and experience to do so. An example of the support provided by the project would be energy saving where the project will support businesses with an advice and support programme tailored to meet the needs of the business. The outcomes for each participating business would be reductions in energy use with corresponding benefits in terms of business efficiency.</p>						
Start Date:	Nov-22						
End Date:	Mar-25						
Project spending Profile by year and Rev/Cap:	2022-23	Rev £:142k Cap £:	2023-24:	Rev £:263k Cap £:	2024-25:	Rev £:544k Cap £:	
What are the outcomes you will deliver under Local Business Investment	Insert Numbers against each target area or CPCA if the project will cover the whole area						
	Fenland	Peterborough	Cambridge City	South Cambs	East Cambs	Hunts	CPCA
Jobs created	75						
Jobs safeguarded	20						
Increased footfall							
Increased visitor numbers							
Reduced vacancy rates							
Greenhouse gas reductions							
Number of new businesses created							
Improved perception of markets							
Increased business sustainability	50						
Increased number of businesses supported	50						
Increased amount of investment	£500k						
Improved perception of attractions							
Number of businesses introducing new products to	25						
Number of organisations engaged in new knowledge transfer activity	10						
Number of premises with improved digital	20						
Number of businesses adopting new to the firm technologies or processes	15						
Number of new to market products	50						
Number of R&D active businesses							
Increased number of innovation active SMEs	15						
Number of businesses adopting new or improved products or services	20						
Increased number of Innovation plans developed	15						
Number of early stage firms which increase their revenue following support	50						
Number of businesses engaged in new markets	15						
Number of businesses increasing their export capability	10						
Increased amount of low or zero carbon energy infrastructure installed							
Number of businesses with improved productivity	10						
Increased number of projects arising from funded feasibility studies	10						
Increased number of properties better protected from flooding and coastal erosion							
None of the above							

COMMUNITIES & PLACES							
Project Name:	Amplifying Community Arts and Culture						
Project Value:	£120000 from SPF, with an expected matched value from Arts Council England						
Project Intervention Codes:	E4: Enhanced support for existing cultural, historic and heritage institutions that make up the local cultural heritage offer. E6: Support for local arts, cultural, heritage and creative activities.						
Identified Local Issue:	Joining up current heritage, art and creativity opportunities to amplify what is available to the local community. This to include local events available in community settings increasing the use and sustainability of such settings. Use of anticipated Arts Council match funding to develop a meaningful three year programme across the District to impact on creative community upskilling, local community cohesion, impact social isolation and encourage people to visit Fenland to take part in events and activities.						
Opportunity or Challenge the Project addresses:	Lack of joined up approach to creativity and culture in the District and the requirement to upskill the local creative industry to work together a, promote ongoing activity better and develop effective grant applications regularly to continue and sustain this work.						
Links to other Funds (Levelling-up, Towns fund, Home Office, ICS prevention etc.)	Arts Council England, Local Community Funds.						
Project Description:	The local creative and culture steering group would utilise the funding to engage local creative providers to develop more opportunities for the local community to engage in creative activities. This work would include upskilling the creative community with regard to communication and advertising of creative opportunities to ensure activity remains sustainable through an increased number of attendees. Further the project will upskill the creative community with regards to grant funding - both searching for and applying successfully for such funding to further amplify what is available to Fenland's local community. A small capital funding element will be used to purchase necessary assets used for display and performance purposes; these to be available to the creative community across Fenland to facilitate community activities.						
Start Date:	2022						
End Date:	2025 - but expected to be sustained post SPF funding						
Project spending Profile by year and Rev/Cap:	2022-23	Rev £25,000 Cap £5,000	2023-24:	Rev £40,000 Cap £5,000	2024-25:	Rev £40,000 Cap £5,000	
What are the outcomes you will deliver under investment in Communities & Places?	Insert Numbers against each target area or CPCA if the project will cover the whole area						
	Fenland	Peterborough	Cambridge City	South Cambs	East Cambs	Hunts	CPCA
Jobs created	6						
Jobs safeguarded	6						
Increased footfall	Significant increase in visitors to take part in community events and community creative activities						
Increased visitor numbers	Significant increase in visitors to take part in community events and community creative activities						
Reduced vacancy rates							
Greenhouse gas reductions							
Improved perceived/experienced accessibility							
Improved perception of facilities/amenities	10%						
Increased number of properties better protected from flooding and coastal erosion							
Increased users of facilities / amenities	10%						
Improved perception of facility/infrastructure project							
Increased use of cycleways or paths							
Increase in Biodiversity							
Increased affordability of events/entry							
Improved perception of safety							
Reduction in neighbourhood crime							
Improved engagement numbers	20%						
Improved perception of events	25%						
Increased number of web searches for a place							
Volunteering numbers as a result of support	Significant increase - TBC						
Number of community-led arts, cultural, heritage and creative programmes as a result of support	Significant increase in sessions available across all towns and the villages						
Increased take up of energy efficiency measures							
Increased number of projects arising from funded feasibility studies							
Number of premises with improved digital connectivity							
None of the above							
What are the outputs you will deliver under Local Business Investment?							
Number of volunteering opportunities supported	Events and creative opportunities will generate new volunteers into the sector						
Number of local events or activities supported	Significant increase in local creative events						
Number of projects	Creativity sessions developed and improved						

COMMUNITIES & PLACES							
Project Name:	Supporting and developing Whittlesey's heritage and community offer						
Project Value:	£94,000						
Project Intervention Codes:	E4:Enhanced support for existing cultural, historic and heritage institutions that make up the local cultural heritage offer. E6: Support for local arts, cultural, heritage and creative activities.						
Identified Local Issue:	<p>Despite the heritage of the local area, Whittlesey lacks a space for local people to learn about their place, for school children to undertake learning activities and a facility to attract visitors to the town. Whittlesey Town Council is developing a Whittlesey Heritage Centre on the edge of the town. This facility, adjacent to a popular local nature reserve, will be a key asset for the town to celebrate the heritage of Whittlesey, will allow learning on site by local school children and will open up access to the local nature reserve to more local people, as well as attracting more volunteers to support the reserve.</p> <p>Given the significance of local archeological finds, it is also expected that the centre will attract visitors into the town, supporting the local economy.</p> <p>The Fenland area between Peterborough and Whittlesey (The Flag Fen Basin) has revealed internationally important archaeological sites. These originated with extensive excavations of prehistoric fen-edge settlements at Fengate, Peterborough and the discovery and small exploratory excavation in the 1980s of a well-preserved Bronze Age timber causeway and platform at Flag Fen that led from organised landscapes on the dryland edge at Fengate across a marshy embayment towards Whittlesey.</p> <p>Excavations in Forterra's King's Dyke quarries of Bradley Fen and Must Farm have revealed important ceremonial sites, funerary monuments and well-preserved Bronze Age settlements. This is internationally significant one of a kind.</p>						
Opportunity or Challenge the Project addresses:	Whittlesey has a unique heritage and there is no opportunity for local people to learn about their heritage, giving them a firm sense of place. There is also no opportunity for visitors to come to Whittlesey to enjoy the heritage of the town or understand the significance of recent local archaeological finds. Finally, there is an opportunity to deliver a unique learning opportunity at the heritage centre for local school children.						
Links to other Funds (Leveling-up, Towns fund, Home Offices, ICS prevention etc.)	Growing Fenland Market Towns Fund. Potentially Heritage Lottery Fund. Arts Council England support expected in year 2 and three.						
Project Description:	Whittlesey Town Council is developing a heritage centre in Whittlesey. This project is very significant for the town and will support the local visitor economy, learning opportunities for local school children. This project will support some initial fit out for the centre in year 1, as well as the covering staffing costs as well as energy costs in years 2 and 3. This support will lead to a sustainable heritage centre that is self-sufficient after the initial start up years and this supportive funding.						
Start Date:	2022						
End Date:	The heritage centre sustainable will be sustainable from 2025.						
Project spending Profile by year and Rev/Cap:	2022-23	Cap £10,000	2023-24:	Rev £39,000	2024-25:	Rev £45,000	
What are the outcomes you will deliver under investment in Communities & Places?	Insert Numbers against each target area or CPCA if the project will cover the whole area						
	Fenland	Peterborough	Cambridge City	South Cambs	East Cambs	Hunts	CPCA
Jobs created	2						
Jobs safeguarded	0						
Increased footfall	Significant increase in visitors to take part in community events and community activities, significant number of school children attending learning activities.						
Increased visitor numbers	Significant increase in visitors to visit the heritage centre both locally as well as from the sub region.						
Reduced vacancy rates							
Greenhouse gas reductions							
Improved perceived/experienced accessibility							
Improved perception of facilities/amenities	20%						
Increased number of properties better protected from flooding and coastal erosion							
Increased users of facilities / amenities	This is a new project so user numbers will ramp up from zero						
Improved perception of facility/infrastructure project	New heritage centre will improve perception of the town overall.						
Increased use of cycleways or paths	Local community will access the site mostly by foot or cycle from the centre of town						
Increase in Biodiversity	By supporting the heritage centre, the local nature reserve will also be supported. This will ensure that the reserve thrives alongside the heritage centre in the future.						
Increased affordability of events/entry							
Improved perception of safety							
Reduction in neighbourhood crime							
Improved engagement numbers	Baseline TBC						
Improved perception of events	Baseline TBC						
Increased number of web searches for a place	Expected to see a significant increase - baseline TBC						
Volunteering numbers as a result of support	Significant increase - TBC						
Number of community-led arts, cultural, heritage and creative programmes as a result of support	Significant increase in sessions available across all towns and the villages						
Increased take up of energy efficiency measures							
Increased number of projects arising from funded feasibility studies							
Number of premises with improved digital connectivity							
None of the above							
What are the outputs you will deliver under Local Business Investment?							
	Events and opportunities at the centre and the nature reserve will generate new volunteers into the sector						
Number of volunteering opportunities supported	Significant increase in local events that will take place at the new centre.						
Number of local events or activities supported	Expectation that the facility will be used by multiple groups from heritage, schools, to activity and wellness sessions.						

COMMUNITIES & PLACES							
Project Name:	ASB						
Project Value:	£34,000						
Project Intervention Codes:	E6,E9						
Identified Local Issue:	Increase in ASB issues across Wisbech						
Links to other Funds (Levelling-up, Towns fund, Home Office, ICS prevention etc.)	levelling up fund						
Project Description:	Working with Blackfield Creatives, Clarion Housing, Clarion Futures, local schools and the police to develop creative and engaging ways to divert young people from ASB.						
Start Date:	01/09/2022(flexible)						
End Date:	Aug-25						
Project spending Profile by year and Rev/Cap:	Mental Health Early Intervention	Rev £:14,000 Cap £:	2023-24:	Rev £:10,000 Cap £:	2024-25:	Rev £10,000 Cap £:	
What are the outcomes you will deliver under investment in Communities & Places?	Insert Numbers against each target area or CPCA if the project will cover the whole area						
	Fenland	Peterborough	Cambridge City	South Cambs	East Cambs	Hunts	CPCA
Jobs created	10%						
Jobs safeguarded							
Increased footfall	20%						
Increased visitor numbers	3%						
Reduced vacancy rates							
Greenhouse gas reductions							
Improved perceived/experienced accessibility	25%						
Improved perception of facilities/amenities	45%						
Increased number of properties better protected from flooding and coastal erosion							
Increased users of facilities / amenities	40%						
Improved perception of facility/infrastructure project	15%						
Increased use of cycleway or paths	25%						
Increase in Biodiversity							
Increased affordability of events/entry							
Improved perception of safety	45%						
Reduction in neighbourhood crime	10%						
Improved engagement numbers	25%						
Improved perception of events							
Increased number of web searches for a place	35%						
Volunteering numbers as a result of support	40						
Number of community-led arts, cultural, heritage and creative programmes as a result of support	5						
Increased take up of energy efficiency measures							
Increased number of projects arising from funded feasibility studies							
Number of premises with improved digital connectivity	15						
None of the above							
What are the outputs you will deliver under Communities and Place Investment?							
Number of volunteering opportunities supported	40						
Number of local events or activities supported	9						
Number of projects	5						

COMMUNITIES & PLACES							
Project Name:	Safer Wisbech - Addressing perceptions of low level crime and ASB in Wisbech						
Project Value:	£50,000						
Project Intervention Codes:	E6,E9						
Identified Local Issue:	Perception of increased level of crime and ASB in Wisbech						
Links to other Funds (Levelling-up, Towns fund, Home Office, ICS prevention etc.)	Police and Crime Commissioner Funding, Proceeds of Crime Act Funding,						
Project Description:	<p>Following public consultation Wisbech has been identified as an area where residents feel 'unsafe' and therefore the Safer Wisbech group has been formed including partners such as Clarion, Cambridgeshire Police, Fenland District Council and Cambridgeshire County Council. Three projects have been identified to work with young people using detached youth work as well as art/culture activities to divert them from ASB. Using these relationships and connections with young people the Safer Wisbech group would work with partners to work with young people over the next three years to develop innovative ways to encourage other young people away from crime and ASB. Working with the Community Safety Partnership we would fund various projects over the next three years to address this issue. Some additional things the group will be looking at over the next three years include:</p> <ul style="list-style-type: none"> Re-evaluating peoples fear of safety after three projects are complete later this year. Funding 3 more projects over the next three years to engage with our communities and divert people from ASB and crime. Engage young people in projects and involve them in design processes. Utilising opportunities for restorative justice working with the police following ASB incidents where property is damaged and allowing community partners opportunities to engage with offenders or perceived offenders of ASB and low-level crime. Built in budget to act on engagements – e.g. funding for our young people to highlight gaps in provisions and help set something up. 						
Start Date:	Sep-22						
End Date:	Aug-25						
Project spending Profile by year and Rev/Cap:	Mental Health Early Intervention	Rev £17,000 Cap £:	2023-24:	Rev £17,000 Cap £:	2024-25:	Rev £16,000 Cap £:	
What are the outcomes you will deliver under investment in Communities & Places?	Insert Numbers against each target area or CPCA if the project will cover the whole area						
	Fenland	Peterborough	Cambridge City	South Cambs	East Cambs	Hunts	CPCA
Jobs created							
Jobs safeguarded							
Increased footfall							
Increased visitor numbers							
Reduced vacancy rates							
Greenhouse gas reductions							
Improved perceived/experienced accessibility							
Improved perception of facilities/amenities							
Increased number of properties better protected from flooding and coastal erosion							
Increased users of facilities / amenities							
Improved perception of facility/infrastructure project							
Increased use of cycleway or paths							
Increase in Biodiversity							
Increased affordability of events/entry							
Improved perception of safety	25%						
Reduction in neighbourhood crime	20%						
Improved engagement numbers	25%						
Improved perception of events							
Increased number of web searches for a place							
Volunteering numbers as a result of support	30						
Number of community-led arts, cultural, heritage and creative programmes as a result of support	9						
Increased take up of energy efficiency measures							
Increased number of projects arising from funded feasibility studies							
Number of premises with improved digital connectivity							
None of the above							

Proposed amendment to Cabinet Report tabled on 11 July 2022

Report title: UK Shared Prosperity Fund

Amendments proposed by: Cllr Chris Boden

Background Information

The Cambridgeshire & Peterborough Combined Authority (CPCA) is collating a Local Investment Plan to present to the Department for Levelling Up, Housing and Communities (DLUHC) regarding local allocation of the UK Shared Prosperity Fund (SPF).

All Local Authority areas have been allocated a sum of SPF funding. Fenland's allocation is approximately £1.3m.

The CPCA wish to deliver a number of area wide initiatives focussing on skills development and have asked constituent partners to contribute to these projects through the provision of a percentage of their allocated funding. It is proposed that FDC contribute 10.5% of their allocated funding. Details of these projects can be found in appendix 1 attached.

Initially, Fenland District Council did not agree to contribute to the area wide initiatives. Information regarding the area wide schemes was received late into the allocation process and it was not felt that the area wide schemes would be of sufficient benefit to Fenland residents and businesses to warrant a reduction in funding to the projects already submitted.

A CPCA Leaders' Strategy Meeting was subsequently held on 6 July 2022, following a request by the Leader of Fenland District to consider a needs-based allocation of funding across the Combined Authority area for the proposed area wide skills initiative. Support for this approach was agreed by the CPCA Mayor and political leaders who attended the meeting. Specifically, the following points were approved:

- The support for a needs-based approach is clearly captured within the Leaders' Strategy Meeting minutes
- The needs-based approach is made clear within the SPF report presented to the CPCA Board for sign off
- The needs-based approach is clearly articulated within the Local Investment Plan to be submitted to Government
- The CPCA commence a dialogue with FDC officers to a needs-based approach to the area-wide skills projects and how this translates into practical action that demonstrates the extent to which FDC's 10.5% funding commitment acts as leverage for additional SPF resource allocation to Fenland.

Proposed Alterations

Paragraph 1.3 should be amended so the proposed submission to the CPCA to deliver five projects is £1,116,065. This is calculated as:

Total amount of funding allocated for Fenland projects	£1,299,000
Less 4% admin fee	£52,000 (rounded up)
Amount available for project spend	£1,247,000
Less 10.5% of £1,124,700 allocation for project spend (to be retained by CPCA for area wide projects)	£130,935

Total amount available for project spend	£1,116,065
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Paragraph 1.7.1 should be amended to read 'Fenland – Investment in Business £818,065 (BUS7)'. This is the original amount of £949k detailed in the report reduced by £130,935. Some elements of the 'Fenland – Investment in Business' project can potentially be delivered by the area wide skills initiative. Therefore, the funding allocation needed for the area wide project is being taken from the original budget for this project.

A revised Schedule 1 (attached) reflects the changes in funding allocation as set out above (summary of bids).

A revised Schedule 2 (attached) reflects the changes in funding allocation as set out above (BUS7).

Recommendations

Cabinet is requested to consider and recommend the five proposed Fenland UK Shared Prosperity Fund projects to the CPCA for inclusion in the CPCA Local Investment Plan to be submitted to the Department for Levelling Up, Housing and Communities. All proposals remain as detailed in the original report with the exception of BUS7 for which funding is reduced by £130,935

An additional proposal is that the £130,935 taken from project BUS7 is used as FDC's contribution of 10.5% of allocated funding to deliver the CPCA area wide skills projects detailed in appendix 1 to this document.

Appendix 1

CPCA Area Wide UKSPF proposals

All Age Careers Service across Cambridgeshire & Peterborough

Working within the current funding boundaries of the NCS and the CEC, the service would be expanded to support careers related learning in primary school settings. Primary provision would mirror the employer engagement element of the CEC contract allowing for sustainable relationships to be developed.

The project will use new technology to align the service offering and allow for individuals to navigate career transitions. Digital tools and data will be a key focus to the service and will act as the digital thread to tie the provision together. Employers will be front and centre of the service. Both CEC and NCS have resources that are suitable for multiple audiences, yet rarely capitalised on outside of their target market. For better value to the public placing these resources in a central location will allow multiple service users to access and benefit from them.

Supported Internships across Cambridgeshire & Peterborough

Working closely with key stakeholders this project will identify those individuals most in need. There will be three main activities:

- Personal Skills Analysis to guide individuals in understanding and identifying opportunities for re-skilling, up-skilling and re-training. This will involve working directly with individuals to identify opportunities to transition into or back into work following an extended period of economic inactivity; into new roles with their existing skills, or to identify training that will support them in transitioning to a new role.
- Delivering real-world experiences of work through funded internships. Funding will be provided to employers to provide new work opportunities. To support these internships activities will include:
 - workshops and webinars on a 1-to-many basis to highlight the benefits of, and ways to implement,
 - internships;
 - 1-to-1 meetings for companies to explore the opportunities for and benefits of internships;
 - securing and matching 3 month paid internships;
 - 'Learning Mentor Training' for the host organisation.
- Training Needs Analysis to identify re-skilling, up-skilling and inclusive recruitment practices within a business. This will include:
 - working with businesses to identify skills development opportunities and inclusive recruitment practices to meet skills shortages,
 - working with businesses looking to develop or expand into key areas such as Net-zero or Digital by training their current staff.

Holistic Online skills support incorporating GWwS and RoL (Integrating Region of Learning Platform)

Continuing Growth Works with Skills, maintaining the Digital Talent Platform with access to resources, diagnostic tools, vacancy listing and candidate matching will maintain support for employers large and small across all six districts.

Integrating Regions of Learning will provide an on-ramp for people with low skill to access credentials that demonstrate their capability - providing them with opportunity to transition into further or higher education or into work or self employment.

Regions of Learning is currently aimed at young people, but would be expanded to cover all people who are not yet in work - whether they be young, returning to work or simply yet to engage in economic activity. The Regions of Learning platform will continue to develop online credentials via Open Badges, and host opportunities, such as internships and early careers vacancies, on the Talent View platform.

The Skills Extractor will be used to create common language between employer, education provider and individual to link into work around careers ladders and, potentially, an all age careers service.

Activity to support NEETs will be focussed on providing destinations for those already served by existing providers in CPCA, and will seek to integrate additional providers to offer progression into technical and vocational learning routes, including Traineeships, T-Levels and Apprenticeships - as well as independent training providers and others providing non-accredited short courses that support progression into, and within, the workplace.

REVISED SCHEDULE 1 - SUMMARY OF FENLAND SPF BIDS

Ref	Name		Year 1 Revenue	Year 1 Capital	Year 2 Revenue	Year 2 Capital	Year 3 Revenue	Year 3 Capital	Total Project Funding	
BUS 7	Investment in Business	Business	£ 142,000		£ 263,000		£ 413,065		£ 818,065	Admin max 15%
COM 10	ASB Wisbech	Community	£ 14,000		£ 10,000		£ 10,000		£ 34,000	
COM 13	Safer Wisbech	Community	£ 17,000		£ 17,000		£ 16,000		£ 50,000	
COM14	Amplifying Community Arts and Culture Whittlesey Heritage	Community	£ 25,000	£ 5,000	£ 40,000	£ 5,000	£ 40,000	£ 5,000	£ 120,000	
COM 15	Centre	Community		£ 10,000	£ 39,000		£ 45,000		£ 94,000	
Profiled FDC annual funding			£ 213,000		£ 374,000		£ 660,000		£ 1,247,000	4% admin £52k
Cambs & Peterborough			£ 1,480,000	17%	£ 2,600,000	30%	£ 4,700,000	53%		

Project Name:	<i>Fenland - Investment in Business</i>
Project Value:	<i>£818,065</i>
Project Intervention Codes:	<i>E18 E19 E20 E21 E23 E28 E29 E30</i>
Identified Local Issue:	<i>Fenland's specific long-known deficit in high-skilled, highly-paid employment together with helping cutting-edge businesses and business practices to form an increasing part of our local economy, with the additional advantage of keeping more highly skilled Fenland residents (particularly younger residents) in Fenland. This project will target local businesses with a desire to grow, expand into new markets, create more jobs, increase profitability and productivity, but simply do not know how to do so and/or requiring pump-priming grant funding to enable the growth to happen.</i>
Opportunity or Challenge the Project addresses:	<i>The project creates a significant grant fund open to Fenland businesses to reduce barriers to entry to innovation, to apply skills (particularly but not exclusively digital skills) and automation to improve productivity, to expand local R&D, energy saving and to boost long-term skilled employment in Fenland. The biggest challenges businesses face is leadership and management skills, knowledge and funding deficits. This project will also target companies that may have started trading without having a business plan or the business acumen needed to optimise their sustainability and growth potential. Fenland has the existing businesses to take up this support and drive forward economic growth in the district.</i>
Links to other Funds (Levelling-up, Towns fund, Home Office, ICS prevention etc.)	


Project Description:	<p><i>This project will provide access to the appropriate expertise and pump-priming grant funding for Fenland businesses to drive local economic growth, productivity, R&D, energy saving and business innovation to secure access to market opportunities. The project will proactively prioritise sectors that are important drivers for economic growth in Fenland including food processing and its supply chain, distribution and precision engineering sectors, however, there will be no sectoral restrictions for the project. The project will bring together all the best practice learned delivering recent grant based projects. It will bring skills development and business investment together in one scheme through a 'pre-qualification' process for grant awards. We will seek the involvement of the North Cambridgeshire Place Development Board in assessing grant bids. Moreover, the project also includes providing the administrative support to assist the incipient North Cambridge Place Development Board in putting local business development at the core of its work. The project is designed to deliver on the Council's corporate objective of supporting economic growth and is one of the key workstreams in the Council's refreshed Economic Growth Strategy 2022-2025.</i></p> <p><i>This programme responds to the priorities of the SPF through investment in local business; it equips existing Fenland businesses with the business skills, expert advice and grant funding they need for sustainable growth and through this will safeguard jobs and increase employment opportunities across Fenland.</i></p> <p><i>The project will support existing businesses with the desire to grow, expand into new and priority markets, create more jobs, increase profitability, competitiveness and productivity, but without the skills and experience to do so. An example of the support provided by the project would be energy saving where the project will support businesses with an advice and support programme tailored to meet the needs of the business. The outcomes for each participating business would be reductions in energy use with corresponding benefits in terms of business efficiency, resilience, viability and growth alongside carbon savings.</i></p>					
Start Date:	Nov-22					
End Date:	Mar-25					
Project spending Profile by year and Rev/Cap:	2022-23	Rev £:142000 Cap £:	2023-24:	Rev £:263000 Cap £:	2024-25:	Rev £:413,065 Cap £:

What are the outcomes you will deliver under Local Business Investment	Insert Numbers against each target area or CPCA if the project will cover the whole area						
	Fenland	Peterborough	Cambridge City	South Cambs	East Cambs	Hunts	CPCA
Jobs created	68						
Jobs safeguarded	18						
Increased footfall							
Increased visitor numbers							

Reduced vacancy rates							
Greenhouse gas reductions							
Number of new businesses created							
Improved perception of markets							
Increased business sustainability	45						
Increased number of businesses supported	45						
Increased amount of investment	£450k						
Improved perception of attractions							
Number of businesses introducing new products to	21						
Number of organisations engaged in new knowledge transfer activity	8						
Number of premises with improved digital	18						
Number of businesses adopting new to the firm technologies or processes	12						
Number of new to market products	45						
Number of R&D active businesses							
Increased number of innovation active SMEs	10						
Number of businesses adopting new or improved products or services	18						
Increased number of Innovation plans developed	10						
Number of early stage firms which increase their revenue following support	45						
Number of businesses engaged in new markets	10						
Number of businesses increasing their export capability	9						
Increased amount of low or zero carbon energy infrastructure installed							
Number of businesses with improved productivity	9						
Increased number of projects arising from funded feasibility studies	9						
Increased number of properties better protected from flooding and coastal erosion							
None of the above							

What are the outputs you will deliver under Local Business Investment?

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Agenda Item No:	10	
Committee:	Cabinet	
Date:	11th July 2022	
Report Title:	Housing Enforcement Policy	

Cover sheet:

1 Purpose / Summary

To consider revisions to the Housing Enforcement Policy that has been in operation since July 2018

2 Key issues

- New Housing Enforcement Policy approved at Full Council in July 2018
- Policy was an action from a member led working group which looked into issues affecting the condition and management of the private rented sector
- The Council also had the opportunity to utilise new powers available through Civil Penalty Notices as a way of sustaining the resource required to deal with the issues affecting the condition and management of the Private Rented Sector.
- To date 4 landlord appeals have been heard by a tribunal judge relating to proposed Civil Penalty Notices, with all being upheld in the Council's favour.
- Nevertheless, there has been some learning from Court cases that has led to the need to have a legal review of the policy to give greater clarity to all involved in the process.
- Therefore a proposed revised policy is attached at Appendix A with track changes to show amendments based on legal feedback and to update new regulations that have been brought in nationally. Appendix B is a clean version of the proposed policy.
- Consultation took place on the policy with stakeholders between 10th May and 8th June 2022
- The policy amendments were also considered by a meeting of Overview and Scrutiny Committee on the 9th May 2022.
- Performance has been good with interventions in 903 properties since the original policy came into force
- The Council has secured income from fines that is used to sustain additional officer resource that is needed to tackle condition and management issues in rented homes at no additional cost to the taxpayer.
- All income from fines must be utilised in tackling housing issues within the district.
- The Council is utilising new fine recovery powers available through the Civil penalty Notice to recover debts outstanding

- Alongside the stick of enforcement, the Council continues to build engagement with landlords to support them in reducing the risk of them falling foul of the requirements relating to renting out a home to a tenant.

3 Recommendations

- It is recommended that Cabinet:
 - Adopt the Council Housing Enforcement Policy set out in Appendix A

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Cllr Sam Hoy
Report Originator(s)	Dan Horn - Acting Assistant Director Jo Evans - Private Sector Housing Officer
Contact Officer(s)	As above
Background Paper(s)	Agenda Item No.10 - Housing Enforcement Policy.pdf (fenland.gov.uk) att6997.pdf (fenland.gov.uk) Agenda Item No.11 - Corporate Enforcement Policy.pdf (fenland.gov.uk)

4 Background / introduction

- 4.1 A new Housing Enforcement Policy was approved by Full Council in July 2018 [Agenda Item No.10 - Housing Enforcement Policy.pdf \(fenland.gov.uk\)](#) as an action from the findings of a member led working group which looked into issues affecting the condition and management of the private rented sector [att6997.pdf \(fenland.gov.uk\)](#) (March 2018 Cabinet).
- 4.2 The policy is complemented by the Council's Corporate Enforcement Policy [Agenda Item No.11 - Corporate Enforcement Policy.pdf \(fenland.gov.uk\)](#) which was approved in July 2018 at Full Council.
- 4.3 The policy direction given by the member review group and the Portfolio Holder for Housing was that we should not be seen to be penalising all landlords through a "Selective Licensing Scheme" but instead ensure enforcement action is taken against Landlords' who are not meeting the legal regulations being a Landlord.
- 4.4 The Council also had the opportunity to utilise new powers available through Civil Penalty Notices as a way of sustaining the resource required to deal with the issues affecting the condition and management of the Private Rented Sector. Between April 2018 and April 2020, the Council received external funding (Controlling Migration Funding) from central government as they recognised the issues and concerns in how many houses were being managed by landlords not fulfilling their responsibilities. This led to concerns in the wider community from residents living near properties not managed correctly. The concerns were multi agency including the Police, Benefit Fraud, Housing, Trading Standards, Border Forces, and at times the National Crime Agency. Operation Pheasant partnership has been formed for over 10 years in response to these issues. The use of Civil Penalty Notices was a way of sustaining the resource needed to proactively tackle issues at no additional cost to the Fenland taxpayer. The new approach utilising CPN's commenced in September 2019.

5 Considerations

- 5.1 A significant element of their work has involved utilising the Civil Penalty Notice (CPN) enforcement powers:
- 5.2 If a landlord or agent does not comply with an improvement notice or has a property that should be licensed but is not (House in Multiple Occupation Mandatory License), then a Notice of Intent CPN (NOICPN) is served outlining the reasons for the NOICPN and the fine amount based on a matrix set out in our approved housing enforcement policy. The fine maximum £30,000.
- 5.3 The recipient has the right to a review by the Council which is undertaken by the head of service.
- 5.4 The review can either amend, uphold or withdraw the CPN.
- 5.5 If the final CPN is served following the review, then the recipient can still appeal to the Residential Property Tribunal (RPT)
- 5.6 The RPT ask the Council and the recipient to narrow the issues further prior to the hearing.
- 5.7 The hearing is then held, and a decision made.
- 5.8 To date 4 landlord appeals have been heard by a tribunal judge, with all being upheld in the Council's favour

- 5.9 This is reassuring in that our processes and systems have stood up to scrutiny by a judge.
- 5.10 Nevertheless, there has been some learning from Court cases that has led to the need to have a legal review of the policy to give greater clarity to all involved in the process.
- 5.11 The proposed revised policy is attached at Appendix A with track changes to show the proposed amendments.
- 5.12 In summary the changes deliver:
- Improved layout and wording in some sections
 - Additional new regulations that the Council is now enforcing on, although the policy does reflect the fact that regulations change and the Council will implement and enforce changes as required once a policy has been approved.
 - A new approach to the fine matrix to reflect legal feedback but remaining within the fine maximum of £30,000
 - The need to be more explicit on the checks and balances offered for a landlord or agent on the ability to pay to be considered as part of the review process by the Council.

6 Consultation on proposed amendments to policy

- 6.1 The Council consulted on the policy with stakeholders between 10th May to 8th June 2022
- 6.2 An email was sent to those landlords and agents on the Private Sector Housing communications distribution list
- 6.3 Officers have been promoting the policy review in their daily engagement with landlords, agents and tenants
- 6.4 There was a media release along with promotion through our social media platforms.
- 6.5 The policy was promoted for feedback at the Spring 2022 landlord forum.
- 6.6 2 responses to the survey were received. Please see table below.

Comment	Response
I would like to mention the normalisation of pets in private rented housing. I myself am in need of an emotional support dog but cannot get one to help my mental health because of pets not being allowed in my private rented home. I would be willing to pay an extra pet deposit to protect my landlord should my pet cause any damage to the property even though I would take all measures to ensure that doesn't happen anyway! Even in the case of that happening I would always make sure I fixed whatever damage was made anyway. Children can cause risk of just as much mess/damage as pets and even more so, so why are children acceptable but pets not? I am a good, clean tenant and take good care of the	<p>Certain terms and conditions of tenancies are implied in law; i.e the requirement for a tenant to pay rent, the landlord to be responsible for certain repairs and the requirement for both parties to serve specific notice periods etc.</p> <p>Any other conditions (known as express terms) have to be 'reasonable'. It is deemed reasonable (and there is no caselaw that has set a precedent otherwise) for landlords to stipulate a 'no pet' or 'no smoking' policy, due to the potential damage that could be caused.</p> <p>The only situation where it would be reasonable for a landlord to specify a 'no children' policy, would be in a HMO, as there could be safeguarding issues due to the differing households sharing communal facilities.</p>

property I reside in and would appreciate some form of legislation/law that makes it easier for the ability to own pets in private rented homes.	
<p>I was, until recently, a private landlord with 10 properties in the south of England. As such, I thought I might have something useful to say in response to your consultation exercise.</p> <p>However, you don't make it very easy!! Yes, you give a link to the existing 28 page policy, as well as a link to the proposed draft, at 75 pages!! When my bank writes to me to advise me of a change to the Ts & Cs, they provide a summary of the changes, as well as the new text. That would have been helpful here and, without that sort of help, I can't justify spending the time to tease through the details, in order to work out what is changing, in order to work out what I make of the change. Life's too short.</p> <p>By the way, there is an error on page 2, "Non-Statutory Inspections", being "Error! Bookmark not defined."</p> <p>I can at least do that for you</p>	Comments relate to the layout of the consultation; which is noted and will be considered as part of future consultations

7 Overview & Scrutiny feedback

- 7.1 O&S scrutinised the proposed policy amendments at it's meeting on the 9th May 2022. The policy was positively received. The draft minutes with the discussion can be viewed here

[Agenda for Overview and Scrutiny Panel on Monday, 9th May, 2022, 1.30 pm - Fenland District Council](#)

8 Performance considerations

- 8.1 Between April 2018 and April 2022 903 properties have received interventions to make the homes either safer or better managed.

9 Finance considerations

- 9.1 From working within the new guidelines in accordance with the Housing Enforcement Policy the following income has been received / charged and not yet recovered:

Area of focus	Total Income received September 2019 - March 31st 2022 (£)	Total charged from September 2019 - March 31st 2022 (£)
Prosecution	0	0
Improvement Notice	11,640	15,120
Prohibition	160	1,440
CPN (Final)	70,553.50	279,938

Other	144	144
HMO applications	40,500	40,500
Total	122,997.50	323,542

- 9.2 Alongside this, the following is in the process of determination as part of a NOICPN “. These cases are currently going through due process which involves the landlord requesting a review by the Council. Once the review is completed a final CPN is served (if not withdrawn as a result of the review information provided). The landlord subsequently can appeal to the Residential Property Tribunal:

Area of Focus	Fine total...prior to review outcome as at 31st March 2022 (£)
CPN notice of intent	2,250

- 9.3 Guidance and regulations linked to the legislation for housing enforcement specifies that income received in response to non-compliance must be ringfenced to support ongoing work in relation to housing regulation.
- 9.4 There is a significant outstanding debt that it is under various stages of recovery. A significant chunk will be recovered through new debt recovery powers available through CPN guidance to recover the debt. There is a focus on recovery of costs and close work is underway to utilise relevant powers in the debt recovery policy and the additional support that can be given through the Civil Penalty Notice Guidance which states "Where the landlord or property agent fails to pay a civil penalty, the local housing authority should refer the case to the county court for an order of that court. If necessary, the local housing authority can transfer the debt into a High Court Writ (at the cost of £71 per case) which affords the debt to be collected by High Court Enforcement Sheriffs to enforce the order and recover the debt with additional costs payable by the creditor."
- 9.5 This is now already bearing fruit with the threat of these powers seeing landlords who had refused to pay, paying outstanding monies prior to a visit from the bailiffs.
- 9.6 There remain many issues that require regulation and enforcement and Operation Pheasant is still supported and prioritised by the Police. It is felt that the impact of the threat of more enforcement is having a ripple effect to drive improved management and conditions of this growing housing sector. However, there is no sign of a reduction in issues being found that require an enforcement approach.

10 Legal considerations

- 10.1 The policy amendment changes set out as track changes in appendix A have predominantly been driven following legal considerations that have taken place through the prevention, intervention and enforcement that has taken place since July 2018.

11 Landlord and Agent Engagement

- 11.1 Alongside the enforcement policy approach the Council continues to offer engagement opportunities to landlords.
- 11.2 At Landlord and Agent forum events the following support and agenda items have been delivered:

- Fire Safety Measures
- Planning advice

- Refuse Collection
- Legal Advice re Possession Proceedings
- HMO Application Process
- Legislative updated from RLA Representative
- DWP Advice (Universal Credit Implications)

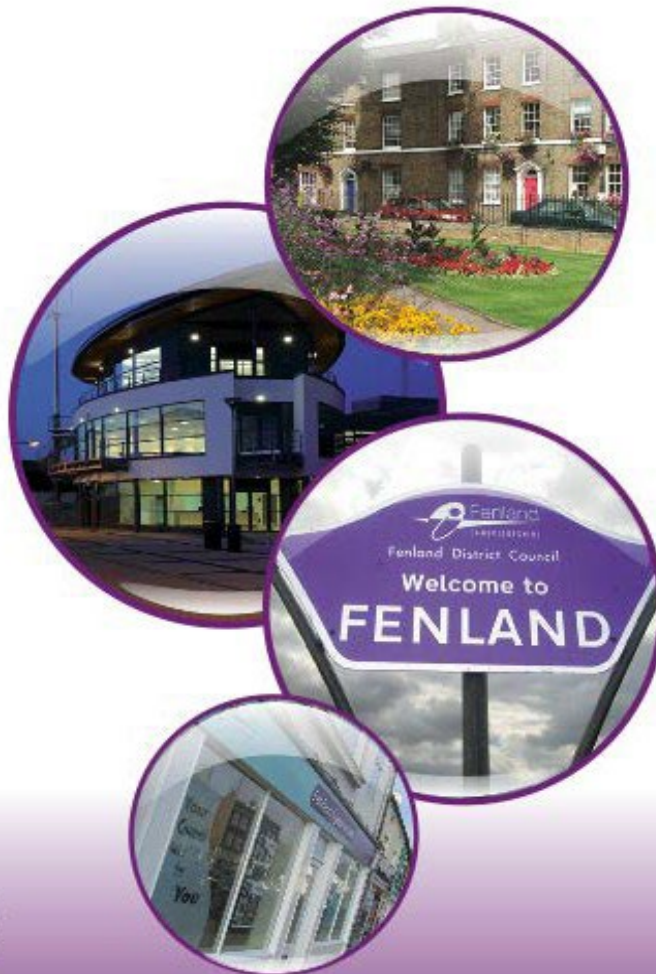
11.3 Landlord and Agent engagement will continue to be an important strand in our approach to raise standards in the sector and offer support to our Landlords and Agents.

12 Effect on corporate objectives

12.1 Support vulnerable members of our community to:

- Use our housing powers to prevent homelessness, reduce rough sleeping, meet housing needs, improve housing conditions and keep homes safe and accessible.

Housing Enforcement Policy



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Introduction

The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector within the district of Fenland.

The policy is based around the Regulators' Code which this Authority has adopted. The general principles of good enforcement, which are set out in the council's Corporate Enforcement Policy including Prevention Intervention and Enforcement, are to be adhered to by the council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.

All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider ~~there are breaches of housing and letting legislation, housing conditions are unacceptable. The options are mostly contained in the Housing Act 1985, the Housing Grants, Construction and Regeneration Act 1996 and the Housing Act 2004. These interventions include:~~

- ~~enforcement activity (e.g. serving notices on owners to defer action, repair, demolish or prohibit the use of dwellings);~~
- ~~slum clearance;~~
- ~~compulsory purchase order (e.g. for empty homes); renewal areas;~~
- ~~works in default;~~
- ~~disabled facilities grants; and private sector renewal grants.~~

Enforcement of housing standards is an integral part of meeting the council's statutory duties in relation to Private Sector Housing. ~~This policy applies to all tenures; housing associations (registered providers), private sector landlords, letting agents and owner occupiers; and sets out to undertake its housing enforcement role in a consistent, practical, open and transparent manner; taking into account the Code of Practice for Crown Prosecutors. This policy applies to Housing Associations (Registered Providers) and private sector landlords.~~

~~This policy sets out the majority of the current regulatory legislation that the Council has at its disposal to use. It is not an exhaustive list and the council reserves the right to implement the enforcement of other legislation, including and any new or revised legislation or new/revised regulations, prior to any policy updates.~~

~~This policy sets out to ensure the Council undertakes its housing enforcement role in a consistent, practical, open and transparent manner. When an officer is dealing with a property which is below acceptable standards, this housing enforcement policy will be followed.~~

~~The policy takes into account the Code of Practice for Crown Prosecutors.~~

~~This policy sets out the current regulatory legislation that the Council has at its disposal to use. The council reserves the right to implement the enforcement of new legislation or new /revised regulations prior to any policy updates. It may be other legislation or regulation will come into operation before this policy is updated and the Council reserves the right to do so if the legislation allows.~~

The fees and charges laid out in the policy will be reviewed on an annual basis as part of the council's fees and charges setting Council process.

Expectations of Stakeholders ~~What to expect from the Private Sector Housing Team~~

Landlords

~~The council expects landlords to be aware of their responsibilities and to keep updated with any new or amended legislation/regulations. Where a landlord receives a request for service from a tenant the council expects the landlord to respond in a timely manner and resolve the issues at the earliest opportunity and independent of the council's intervention.~~

~~Where a landlord fails to respond, or address their tenants concerns, the council may intervene to safeguard the tenant's health and safety, and ensure the landlord complies with their legal duties.~~

~~Where the chosen course of action is informal, council officers will advise landlords on how to comply with legislation. The council may ask landlords to respond with their proposal within a reasonable timescale and consideration will be given to any schedule of works.~~

~~However, where there is evidence that a landlord has failed to respond to an informal request from either the tenant, or the council officer, for service or does not progress as per the agreed schedule of works, the council will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution, either via the criminal or civil route.~~

~~There may be times where the council identifies properties that require immediate intervention to protect the health and safety of residents, visitors or the general public. The council will notify the relevant parties of such intervention within the stipulated legal timeline. We will advise you of the legislation and how to comply with it. Where remedial works are carried out in default, a legal charge will be registered on the title deeds and attempts to recover the debt(s) will be made via the civil route. Once the debt is cleared the registered charge will be removed.~~

~~We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply within a reasonable timescale. Where a landlord demonstrates there is a planned improvement programme Officers will give consideration to this.~~

~~If we are satisfied with your proposal we will work with you to comply within agreed timescales. If we are not satisfied with your proposal or how the work is progressing we will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution; either via the criminal or civil route.~~

~~In making the decision to prosecute we will have regard to how serious the offence is, the benefit of prosecution and whether some other action would be better.~~

~~A charge will be made for the service of a notice.~~

Tenants

~~The council expects tenants to report any repair issues to their landlord, in writing, before requesting council intervention, allowing 14 days for a response. 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. Wherever possible this communication should be done in writing, allowing 14 days for the landlord to respond, as the documentary evidence will be required by the housing enforcement officers at a later date.

~~We will expect you to advise your landlord, in writing, of the issues within your property before contacting us.~~

In certain situations, tenants will not be required to write to their landlord first, e.g.:

- 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 illegal eviction/poor management practice, or
- where the tenant could not, for some other reason, be expected to contact their landlord/managing agent, e.g., a hospital leaver whose property is in poor condition and cannot be discharged

Where no, or an inadequate response from the landlord/agent has been received, it may be deemed appropriate for the council to intervene. The council will advise tenants as to what action it can take and within what timescales.

~~We will advise you as to what action we can take and the expected timescales.~~

The council expects tenants to cooperate with the landlord to facilitate the works to be carried out and to advise the council of any remedial work action undertaken by the landlord.

~~We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord.~~

The role of the Private Sector Housing team is to ensure house conditions are safe and healthy and **does not** serve to increase applicants' priority on the housing register.

~~Engagement with the Private Sector Housing team is to ensure house condition improvement only and is not intended to increase priority on the housing register.~~

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Owners

Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

~~The council expects owners to maintain their own properties so that they are safe and healthy.~~

~~We will expect owners to maintain the properties they live in.~~

Where it is deemed there is a serious risk to a person's health and/or the property is causing a statutory nuisance to neighbouring properties the council will consider formal enforcement action, requiring the responsible person to take the necessary action.

~~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 it is considered enforcement is not appropriate, or there are safeguarding concerns, the council will consider the most appropriate alternative intervention(s).~~

~~Where there are safeguarding concerns, or where it is considered enforcement is not appropriate, the council will consider alternative interventions.~~

Letting Agents

~~The council expects agents to be aware of their responsibilities and to keep updated with any new or amended legislation/regulations. Where an agent is managing the maintenance contract on behalf of the landlord and receives a request for service from a tenant, the council expects the agent to respond in a timely manner and resolve the issues at the earliest opportunity, independent of the council's intervention.~~

~~Where the agent has managing responsibilities and/or has a legal duty to comply with legislation, the council will take appropriate enforcement action in cases of non-compliance and may serve notices on both the landlord and agent where appropriate.~~

~~In cases where there is non-compliance, the council will also consider taking prosecution action against the Letting Agent.~~

Owners of Empty Homes

~~The council will work with owners of empty homes to bring their properties back into use. We will work with owners of empty homes to bring empty homes back into use. Incentives may be available to owners to make their empty homes available to the council in discharging their statutory Homelessness duties.~~

~~Where properties remain empty for a period of 2 years or more and the owner fails to cooperate with the council, enforcement action, such as (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale,) may will be considered; if an owner does not co-operate, particularly where and the empty property is having a detrimental has an impact on the neighbourhood/community.~~

Housing Act 2004

~~The Housing Act 2004 is the principal Act covering statutory action delegated to housing authorities in ensuring tenants are afforded safe, warm and healthy homes against landlords breaching their duties. The Act makes provisions about housing conditions, to regulate houses in multiple occupation (HMOs) and certain other residential accommodation.~~

<https://www.legislation.gov.uk/ukpga/2004/34/contents>

Legislation

Housing Health & Safety Rating System (HHSRS)

The Housing Act 2004, ~~("the Act")~~, together with Regulations made under it, prescribes the Housing Health and Safety Rating System (HHSRS) as the means by which Local ~~Housing Officers Authorities~~ assess housing conditions ~~which pose a risk to the health and safety of occupants and visitors and determine the appropriate enforcement action and decide on action to deal with poor housing, and evaluate~~

~~HHSRS is the evaluation of the potential risks to health and safety from any deficiencies identified in dwellings.~~

~~It is a risk assessment system of the likely effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity.~~

The scores for each hazard are ranked in bands. Hazards falling into bands A to C are more serious and are classed as Category 1. Less serious hazards fall into bands D to J and are classed as Category 2. ~~The council has a duty to remove Category 1 hazard and a power to remove Category 2 hazards. The council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.~~

~~A 'Category 1 hazard' arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A 'Category 2 hazard' arises when a hazard reaches a score of 999 or less under the Housing Health and Safety Rating System.~~

The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the council will not only take account of the score, but also whether the council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers ~~and~~ visitors and the presence of other significant hazards in the property.

~~If a Category 1 hazard is identified, the council has a duty to require the responsible person owner to remedy the defect. The council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be determined on a case-by-case basis. Where an improvement notice is served, the council will require sufficient works to abate the hazard.~~

~~The Housing and Planning Act 2016 confers additional enforcement powers as described in this Policy.~~

Statutory Action

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~~The Housing Act 2004 is the principal Act covering statutory action. If a Category 1 hazard is identified, the council has a duty to require the owner to remedy the defect. The council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be decided on a case-by-case basis. Where an improvement notice is served, the council will require sufficient works to abate the hazard for five years.~~

~~It is for the council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors of the case, to published guidance from central government & professional organisations and to the views of owners and tenants, before formal action is taken.~~

~~There are a number of different notices available to the council which requires a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards.~~

Hazard Awareness Notices

Hazard Awareness Notice relating to Category 1 Hazards; section 28

Hazard Awareness Notice relating to Category 2 Hazards; section 29

~~The above notices are deemed appropriate where a hazard or hazards have been identified but are not necessarily serious enough to take more formal action. These notices serve to draw the responsible person's attention to the need for remedial action. These notices should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure. This is used where a hazard has been identified but it is not necessarily serious enough to take more formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.~~

Improvement Notices

Improvement Notices relating to Category 1 Hazards; section 11

Improvement Notices relating to Category 2 Hazards; section 12

~~Improvement notices will serve as the most appropriate form of enforcement action where Category 1 and/or Category 2 hazards exist.~~

~~An improvement notice will provide the most appropriate action for most Category 1 hazards where reasonable remedial works can be carried out to reduce the hazard sufficiently.~~

Prohibition Orders

Prohibition Orders relating to Category 1 Hazards; section 20

Prohibition Orders relating to Category 2 Hazards; section 21

A prohibition order may be appropriate when conditions present a risk, but remedial action is unreasonable or impractical e.g. where there is inadequate natural light to a room or no protected means of escape in fire. The order may prohibit the use of part or all of a premise for some or all purposes. It may also be used to limit the number of persons occupying the dwelling or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

Suspended Notices & Suspended Prohibition Orders

Suspension of Improvement Notice; section 14

Suspension of Prohibition Order; section 23

These may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes may be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at least every 12 months. The advantage of suspending a notice is that there is a record of the Local Housing Authority's involvement and the situation must then be reviewed. It is also recorded as a land charge.

Emergency Remedial Action, Section 40

When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act. Emergency Remedial Action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The action will be whatever remedial action the council considers necessary to remove an imminent risk of serious harm.

This is likely where the council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. If this action is taken, a notice will be served within 7 days of taking the Emergency Remedial Action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action was taken, and the rights of appeal.

Emergency Prohibition Orders, Section 43

When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The order specifies prohibition(s) on the use

of part or all of the premises with immediate effect.

This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason. Where this action is taken the council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

Demolition Order, Section 46 (Housing Act 2004), Part 9 (Housing Act 1985)

When the council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a Management Order is not in force, or in the case of a building containing one or more flats where the council is satisfied that a Category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State. At the time of writing this policy, no such order has been made.

Clearance Areas, Section 47 (Housing Act 2004), Part 9 (Housing Act 1985)

This may be declared when the council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or when the council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

Statement of Reasons, Section 8

All Notices and Orders will have a Statement of Reason attached to them as appropriate. The Statement should include why one type of enforcement was taken over another. A copy of the Statement must accompany the Notice or Order. Before formal enforcement action is taken regarding a fire hazard in a House of Multiple Occupation, the council will give regard to the memorandum of understanding as agreed with Cambridgeshire Fire & Rescue Service.
~~will consult with the Fire Authority regarding works required to abate the hazard.~~

Rights of Appeal

~~There is a right of appeal against most notices, orders or decisions made by the council. Where there is an appeal, the appropriate authority may confirm, quash, vary or suspend any notice, order or decision.~~

Vacated Premises

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all Notices or Orders will be reviewed to consider whether the notices or orders may be varied, suspended, or revoked. The council will seek to deter landlords from undertaking retaliatory eviction and will not consider ~~the~~ removal of ~~a~~ tenants a ~~method of achieving~~ compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

Charging for Notices and Recovery of Costs

Local Authorities can make a charge as a means of recovering reasonable expenses incurred, in accordance with Sections 49 and 50 of the Housing Act 2004, in:

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- serving an Improvement Notice (including suspended),
- making a Prohibition Order (including suspended),
- serving a Hazard Awareness Notice,
- taking Emergency Remedial Action,
- making an Emergency Prohibition Order, or
- making a Demolition Order under the Housing Act 2004
- ~~serving an Improvement Notice,~~
- ~~making a Prohibition Order,~~
- ~~serving a Hazard Awareness Notice,~~
- ~~taking Emergency Remedial Action,~~
- ~~making an Emergency Prohibition Order, or~~
- ~~making a Demolition Order under the Housing Act 2004.~~

~~These costs are in relation to re-inspection of premises, the subsequent consideration of action to be taken and the service of Notices etc. No maximum charge has been set by a Government in England. In Fenland, the~~
cost for a Housing Act Notice is calculated using an hourly rate charge as published within the council's fees and charges statement with can be located on the council website. In cases where chargeable notices and orders are served, the officer will place a registered charge on the Land Registry deeds, which will remain until the debt has been paid, or the property is sold.

~~standard charge for a Housing Act Notice will be £240 for each Notice or Order made. This charge has been calculated using an officer's hourly rate of £60. The hourly rate includes salary and associated corporate support costs.~~

Costs will only be waived in exceptional circumstances, and this decision is such as deficiencies caused by tenant neglect and owner-occupied premises, only at the discretion of the Council

~~Once an invoice for the service of the notice has been invoiced a legal charge will be registered against the property's title deeds as a local land charge. From the time the notice charge is issued to the landlord for payment a legal charge will be registered against the property which is a local land charge. The charge will remain on the property until the sum is repaid in full.~~

When enforcement costs exceed £500 (as a result of multiple notices having been served), the council will normally exercise its rights and remedies under the Law of Property Act 1925

(c.20) which includes, by deed, having powers of sale and lease or accepting surrenders of leases and of appointing a receiver to recover costs.

When enforcement costs do not exceed £500, the council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.

The council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the council's decision on a review and that charge will also be registered as a charge against the property.

~~All enforcement costs incurred and recovered will be based upon the activities listed within section 49 of the Housing Act 2004 and will be charged at an hourly rate. The hourly rate will be based on the actual cost incurred to the council of performing the chargeable activity.~~

Works in Default of a Statutory Notice

The council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:

- The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate,
- ~~Works in default powers are provided by the specific legislation being used in relation to the case, and~~
- ~~The council will register a charge against the premises for the costs incurred in undertaking the works~~
- ~~that reasonable progress is not being made towards compliance with the notice in relation to the hazard.~~

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In the majority of cases the council will seek to recover the costs incurred in undertaking works in default ~~by placing a registered charge on the Land Registry deeds, until the debt has been paid. Where a debt is not paid, the council will use its legal powers to recover such debt, or, the debt will be repaid at the point of sale.~~

Non-Statutory Inspection Charges

~~The Private Sector Housing team will charge for non-statutory inspections. These include inspections relating to fitness of dwellings for immigration purposes and stakeholder requests for advice in relation to duties under the Housing Act 2004. The cost for this service will be charged in accordance with the council's fees and charges statement. The cost for this service will be charged at £60 per hour and part of in line with officers' hourly rate. The hourly rate includes salary and associated corporate support costs.~~

Right to Rent Legislation

~~Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must ensure tenants have the appropriate legal status to reside and work in the UK before offering accommodation. must check the right of prospective tenants to be in the country to avoid being issued with a penalty of up to £3000 per tenant. Enforcement rests with the Home Office.~~

Powers of entry and power to require information

Councils have the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that the officer has:

- written authority from an appropriate officer stating the particular purpose for which entry is authorised, and
- given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No notice is required where entry is to ascertain whether an offence has been committed under:

- sections 72 (offences in relation to licensing of HMOs),
- 95 (offences in relation to licensing of houses), or
- 234(3) (offences in relation to HMO management regulations)

If admission is refused, premises are unoccupied, or any prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace [upon](#) written application. A warrant under this section includes power to enter by force, if necessary.

Councils also have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004, and
- investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

Councils also have powers under Section 237 of the Housing Act 2004 to use the information obtained [pursuant of s.235 above](#) and [from the](#) Housing Benefit and Council Tax [database held information obtained](#) by the council to carry out its functions in relation to these parts of the Act.

Energy Efficiency Standards

~~The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007~~

~~Cambridgeshire County Council (CCC) has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively. This means if on engagement with a landlord or agent it is determined there is no Energy Performance Certificate (EPC) then the Council can serve a fixed penalty notice. CCC has confirmed that FDC can keep any income from the fixed penalty notice.~~

~~Once the delegated powers have been formally transferred, Fenland District Council's Private Sector Housing team will adopt the formal assessment and procedures as set out in~~

the Appendix.

The fine structure and guidance of legislation for landlords is set out in: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674018/A_guide_to_energy_performance_certificates_for_the_marketing_sale_and_let_of_dwellings.pdf

Minimum Efficiency Standards for Domestic Premises (Regulations 2015)

The above legislation came into force in April 2016 and has subsequently been amended. Since April 2018, the enforcing Weights & Measures authorities can serve penalty notices in certain circumstances where a landlord rents a property with a low (below E) energy efficiency rating.

Cambridgeshire County Council has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively.

Once the delegated powers have been formally transferred, Fenland District Council's Private Sector Housing team will adopt the formal assessment and procedures as set out in the guidance document:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713159/Domestic_Private_Rented_Landlord_Guidance_-_June_18.pdf

Empty Homes Legislation

Not only are empty homes a wasted resource, particularly when considered against the need for housing, these long-term vacant dwellings can have an adverse impact on the local community. Some of these effects include: community safety issues (e.g. anti-social behaviour and vandalism), unsightliness, environmental issues (e.g. pest and vermin infestations) and reducing the value and ease of sale of neighbouring properties. By bringing empty properties back into use, the following can be achieved:

- [Maximise the existing housing resource](#)
- [Increase the provision of good quality, affordable housing](#)
- [Minimise adverse environmental, social and local impacts](#)
- [Encourage growth, betterment and investment within communities](#)
- [Support other corporate priorities, objectives and strategies](#)

The Council currently employs an Empty Homes Officer, who focuses on properties which have laid empty the longest. The officer works informally with owners, some of whom have inherited an empty home, and provides a bespoke supportive service, in order to bring the property back into use at the earliest opportunity. Whilst enforcement action, such as Empty Dwelling Management Orders, and Enforced Sales, are legislative tools available to the council, such enforcement action will only be used as a last resort.

Non-Statutory Inspection Charges

The Private Sector Housing team will charge for non-statutory inspections. These include inspections relating to fitness of dwellings for immigration purposes and stakeholder

[requests for advice in relation to their duties under the Housing Act 2004. The cost for this service will be charged in accordance with the council's fees and charges statement. The hourly rate includes salary and associated corporate support costs.](#)

Right to Rent Legislation

[Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must ensure tenants have the appropriate legal status to reside and work in the UK before offering accommodation.](#)

The Housing and Planning Act 2016

Civil Penalties

The Housing & Planning Act 2016 introduced^{de} a range of measures to crack down on rogue landlords, including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution^a for certain specified offences.

This power came into force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Income received from a Civil Penalty can be retained by the local housing authority, provided that it is used to ~~further support~~ the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (section 30),
- offences in relation to licensing of Houses in Multiple Occupation (section 72),
- offences in relation to licensing of houses under Part 3 of the Act (section 95),
- offences of contravention of an overcrowding notice (section 139), and
- failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

~~The amount of penalty is to be determined by the Council in each case. In determining an appropriate level of penalty, the Private Sector Housing Enforcement Team will have regard to statutory guidance given in the DCLG publication 'Civil Penalties under the Housing and Planning Act 2016'.~~

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction.

In order to achieve a conviction in the magistrates' court, the Council must be able to demonstrate^a beyond reasonable doubt^a that ~~an~~^{the} offence has been committed. Therefore, in doing this, Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and

- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

~~The Council shall submit a request to the offender, to provide any financial information that they feel shall influence their ability to pay a high fine. This will be taken into consideration if it appears reliable. If no information is provided then the Council will consider any information known to them regarding the offender, consider this when making a decision regarding the level of fine.~~

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from ~~the date when~~ the notice was ~~given~~served.

Where written representations are made, a senior officer, not previously involved with the case, will consider the appeal. ~~This officer will take into account any mitigating factors provided by the appellant, including financial declarations. This will usually be the Head of Housing and Community Support or another relevant officer at this level within the Council's structure.~~ The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- withdraw a notice of intent or final notice,
- reduce the amount specified in a notice of intent or final notice, or
- uphold the original decision to issue the notice of intent

At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, ~~the council~~we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Determining the level of any penalty is detailed later, in the Penalty Structure Chapter.

See Appendix 2 for a flow chart of the Civil Penalty enforcement process.

Prosecution versus Civil Penalty Notice

The decision to impose a Civil Penalty as opposed to pursuing a traditional prosecution will be determined on a case-by-case basis.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

Where a local housing authority decides to prosecute when a landlord has committed breaches in more than one local housing authority area, it should consider the scope for working together with other local housing authorities.

The following principles will apply to each case to be considered:

- each case will be considered on its own merits and any known mitigating and aggravating circumstances will be considered
- there must be sufficient, reliable evidence to justify the action taken
- the action taken must be in the public interest
- decisions to take enforcement action should always be fair and consistent

Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enables councils to serve financial penalties for breaches of up to £30,000 and came into full force on 1st April 2021.

These new regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at an interval of at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and to their local authority if requested. Landlords of privately rented accommodation must:

- ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations', which are published as British Standard 7671.
- ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years.
- obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- supply a copy of this report to a new tenant before they occupy the premises.
- supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.

- supply the local authority with a copy of this report within 7 days of receiving a request for a copy,
- retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test,
- where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report, and
- supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works

The council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of a breach. Each breach constitutes a separate offence for which a financial penalty can be imposed.

The same criminal standard of proof is required for a financial penalty as for prosecution. Therefore, the Council must be able to demonstrate, beyond reasonable doubt, that the offence has been committed. Therefore, in doing this, Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors.

Determining the level of any penalty is discussed later, in the Penalty Structure Chapter.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- withdraw a notice of intent or final notice,
- reduce the amount specified in a notice of intent or final notice, or
- uphold the original decision to issue the notice of intent

If the decision is made to impose a financial penalty, we will give the person a final notice

requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

See the Appendix 3 for a flow chart of the Financial Penalty enforcement process.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be
- **Culpability and track record of the offender.** A higher penalty will 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 expected to be aware of their legal obligations
- **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty
- **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence
- **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:

- the local housing authority is proactive in levying civil penalties where the need to do so exists, and
- that the penalty will be set at a high enough level to both punish the offender and deter repeat offending

- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e., it should not be cheaper to offend than to ensure a property is well maintained and properly managed
- **Fairness and proportionality.** The final determination of any civil penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a civil penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total civil penalties are just and proportionate to the breaches.
 - Impact of the civil penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
 - Impact of the civil penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

Determining the Sanction

~~The following principles will apply to each case to be considered in relation to a Civil Penalty:~~

- ~~Each case will be considered on its own merits~~
- ~~There must be sufficient, reliable evidence to justify the action taken~~
- ~~The action taken must be in the public interest~~
- ~~Any mitigating circumstances will be considered~~
- ~~The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.~~

Determining the Penalty

~~In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:~~

- ~~Severity of the offence. The more serious the offence, the higher the penalty should be:~~
- ~~Culpability and track record of the offender. A higher penalty will 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 expected to be aware of their legal obligations.~~
- ~~The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.~~

~~A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and~~

~~whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.~~

~~The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.~~

~~While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:~~

- ~~the local housing authority is proactive in levying civil penalties where there is a need to do so and~~
- ~~that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.~~

~~The guiding principle should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.~~

Penalty Structures

Penalties Structure

~~Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing this policy.~~

~~Civil Penalties issued under the Housing Act 2004 and Financial Penalties in relation to The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 have a maximum penalty amount of £30,000.~~

~~When issuing penalties, The Council has decided to base the fine structure is penalty in line with structure similar to the principles contained in; Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline. when issuing penalties. The Council believes this to be a fair, relevant, and reasonable model to follow.~~

~~Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine to issue.~~

~~For the purpose of the offence the following three steps below shall be used to determine the level of fine to issue.~~

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION	EXAMPLES
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly	The Housing Act 2004 <ul style="list-style-type: none">Failure to demonstrate compliance or shows a willful refusal to comply with an Improvement Notice where defects are clearly dangerous to the occupantsBreach of a Banning Order

	<u>disregarded, the law and knew their actions were unlawful</u>	<ul style="list-style-type: none"> • <u>Willful refusal to comply with an overcrowding notice</u> • <u>Failure to comply with HMO management regulations where the conditions are clearly visible as dangerous to the tenants or where a landlord/agent has not made appropriate inspections of the property</u> <p><u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u></p> <ul style="list-style-type: none"> • <u>Failure to ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations', which are published as British Standard 7671</u> • <u>Failure to carry out further investigative or remedial work or completing this work within 28 days or any shorter period if specified as necessary in the EICR</u>
<u>Very High</u>	<u>Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.</u>	<p><u>The Housing Act 2004</u></p> <ul style="list-style-type: none"> • <u>Failure to licence an HMO</u> • <u>Failure to demonstrate compliance or shows a willful refusal to comply with an Improvement Notice</u> • <u>Failure to comply with an overcrowding notice within the date required</u> • <u>Failure to comply with HMO management regulations</u> <p><u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u></p> <ul style="list-style-type: none"> • <u>Failure to ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years</u> • <u>Failure to supply the local housing authority with an EICR within 7 days of receiving a written request for a copy where the report is unsatisfactory.</u> • <u>Failure to supply a copy of an EICR to the existing tenant(s) within 28 days of the inspection and test where report is unsatisfactory</u>
<u>High</u>	<u>Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken</u>	<p><u>The Housing Act 2004</u></p> <ul style="list-style-type: none"> • <u>Demonstrated actions to resolve the hazards highlighted on an Improvement Notice, but the majority of work has not been completed by the date specified on the notice</u> <p><u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u></p> <ul style="list-style-type: none"> • <u>Failure to obtain an EICR from the person conducting the inspection and test which gives</u>

		<p><u>the results and sets a date for the next inspection and test</u></p> <ul style="list-style-type: none"> • <u>Failure to supply a copy of an EICR to a new tenant before they occupy the premises</u> • <u>Failure to supply a copy of an EICR to any prospective tenant within 28 days of receiving a request for the report</u>
Medium	<u>Breach committed through an act or omission which a person exercising reasonable care would not commit</u>	<p><u>The Housing Act 2004</u></p> <ul style="list-style-type: none"> • <u>Demonstrated actions to resolve the hazards highlighted on an Improvement Notice, but less than half the work required has not been completed by the date specified on the notice</u> <p><u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u></p> <ul style="list-style-type: none"> • <u>Failure to supply the local housing authority with a copy of an EICR within 7 days of receiving a written request for a copy where report is satisfactory</u> • <u>Failure to supply a copy of an EICR to the existing tenant within 28 days of the inspection and test, where the report is satisfactory</u>
Low	<u>Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion</u>	<p><u>The Housing Act 2004</u></p> <ul style="list-style-type: none"> • <u>The majority of the work required on an Improvement Notice has been completed by the date specified but remedial work is still required before completion</u> <p><u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u></p> <ul style="list-style-type: none"> • <u>Failure to supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works</u>
Minimum	<u>Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident</u>	<p><u>The Housing Act 2004</u></p> <ul style="list-style-type: none"> • <u>Failure to provide documentation to prove works on an Improvement Notice have been completed satisfactorily</u> <p><u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u></p> <ul style="list-style-type: none"> • <u>Failure to retain a copy of an EICR to give to the inspector and tester who will undertake the next inspection and test</u>

Step One—A decision shall be made by first considering the culpability factors:

Serious breach of legislation	Very High
History of failing to comply with legislation	High
An act or omission that a reasonable person would not commit	Medium
Effort was made to comply but was insufficient	Medium

Minor failings due to an isolated incident

Low

~~The harm factors should then be considered and given a category below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm:~~

~~Serious adverse effect on individual or high risk of adverse effect Cat 1~~

~~Adverse effects, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled Cat 2~~

~~Low risk of an adverse effect Cat 3~~

Step 2 - the harm factors should be considered and [rated from the table below given a category below](#). Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm. Where the breach of legislation is through the breach of a Banning Order the level of harm shall be considered on a case-by-case basis.

<u>RATING</u>	<u>EXPLANATION</u>	<u>EXAMPLES</u>
<u>High</u>	<u>Serious adverse effect on individual or high risk of adverse effect</u>	<u>The Housing Act 2004</u> <ul style="list-style-type: none">• <u>Category 1 Hazards (A-C)</u> <u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u> <ul style="list-style-type: none">• <u>Multiple C1 rating on EICR</u>
<u>Medium</u>	<u>Adverse effects, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled.</u>	<u>The Housing Act 2004</u> <ul style="list-style-type: none">• <u>High Category 2 Hazards (D-E)</u> <u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u> <ul style="list-style-type: none">• <u>C1 Rating on EICR</u>
<u>Low</u>	<u>Low risk of an adverse effect.</u>	<u>The Housing Act 2004</u> <ul style="list-style-type: none">• <u>Low Category 2 Hazards (F-J)</u> <u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u> <ul style="list-style-type: none">• <u>C2 Rating(s) on EICR</u>
<u>Negligible</u>	<u>Harm not a consideration in the breach</u>	<u>The Housing Act 2004</u> <ul style="list-style-type: none">• <u>Failure to licence an HMO</u> <u>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</u> <ul style="list-style-type: none">• <u>Absence of an EICR</u>• <u>F1 Rating on EICR</u>

Step Three – The culpability and harm are used as references and converted using the

table below to provide a point scale within the range of the civil penalty.

CULPABILITY	CLASS OF HARM			
	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below.

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

~~Step Two - The Standard Scale (Criminal Justice Act 1982) has been used as reference and converted below to provide a point scale within the range of the civil penalty.~~

- ~~1. £1-£500~~
- ~~2. £501-£1000~~
- ~~3. £1001-£2500~~
- ~~4. £2501-£7000~~
- ~~5. £7001-£17000~~
- ~~6. £17001-£30000~~

~~The table below indicates the level at which the fine should be imposed by considering culpability and harm~~

Culpability	Harm-Cat 1	Harm-Cat 2	Harm-Cat 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

~~The following factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment:~~

- ~~• Factors increasing seriousness~~
- ~~• Statutory aggravating factors~~
- ~~• Previous convictions, having regard to:~~
 - ~~○ the nature of the offences to which the conviction relates and its relevance to the current offence; and~~
 - ~~○ the time that has been elapsed since the conviction~~
 - ~~○ Offence committed whilst on bail~~
 - ~~○ Other aggravating factors include (this is not an exhaustive list):~~
 - ~~* Motivated by financial gain~~
 - ~~* Deliberate concealment of illegal nature of activity~~
 - ~~* Established evidence of wider/community impact~~
 - ~~* Obstruction of justice~~
 - ~~* Record of providing substandard accommodation~~
 - ~~* Refusal of free advice~~
- ~~○ Factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):~~
 - ~~* No previous convictions or no relevant/recent convictions~~
 - ~~* Steps voluntarily taken to remedy problem~~
 - ~~* High level of co-operation with the investigation, beyond that which will always be expected~~
 - ~~* Good record of maintaining property/member of Accreditation scheme~~
 - ~~* Self-reporting, co-operation and acceptance of responsibility~~
 - ~~* Good character~~

Rent Repayment Orders

A Rent Repayment Order (RRO) is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to:

- repay an amount of rent paid by a tenant, or
- pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy

The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

Offences for which a Rent Repayment Order can be obtained:

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004, but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004 Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether the landlord has been convicted or not.

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied, beyond reasonable doubt, that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see [Code for Crown Prosecutors](#)) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

In deciding whether to apply for a RRO, the Council must under section 41(4) of the Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - [Rent Repayment Orders Guidance](#)).

Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but, in such cases, the tenant will usually be referred direct to the Citizen's Advice Bureau or other appropriate bodies for further support.

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

The objective of an application for a Rent Repayment Order is not only to issue a punishment because of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

If a conviction for the offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances.

The matrix below should be followed to help determine whether to pursue a RRO and the

amount of rent to reclaim:

1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2
2.	Has evidence been obtained from Academy / Benefits to confirm that Housing Benefit has been paid by FDC over the 12 months?	If no – no case for RRO. If yes, proceed to step 3
3.	Does the LA have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defense?	If no – case closed, do not pursue. If yes, proceed to step 4
4.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step 5
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If no, proceed to step 7
7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing
8.	Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO?	If yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.

The amount of rent to be repaid cannot exceed the actual amount collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RROs shall be followed.

Factors to influence amount of RRO:

1.	Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
3.	Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their

	responsibilities.
4.	Remove any financial benefits that the offender may have obtained resulting from the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	Are there any other factors the Council considers should be considered?

Consideration of the above points will determine whether the full amount of rent should be reclaimed or if there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

Banning Order Offences

The local Authority may apply to the First-tier Tribunal for a Banning Order against a landlord who it has prosecuted for a banning order offence as described in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

A banning order is an order issued by the First-tier Property Tribunal that bans a landlord 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

Breach of a banning order is a criminal offence.

Determining the sanction

Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Our expectation is that a local housing authority will pursue a banning order for the most serious offenders.

Fenland District Council will consider applying for a Banning Order where the landlord has received a Civil Penalty where the severity of harm is assessed as **Category 2** and the culpability is above High (see table Civil penalties section).

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The government has issued guidance which details the specific process for making a Banning Order. Fenland District Council will adopt this guidance: [Banning orders for landlords and property agents under the Housing and Planning Act 2016 \(publishing.service.gov.uk\)](#) or any future amended guidance from the government.

Database of Rogue Landlords and Property Agents

The database is a tool for local housing authorities in England to keep track of rogue landlords and property agents. Users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those

operating across council boundaries and will help authorities target their enforcement activities.

If a court makes a banning order, then Fenland District Council must make an entry in the database of rogue landlords and property agents. An entry may also be made if a person is convicted of a banning order offence committed at ~~the-a-where~~ time they are a residential landlord or property agent, or if two financial penalties have been imposed on a person for such an offence in a 12-month period. The government has published statutory guidance regarding this database.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf

Licensing of Houses in Multiple Occupation

Under the Housing Act 2004 certain types of Houses in Multiple Occupation (HMO) will require a licence to operate. An licensable HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.

This legislation has subsequently been amended, and since October 2018, any HMO which ~~Certain HMOs, as determined by legislation, where~~ is occupied by 5 persons or more, must be licensed, irrespective of the number of storeys ~~there are five or more occupants, must be licensed. Regulations and guidance published by the Department of Communities and Local Government will be followed in the administration of the council's HMO licensing duties and enforcement of satisfactory conditions and standards.~~

Local Authorities have discretionary powers to licence other HMOs which fall outside the mandatory requirement and other types of residential properties in certain circumstances. However, Fenland District Council has not adopted any licensing scheme.

The cost of a licence will be charged in accordance with the council's fees and charges statement which can be found on our website. ~~The Council currently charges £300 for a Mandatory HMO Licence, with a renewal cost of £100.~~

There are only 13 currently in the district and the fee charge is based on historical advice that is now outdated and not based on full cost recovery.

The government has introduced new legislation to remove the '3 storey' element of the current Mandatory Licensing Scheme. Therefore, any HMO housing 5 persons, forming 2 households or more, irrespective of how many storeys there is, will require to be licenced from 1st October 2018. The Council will be setting a new licence fee to coincide with this legislative change based on full cost recovery and guidance

All HMO's which fall under the definition of s.254 of the Housing Act 2004, irrespective as to whether they require a licence, must comply with The Management of Houses in Multiple Occupation (England) Regulations 2006~~the national HMO regulations (Statutory Instruments 2006 372/3).~~

Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within a suitable timescale. If they do not, then the council will be expected to use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued, and information made available to help them identify and deal with Category 1~~One~~ Hazards.

The council will consider ~~issuing service of~~ a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit upon tenants until the HMO is licensed.

Where a landlord fails to licence an HMO, the council ~~may~~ can consider instigating a criminal taking a prosecution case to the Residential Property First tier Tribunal (RPT) or to serve a Civil Penalty. ~~The RPT will replace the courts in judging cases relating to some offences and appeals under the Act.~~

~~On conviction prosecution for a failure to licence, the First tier Tribunal RPT has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the council where a tenant is on housing benefits.~~

~~The licensee has a right of appeal to the RPT First tier Tribunal against refusal to licence, licensing conditions and the maximum number of occupiers or households specified on the licence.~~

Where there is no prospect of an HMO being licensed, the act requires that the council use its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the council also having the power to grant tenancies.

If the council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked.

The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

Management Orders

Management Orders effectively mean that the council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, ~~creating~~ forming tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property; the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.

There are two forms of management order: an interim MO which last for a maximum of 12 months, and a final MO which can last for up to 5 years.

Where a property is subject to licensing but there are no reasonable prospects of it being licensed in the near future or a management order is necessary to protect the health, safety and welfare of persons affected by the condition of the property, the council must make a MO. A threat to evict persons occupying a house to avoid licensing may be regarded as a threat to the welfare of those persons. There are other prescribed circumstances which require the council to make a MO.

The council may apply to a RPT for a MO for an HMO not subject to licensing where it is considered necessary to protect the health, safety and welfare of persons affected by the conditions.

An Interim Management Order (IMO) must be introduced where a property should be licensed or a licence has been revoked but the revocation is not yet in force, but for whatever reason(s) there is no reasonable prospect of granting a licence or where the health and safety condition (Section 104) is satisfied. Also where a property let in breach of a banning order under section 16 of the Housing and Planning Act 2016 the council must introduce a Management Order. The council also has a duty to make an Order where the health and safety condition as described in the Section 104 of the Act is met. Similarly, the council can also decide to take over the management of some empty properties to bring them back into use and those properties where it is decided the council should intervene for anti-social behaviour reasons. An Interim Management Order (IMO) lasts for no longer than 12 months

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Management Orders effectively mean that the council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property; the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.

Schedule 3 of the Housing and Planning Act 2016 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

An Interim Management Order (IMO) lasts for no longer than 12 months and will be made on a property if it is a licensable HMO but does not have a licence. The council must make an IMO if they do not anticipate that the HMO will be licensed in the near future or because the council has revoked the licence. The expiry date of the IMO will be determined when it is made.

A Final Management Order (FMO) lasts for no longer than 5 years and must be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be made if necessary.

A Special Interim Management Order (SIMO) is an Order authorised after a successful application to a ~~Residential Property Tribunal (RPT)~~ First-tier Tribunal where circumstances fall within a category of circumstances prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors, or neighbours. A FMO can follow a SIMO to protect persons on a long-term basis as described in the Order.

An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to a ~~RPT~~ First-tier Tribunal. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the council feels that unless a Final EDMO is in place the dwelling will become or remain empty. Where the dwelling is already unoccupied the council must have taken all

appropriate steps under the interim EDMO with a view to ensuring the dwelling becomes occupied. A final EDMO lasts for 7 years; once a Final EDMO expires a new one may be made if necessary. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.

The council is under a duty to issue Interim and Final Management Orders where necessary. Officers will instigate this action where necessary but as a last resort.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

As of the 1st of April 2019, the Tenant Fees Act 2019 amended the Housing and Planning Act 2016 and made it a requirement that property agents in the private rented sector holding client money obtain membership from a government approved or designated client money protection scheme.

The purpose was to give landlords and tenants confidence that their money is safe when handled by agents. The Client Money Protection (CMP) schemes enable landlords and tenants alike to be compensated if their money is not repaid.

In addition, there is also the requirement to be transparent. This requires:

- a letting agent must display its membership certificate at each of its premises in a place where it will be clearly visible to clients
- publish a copy of the certificate on their website where applicable
- produce a copy of the certificate to any person who may reasonably require it, free of charge
- a regulated property agent must notify all of its clients within 14 days should a CMP scheme membership be revoked
- a regulated property agent must notify all of its clients within 14 days should it change membership schemes and provide the name and address of the new scheme

Breaches of the requirement to belong to a scheme are liable to a financial penalty to a maximum of £30,000 (Regulation 3). Transparency requirements are liable to a maximum of £5,000 (Regulation 4).

Fenland District Council may also impose a penalty on an agent in another district. Should this be the case then Fenland District Council must inform the other local authority of its intention to do so. The other local authority then has no duty or capacity to enforce the regulations in relation to this breach.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach, or at any time when the conduct is continuing.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears

reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved in the case, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- decide whether to impose a financial penalty on the property agent,
- if it is decided to do so, decide the amount of the penalty, or
- withdraw a penalty

If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Appeals can be made to the First-tier Tribunal against:

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

Fenland District Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

Any financial penalties received by the council may be used 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.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to

help ensure that any penalty is set at an appropriate level:

- **Severity of the breach** - the more serious the breach, the higher the penalty should be. This should include considering:
 - The track record of the agent – a higher penalty will be appropriate where the agent 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. Agents are running a business and should be expected to be aware of their legal obligations; and
 - Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.
- **Deterring agents from breaching the Requirement Regulations 2019** - Breaching the legal requirements of mandatory client money protection is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the financial penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations. This should include considering:
 - Deterring the agent from repeating the breach.
 - Deterring others from committing similar breach, and
 - Removing any financial benefit, the agent may have obtained because of committing the breach.
- **Aggravating and mitigating factors** - In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.
- **Fairness and proportionality**. The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches.
 - Impact of the financial penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
 - Impact of the financial penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

A record of each decision and the reason for determining the financial penalty must be made by the enforcement authority.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Financial Penalties issued under The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 have a maximum penalty amount of £30,000 for the breach of the requirement to belong to a client money protection scheme (Regulation 3) and a maximum of £5,000 for breaching the transparency requirements (Regulation 4).

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

<u>LEVEL</u>	<u>DESCRIPTION</u>
<u>Maximum</u>	<u>Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful</u>
<u>Very High</u>	<u>Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.</u>
<u>High</u>	<u>Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken</u>
<u>Medium</u>	<u>Breach committed through an act or omission which a person exercising reasonable care would not commit</u>
<u>Low</u>	<u>Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion</u>
<u>Minimum</u>	<u>Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident</u>

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm, occurring due to the breach, and the severity of that harm.

<u>RATING</u>	<u>EXPLANATION</u>
<u>High</u>	<u>High likelihood of harm</u> <ul style="list-style-type: none"> <u>Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or</u> <u>High risk of an adverse effect on individual(s) – including where persons are vulnerable</u>
<u>Medium</u>	<u>Medium likelihood of harm</u> <ul style="list-style-type: none"> <u>Adverse effect on individual(s) (not amounting to Category 1)</u> <u>Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.</u> <u>Tenants and/or legitimate landlords or agents substantially undermined by the conduct.</u> <u>The Council's work as a regulator is inhibited</u> <u>Tenant or prospective tenant misled</u>
<u>Low</u>	<u>Low likelihood of harm</u> <ul style="list-style-type: none"> <u>Low risk of an adverse effect on actual or prospective tenants.</u> <u>Public misled but little or no risk of actual adverse effect on</u>

	individual(s)
Negligible	Negligible likelihood of harm <ul style="list-style-type: none"> Harm not a consideration in the breach

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below for breaches of the transparency requirements (Regulation 4).

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

And from the following list for the breach of the requirement to belong to a client money protection scheme (Regulation 3)

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding. As below for breaches of transparency requirements.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167

7. £2,917
8. £3,750
9. £4,583

And from the following list for the breach of the requirement to belong to a client money protection scheme.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Energy Act 2011

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

Cambridgeshire County Council (CCC) has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively. This means that, if upon engagement with a landlord or agent, it is determined there is no Energy Performance Certificate (EPC) then the Council can serve a fixed penalty notice. CCC has confirmed that FDC can keep any income from the fixed penalty notice.

These regulations stipulate the following requirements in relation to Energy Performance Certificates (EPCs) and rented properties:

- The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant
 - at the earliest opportunity; and
 - in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of— (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.
- The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant
- The person giving the particulars must ensure that:
 - the particulars include the asset rating of the building expressed in the way required by regulation 11(1)(a); or
 - a copy of an energy performance certificate for the building is attached to the particulars.
- Where a relevant person is under a duty under regulation 5(2), 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report
- A recommendation report is a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate
- It is the duty of a person subject to such a requirement to produce documents within the period of seven days beginning with the day after that on which it is imposed

Breaches of the above are liable to a Penalty Charge Notice of £200.

Landlords can request a review of any Penalty Charge Notice where they consider they can demonstrate they took all reasonable steps and exercised all due diligence to avoid breaching the duty.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

Where a landlord is unsuccessful with the review, they can appeal the decision to the County Court provided this is within 28 days beginning with the day after the notice was served or a review decision. Appeals can be made on the grounds of:

- that the recipient did not commit the breach of duty specified in the penalty charge notice,
- that the notice was not given within the time allowed by regulation 40(2) or does not comply with any other requirement imposed by these Regulations, or
- that in the circumstances of the case it was inappropriate for the notice to be given to the recipient

See Appendix 4 for a flow chart of the Penalty Charge enforcement process.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

As of the 1st April 2020 any rental property with an EPC rating below an E, therefore any F or G, is deemed a sub-standard, ~~property~~ and as such, any landlord that rents property with such a low EPC rating, ~~it is in breach of the regulations to rent out such a property,~~ unless it is included on the PRS exemption register.

Where the council considers a landlord appears to be renting out a property, or to have been at any time within the 12 months preceding shall serve a Compliance Notice requesting:

- the energy performance certificate for the property which was valid at the time the property was let,
- any other energy performance certificate for the property in the landlord's possession,
- any current tenancy agreement under which the property is let,
- any qualifying assessment in relation to the property,
- any other document which the enforcement authority considers necessary to enable it to carry out its functions under this Part, and
- may request landlord to register copies of any of them on the PRS Exemptions Register

The council can choose to serve a Penalty Notice where a landlord:

- rents out a sub-standard ~~PR~~ property, unless one or more exemptions apply,
- has registered false or misleading information when registering information on the PRS Exemptions Register, or
- does not comply with a compliance notice

Penalties vary dependent on the breach for example maximum fines available are as follows:

- for letting a sub-standard property for less than 3 months - £2,000
- for letting a sub-standard property for 3 months or greater - £4,000
- false or misleading information is provided - £1,000

- failure to comply with a compliance notice - £2,000

Where a landlord violates one of the first two listed breaches above and either, or both of the last two, then the total of the financial penalty must not be greater than £5,000.

Where a financial penalty is imposed the local authority is at liberty to publish any of the following information onto the PRS exemption Register for a minimum of 12 months:

- landlords name,
- details of the breach of these Regulations in respect of which the penalty notice has been issued,
- the address of the property in relation to which the breach has occurred, and
- the amount of any financial penalty imposed

Penalty Notices will include any actions required to remedy the breach(es).

The level of the penalty shall be calculated by working from a starting point at 75% of the maximum fine and aggravating or mitigating factors (Appendix 1) will be used to increase or reduce that fine accordingly.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

Where a Penalty Notice is served, then a landlord has one month to request a review of the notice. Where a review is requested, the council must:

- consider any representations made by the landlord and all other circumstances of the case,
- confirm or withdraw the penalty notice, and
- serve notice of its decision to the landlord

Where the council:

- ceases to be satisfied that the landlord committed the breach specified in the penalty notice,
- is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
- decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on the landlord,

then the council shall serve a withdrawing of the penalty notice.

If, after a review the Penalty Notice is confirmed, then a landlord can appeal to the First-tier Tribunal on the grounds that:

- the issue of the penalty notice was based on an error of fact,
- the issue of the penalty notice was based on an error of law,
- the penalty notice does not comply with a requirement imposed by these Regulations, or

- in the circumstances of the case, it was inappropriate for the penalty notice to be served on the landlord

Where a landlord fails to take the action required by a penalty notice within the period specified in that penalty notice, the enforcement authority may issue a further penalty notice.

See Appendix 5 for a flow chart of the Penalty Notice enforcement process.

Energy Act 2013

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Smoke & Carbon Monoxide Regulations 2015

These regulations were introduced to ensure that private sector landlords install and maintain at least one smoke alarm on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire or wood burning stove).

It also makes it the landlords' responsibility to ensure that the alarms are in working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in an HMO licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

The enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations.

The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a penalty charge of up to £5,000. Penalty charges for non-compliance are as follows:

	<u>Maximum</u>	<u>Starting Point</u>
<u>First Offence</u>	<u>£3,000</u>	<u>£1,500</u>
<u>Repeat Offence</u>	<u>£5,000</u>	<u>£4,000</u>
<u>First Offence</u>	<u>£1,500</u>	<u>Reduced to £750 if paid within 14 days</u>
<u>Second Offence</u>	<u>£3,000</u>	<u>No reduction for early payment</u>

In determining the level of the ~~fixed~~-penalty charge notice the Council has considered the likely costs it will incur, and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a ~~second or third~~repeat offence reflects the seriousness of the offence and is designed to deter repeat offending. The penalty charge will be started at the amount listed in the table above and then any mitigating factors will be taken into consideration in setting the penalty charge notice amount. Factors to be considered are listed in Appendix 1.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

While these charges are set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice, ~~usually the Housing & Communities Manager~~ will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.

The reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the ~~fixed~~-penalty charge notice the reviewing officer will inform the landlord by service of notice of their decision. ~~The 50% reduction for a first offence will apply to any revised charge set should payment be within 14 days of service of the revised notice.~~

The reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the penalty charge notice the reviewing officer will inform the landlord by service of notice of their decision.

The Landlord or Agent can appeal to the Residential Property Tribunal. ~~The whole process is set out in a later Appendix.~~

See Appendix 6 for a flow chart of the Penalty Charge enforcement process.

Protection from Eviction Act 1977

The above act provides protection to tenants by making it a criminal offence for a landlord to use unreasonable behaviour resulting in making the tenant feel uncomfortable, distressed or ultimately forcing them to leave their home. Some landlords ~~believe think that as they own the house they are renting to tenants,~~ they have the right to enter and control the way the tenant lives. However, ~~landlords must be aware that, when they rent a property to a single household, they 'part with possession' of that property and have to conduct their management of the tenancy in line with housing legislation.~~ If a landlord doesn't comply with legislation their actions could be construed as harassment or illegal eviction. Examples of such behaviour could be:

- changing the locks without ending the tenancy via the due legal process
- entering their tenants' home without permission
- using unreasonable behaviour which makes a tenant feel uncomfortable
- preventing tenants from using the basic services, such as water, electric & gas

The above list is not exhaustive, and each case will be assessed on its own merits. Where an officer receives an allegation of harassment or illegal eviction, an investigation will be carried out. If there is sufficient and reliable evidence that an offence may have occurred pursuant of the Protection from Eviction Act the case will be referred to the ~~council's~~ legal department recommending a criminal prosecution. Upon summary conviction, a landlord will be liable to a fine of up to £5k and/or a prison sentence. Where on conviction on indictment, a fine and/or imprisonment for a term not exceeding 2 years can be imposed.

More information can be found at:

Private renting for tenants: evictions: Harassment and illegal evictions - GOV.UK (www.gov.uk)

Protection from Eviction Act 1977 (legislation.gov.uk)

A landlord does not have to provide 24hr notice of entry to access **communal areas** of a House in Multiple Occupation. Therefore, this would not generally be deemed as harassment.

Enterprise and Regulatory Reform Act 2013

The Act provides directions on imposing sanctions for breaches of sections 83 and 84 in relation to membership of Redress Schemes.

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

This order requires letting agents and property managers to be members of an approved or designated Redress Scheme so that members can be investigated when complaints are made against them in connection with that work.

Where a letting agent or property manager is found not to be a member of a scheme then a monetary penalty can be imposed to a maximum of £5,000.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a monetary penalty. This will set out:

- The reasons for imposing the monetary penalty.
- The amount of the penalty.
- Information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a monetary penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- Decide whether to impose a monetary penalty on the property agent,
- If it is decided to do so, decide the amount of the penalty, and
- Withdraw a penalty

If the decision is made to impose a financial penalty, the council ~~we~~ will ~~issue~~give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the reasons for imposing the monetary penalty,
- information about the amount to be paid,
- information about how the payment may be made,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

Appeals can be made to the First-tier Tribunal against:

- the decision to impose a monetary penalty was based on an error of fact,
- the decision was wrong in law,
- the amount of the monetary penalty is unreasonable,
- the decision was unreasonable for any other reason

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Fenland District Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

Determining Penalties

The Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach** - the more serious the breach, the higher the penalty should be. This should include considering:
 - The track record of the agent – a higher penalty will be appropriate where the agent 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. Agents are running a business and should be expected to be aware of their legal obligations; and
 - Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.
- **Detering agents from breaching the Requirement Regulations 2014** - Breaching the legal requirements of mandatory redress schemes is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the monetary penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations. This should include considering:
 - Detering the agent from repeating the breach,
 - Detering others from committing similar breach, and
 - Removing any financial benefit, the agent may have obtained because of committing the breach.

- **Aggravating and mitigating factors** - In order to determine the monetary penalty, the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.
- **Fairness and proportionality**. The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total monetary penalties are just and proportionate to the breaches.
 - Impact of the monetary penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
 - Impact of the monetary penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

A record of each decision and the reason for determining the monetary penalty must be made by the enforcement authority.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of the monetary penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Monetary Penalties issued under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 have a maximum penalty amount of £5,000.

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

<u>LEVEL</u>	<u>DESCRIPTION</u>
<u>Maximum</u>	<u>Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful</u>
<u>Very High</u>	<u>Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.</u>
<u>High</u>	<u>Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken</u>
<u>Medium</u>	<u>Breach committed through an act or omission which a person exercising reasonable care would not commit</u>
<u>Low</u>	<u>Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion</u>
<u>Minimum</u>	<u>Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as</u>

	<u>an isolated incident</u>
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Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

<u>RATING</u>	<u>EXPLANATION</u>
<u>High</u>	<u>High likelihood of harm</u> <ul style="list-style-type: none"> • <u>Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or</u> • <u>High risk of an adverse effect on individual(s) – including where persons are vulnerable</u>
<u>Medium</u>	<u>Medium likelihood of harm</u> <ul style="list-style-type: none"> • <u>Adverse effect on individual(s) (not amounting to Category 1)</u> • <u>Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.</u> • <u>Tenants and/or legitimate landlords or agents substantially undermined by the conduct.</u> • <u>The Council's work as a regulator is inhibited</u> • <u>Tenant or prospective tenant misled</u>
<u>Low</u>	<u>Low likelihood of harm</u> <ul style="list-style-type: none"> • <u>Low risk of an adverse effect on actual or prospective tenants.</u> • <u>Public misled but little or no risk of actual adverse effect on individual(s)</u>
<u>Negligible</u>	<u>Negligible likelihood of harm</u> <ul style="list-style-type: none"> • <u>Harm not a consideration in the breach</u>

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	<u>CLASS OF HARM</u>			
<u>CULPABILITY</u>	<u>HIGH</u>	<u>MEDIUM</u>	<u>LOW</u>	<u>NEGLIGIBLE</u>
<u>MAXIMUM</u>	<u>9</u>	<u>8</u>	<u>7</u>	<u>6</u>
<u>VERY HIGH</u>	<u>8</u>	<u>7</u>	<u>6</u>	<u>5</u>
<u>HIGH</u>	<u>7</u>	<u>6</u>	<u>5</u>	<u>4</u>
<u>MEDIUM</u>	<u>6</u>	<u>5</u>	<u>4</u>	<u>3</u>
<u>LOW</u>	<u>5</u>	<u>4</u>	<u>3</u>	<u>2</u>
<u>MINIMUM</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>

Step 4 - The scale point is then used to provide the penalty banding.

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Tenant Fees Act 2019

As of the 1st of June 2020, The Act dictates that landlords or agents will no longer be able to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make payments in connection with a tenancy, excluding:

- rent, provided no earlier period is financially more than any later period
- tenancy deposit to a maximum of 5 weeks' rent where the rent is less than £50,000 per annum and 6 weeks' rent where the rent is £50,000 or higher
- refundable holding deposit to a maximum of 1 weeks rent
- payment in the event of a default which applies to the reasonable costs due to a loss of a key or the late payment of rent by over 14 days, provided it is not greater than the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of 3% above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day
- payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person
- payment on variation, assignment or novation of a tenancy, when requested by a tenant, to a maximum of £50 or reasonable costs incurred if higher
- payment on termination of a tenancy to a maximum of the loss suffered by the landlord as a result of the termination of the tenancy
- payment in respect of council tax
- payment in respect of utilities, etc
- payment in respect of a television licence
- payment in respect of communication services to a maximum of the reasonable costs incurred by the landlord for or in connection with the provision of the service

As of the 1st of June 2020, The Act applies to Assured Shorthold Tenancies (ASTs), student accommodation and licenses to occupy housing (HMOs), in England only. The Act also applies to housing associations and local authorities, where they are letting an AST in the private rented sector.

Where an unlawful fee has been charged there is a maximum penalty of £5,000 for a first offence which is deemed a civil offence. Where a further breach is made within 5 years this constitutes a criminal offence but financial penalties of up to £30,000 can be issued as an alternative to prosecution.

In addition, the Act also dictates how holding fees should be treated. Holding deposits are to be held for up to 14 days from when paid or until a date agreed by the landlord/agent and tenant in writing. Where there is no separate agreement in writing deposits must be returned on the 15th day. The holding deposit is also required to be paid within 7 days from when a tenancy agreement is entered, the day the landlord decides not to enter into a tenancy agreement or where the landlord and tenant fail to enter into an agreement before the deadline for an agreement.

When making the decision whether to prosecute or not the following may be considered:

- history of non-compliance
- severity of the breach
- deliberate concealment of activity or evidence
- knowingly or recklessly supplying false or misleading evidence

- intent of the landlord/agent, individually and/or corporate body
- attitude of the landlord/agent
- deterrent effect of a prosecution on the landlord/agent and others
- extent of financial gain as result of the breach

Where ~~there is~~ a holding deposit is unlawfully retained, this civil breach can be served with a financial penalty. Enforcement authorities will be able to retain the money raised through financial penalties with this money reserved for future housing enforcement in the private rented sector. Each request for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- an agent/landlord charging different tenants under different tenancy agreements prohibited fees
- an agent/landlord charging one tenant multiple prohibited fees for different services at different times
- an agent/landlord charging one tenant multiple prohibited fees for different services at the same time
- an agent/landlord charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment, e.g., £200 requested for arranging the tenancy and doing a reference check would represent multiple breaches

Where an agent or landlord is being fined for multiple breaches at once and they have not previously been fined, the financial penalty for each of these breaches is limited to up to £5,000 each. The Act provides that the period of five years (in which a second breach could occur) begins on the day on which the relevant penalty was imposed, or the person was convicted. The date on which the penalty is imposed is the date specified in the final notice.

Fenland District Council may enforce this Act, however, local weights and measures authority in England have a duty to enforce in its area. For Fenland this would be Cambridgeshire County Council.

The lead enforcement authority, Bristol City Council, can also enforce the Act and will do so when breaches are reported directly to them.

Where Fenland District Council chooses **to enforce** this legislation, they will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the date the notice was served,
- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty,
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer not previously involved will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- Decide whether to impose a financial penalty on the person, and
- If it decides to do so, decide the amount of the financial penalty

If the decision is made to impose a financial penalty, the council ~~we~~ will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the date the final notice is served,
- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Fenland District Council may at any time withdraw a notice of intent or final notice; reduce the amount specified in a notice of intent or final notice; or amend a notice of intent or final notice to remove the requirement to pay an amount which the authority required to be paid, which includes:

- any part or all of any prohibited payment to the relevant person,
- an amount which does not exceed the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made,
- any part or all of any holding deposit to the relevant person, or
- any amount, the authority may have required the landlord or letting agent to pay in interest on that amount

Any financial penalties under this act can be used towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach.** - the more serious the breach, the higher the penalty should be. This should include considering:
 - the track record of the landlord or agent – a higher penalty will be appropriate where the landlord or agent 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. Agents and landlords are running a business and should be expected to be aware of their legal obligations; and
 - harm caused to the tenant - the greater the harm, the greater the amount should be when imposing a financial penalty.
- **Punishment of the landlord or agent.** A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the breach and previous track record of the offender, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the landlord or agent and demonstrates the consequences of not complying with their legal obligations. This should include considering:
 - Deterring the landlord or agent from repeating the breach,
 - Deterring others from committing similar breaches, and
 - Remove any financial benefit the landlord or agent may have obtained because of committing the breach.
- **Aggravating and mitigating factors.** In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating and/or mitigating factors in each case.
- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a financial penalty for more than one breach, or where the landlord or agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches. Where the landlord or agent is issued with more than one financial penalty, the enforcement authority should consider the guidance 'Offences Taken into Consideration and Totality by the Sentencing Council for England and Wales'.
 - Impact of the financial penalty on the landlord or agent's ability to comply with the law and whether it is proportionate to their means (e.g., risk of loss of home)
 - Impact of the financial penalty on third parties (e.g., employment of staff or other customers)

A record of each decision and the reason for determining the financial penalty must be made by the enforcement authority

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Financial Penalties issued under the Tenant Fees Act 2019 have a maximum penalty amount of £5,000 for first offences and £30,000 for second offences.

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	High likelihood of harm <ul style="list-style-type: none">• Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or• High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	Medium likelihood of harm <ul style="list-style-type: none">• Adverse effect on individual(s) (not amounting to Category 1)• Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.• Tenants and/or legitimate landlords or agents substantially undermined by the conduct.• The Council's work as a regulator is inhibited• Tenant or prospective tenant misled
Low	Low likelihood of harm

	<ul style="list-style-type: none"> • <u>Low risk of an adverse effect on actual or prospective tenants.</u> • <u>Public misled but little or no risk of actual adverse effect on individual(s)</u>
<u>Negligible</u>	<u>Negligible likelihood of harm</u> <ul style="list-style-type: none"> • <u>Harm not a consideration in the breach</u>

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	<u>CLASS OF HARM</u>			
<u>CULPABILITY</u>	<u>HIGH</u>	<u>MEDIUM</u>	<u>LOW</u>	<u>NEGLIGIBLE</u>
<u>MAXIMUM</u>	9	8	7	6
<u>VERY HIGH</u>	8	7	6	5
<u>HIGH</u>	7	6	5	4
<u>MEDIUM</u>	6	5	4	3
<u>LOW</u>	5	4	3	2
<u>MINIMUM</u>	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below for first offences.

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

And from the following list for second offences

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding for first offences.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167

7. £2,917
8. £3,750
9. £4,583

And from the following list for second offences.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Non Private Rented Sector Properties other than those Privately Rented

Owner Occupiers Occupied Properties Owner Occupied

O Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention."

ther than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

Where Occasions will arise whereby Category 1 hazards are identified in owner-occupied properties, and where the owner is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the council, the duty to take action as required under Section 5 of the Housing Act 2004 still applies:

However, it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health and safety of the public or visitors to the property (such as Postal Service workers).

Where it appears that there would otherwise be little prospect of such a hazard being remedied within the forthcoming 12 months (for example through a grant to install central heating / insulation to remedy the hazard of excess cold) then the hazard will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice. This fulfils the council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences for the owner.

In some exceptional cases, in line with the guidance given by the HHSRS Enforcement Guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner-occupied properties. No charge would generally be made for the service of such a notice and the Council will work with the owner to offer advice and assistance in complying with the requirements of the notice. Other examples of exceptional cases where the council may take enforcement action include:

- Vulnerable elderly people who are judged not capable of making informed decisions about their own welfare
- Vulnerable individuals who require the intervention of the council to ensure their welfare is best protected
- Hazards that might cause harm to persons other than the occupants
- Serious risk of life threatening harm such as electrocution or fire
- Any other exceptional case determined by the Housing & Communities Manager or equivalent officer or a senior manager

Housing Associations/Registered Providers (RP)

~~If the council determines that it is appropriate~~ Upon receiving a complaint relating to an RP property, ~~that action should be taken if the council~~ will normally notify the RP that a complaint has been received and/or a hazard identified and seek the RP's comments and proposals. However, the Council will, if deemed necessary, utilise all powers available under this policy, ~~to resolve matters, if it is felt needed to get resolution to an issue within an RP property.~~

Where ~~the council has~~ we have identified hazards, and the Registered Provider has ~~scheduled~~ a programme of works, ~~which will remove the hazard, to improve or make their stock decent,~~ the officer will consider the programme when determining the most appropriate course of action. The ~~council~~ will liaise with the RP ~~to agree a schedule~~ ~~over any works necessary~~ to deal with category 1 and 2 hazards in advance of the planned improvements. ~~In relation to the particular account will be taken of the availability of suitable alternative accommodation, with the Space and Crowding hazard, where defect have been scored as a Category 1 or high Category 2 hazard, particular account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in overcrowded conditions subject of a Category 1 or high Category 2 hazard.~~

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Additional Enforcement Powers

The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

- Environmental Protection Act 1990 Section 80 - Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance
- Building Act 1984 Section 59/~~60~~ - Used to deal with defective drainage issues in existing buildings
- Building Act 1984 Section 64/~~65~~ - Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance
- Building Act 1984 Section 76 - Used where the property is so defective as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default)
- Building Act 1984 Section 79 – Used where a building or neglected site is in a ruinous and dilapidated condition and requires the owner to execute such works of repair or restoration, or if he so elects, to take such steps for demolishing the building or structure, or any part thereof, and removing any rubbish or other material resulting from or exposed by the demolition
- Building Act 1984 Section 84 – Used where there is unsatisfactory paving and drainage of yards and passages
- Building Act 1984 Sections 95 and 96 – Provides a power of entry to any property at all reasonable hours provided the occupier has been given 24 hours-notice:
 - for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, a contravention of this Act, or of any building regulations, that it is the duty of the local authority to enforce
 - ascertaining whether or not circumstances exist that would authorise or require the local authority to take any action, or execute any work, or the purpose of taking any action, or executing any work, authorised or required by this Act, or by building regulations,
 - for the purpose of taking any action, or executing any work, authorised or required by this Act, or by building regulations, or by an order made under this Act, to be taken, or executed, by the local authority, or
 - generally, for the purpose of the performance by the local authority of their functions under this Act or under building regulationsSection 96 allows an Officer to take with him such other persons as may be necessary
- ~~Public Health Act 1936 Section 45 – Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance~~

- ~~Public Health Act 1936 Section 83 – Used where a property is in such a state as to be in a filthy or unwholesome condition or verminous~~
- Public Health Act 1936 Section 287 – Gives the Officer a right to enter any premises at all reasonable hours when giving 24 hours-notice to any occupier for the purpose of ascertaining whether there is, or has been, on or in connection with the premises any contravention of the provisions of this Act, being provisions which it is the duty of the council to enforce, ascertaining those circumstances, for the purpose of taking action and generally, for the purpose of the performance by the council of their functions under this Act
- ~~Public Health Act 1961 Section 17 – Where any drain, private sewer, water closet, waste pipe or soil pipe has not been maintained and can be repaired for less than £250~~
- ~~Local Government (Miscellaneous Provisions) Act 1976 Section 33 – Used where services such as the water supply are due to be, or have been, cut off to a domestic property~~
- Local Government (Miscellaneous Provisions) Act 1982 Section 27 – Gives the power to repair drains and to remedy stopped-up drains
- Local Government (Miscellaneous Provisions) Act 1982 Section 29 (Notice of Intended Entry) - Used to prevent unauthorised access (for example broken windows, doors etc.) to get the owner to secure the premises
- ~~Prevention of Damage by Pests Act 1949 Section 224 - Used where there is evidence of or harbourage of rats or mice at a property~~ Provides a right of entry to an Officer to inspect for rats and mice and to ascertain compliance with any notice provided any occupier has been given 24 hours-notice
- Housing Act 1985 (As Amended) - Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. Particularly the overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.
- ~~The Management of Houses in Multiple Occupation (England) Regulations 2006. These regulations have been introduced to deal with all other types of HMO other than those mentioned in above. Therefore, all licensable HMOs, smaller HMOs and flats in multiple occupation are covered by these regulations. Only self-contained flats are exempt as they fall under the regulations mentioned above. The regulations cover the management and repair of the HMO. There are no notice provisions with these regulations therefore if a decision is made to take action under these regulations; the Officer must go straight to prosecution.~~

The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence:

- Local Government (Miscellaneous Provisions) Act 1976 Section 16 - Used to

formally request information about a premise or a person

- Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000, Investigatory Powers Act 2016 – used in relation to interviews under caution, prosecution and gathering of evidence

Where housing or other related legislation is introduced, which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge, the Council will seek to fully implement any duty or power conferred upon it.

Monitoring and review

In accordance with the Regulators' Compliance Code, the council 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.

Contacts

If you have any comments or queries in relation to this policy, please contact the ~~Housing and Communities Manager~~ Private Sector Housing Team.

- Email: privatesectorhousing@fenland.gov.uk
- Telephone: 01354 654321
- Address: Fenland Hall, County Road, March, Cambs, PE15 8NQ

Appendix 1 – Aggravating and mitigating factors to consider when determining certain penalties

Potential factors increasing seriousness (this is not an exhaustive list):

- Previous convictions - Having regard to the nature of the offences to which the conviction relates and its relevance to the current offence; and the time that has been elapsed since the conviction. Therefore, where it is established that considered there are appropriate previous convictions that should be considered, the level of fine shall be increased to at least one banding higher (if feasible) to reflect the history of offending. This action is to be taken having regard to:
 - the nature of the offences to which the conviction relates and its relevance to the current offence; and
 - the time that has elapsed since the conviction
 - offences committed whilst on bail

This action is only to be taken when a prosecution is not deemed an appropriate action to take.

- Financial incentive - While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Therefore, where an offender lets and/or manages multiple properties nationally or locally the level of fine may be increased to at least one banding higher (if feasible) to ensure that the penalty is high enough to have a real economic impact on the offender.
- Statutory aggravating factors
- Record of non-compliance
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice/obstructive to the investigation
- Record of providing substandard accommodation
- Refusal of free advice
- Tenant is a vulnerable individual

Potential factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):

- No previous convictions/breaches or no relevant/recent convictions/breaches
- Steps voluntarily and promptly taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property/member of an accreditation scheme
- Self-reporting, co-operation and acceptance of responsibility
- Good character/exemplary conduct
- Evidence of health reasons preventing reasonable compliance (poor mental health, unforeseen health issues and/or emergency health concerns)
- Landlord or agent is a vulnerable individual, where vulnerability is linked to the breach being committed
- Whether landlord or agent's primary trade or income is connected to the private rented sector
- Admission of guilt

Appendix 2 – Civil Penalty Process Flow Chart



Appendix 3

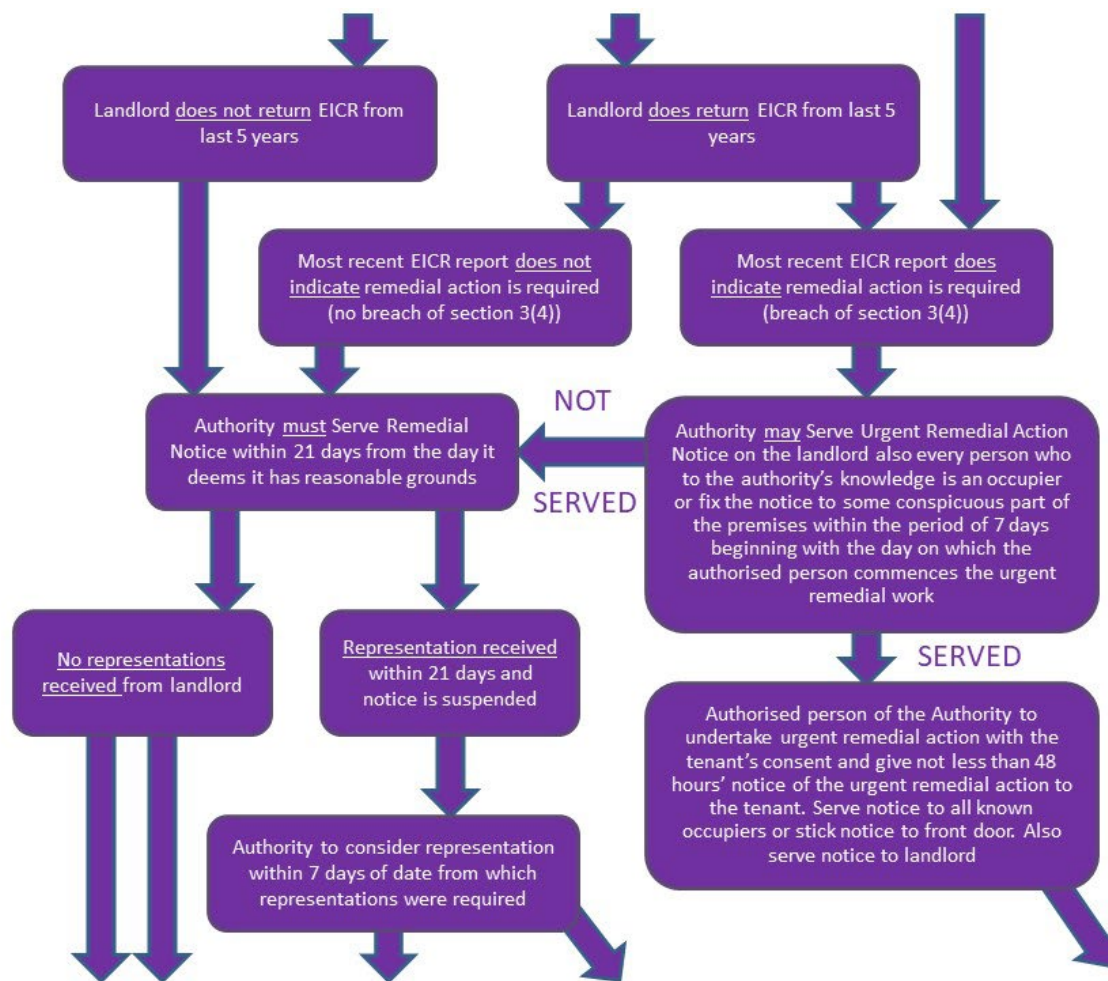
EICR Breach Process Flow Chart

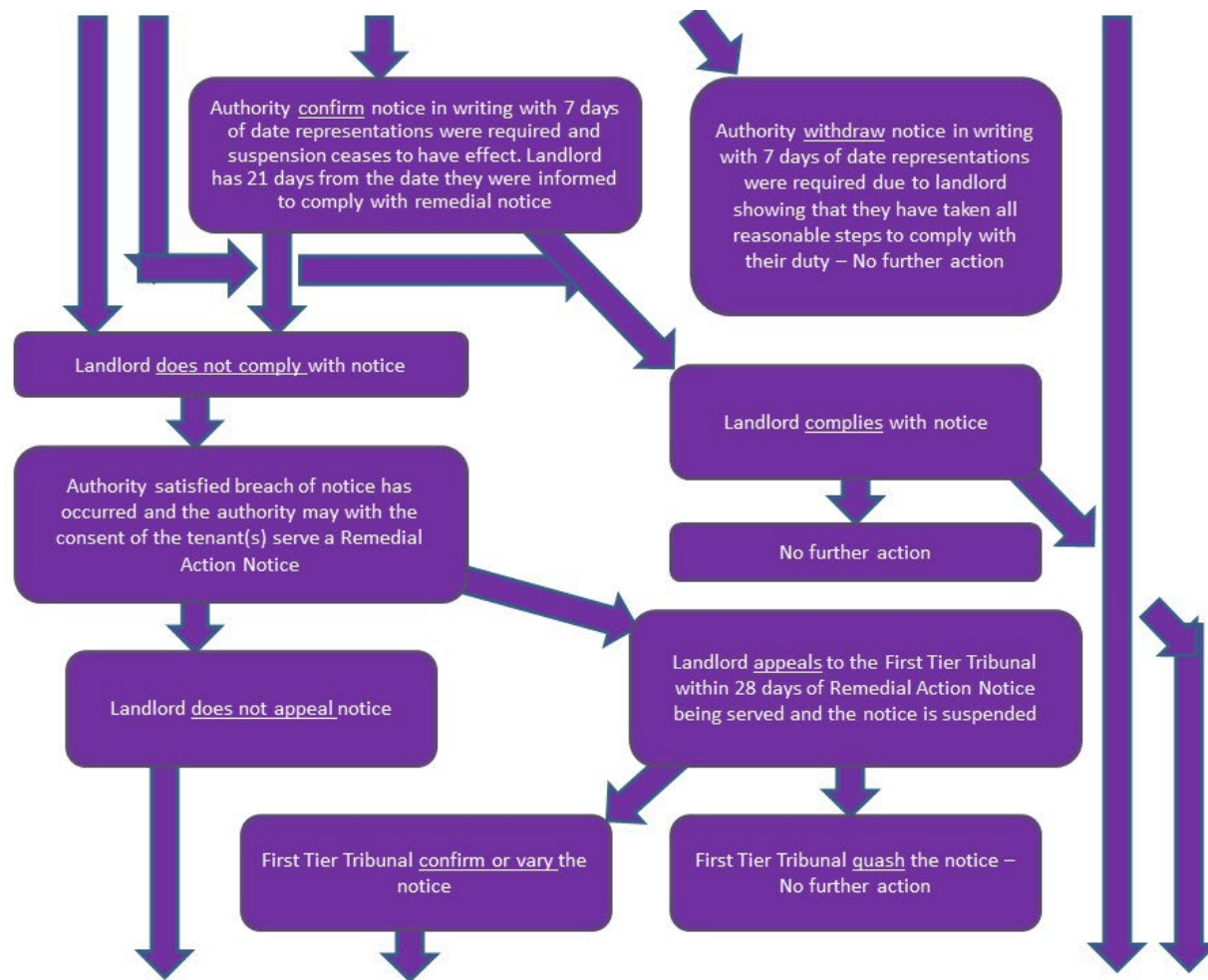
Local housing authority has reasonable grounds to believe that, in relation to residential premises a private landlord is in breach of one or more of the following duties:

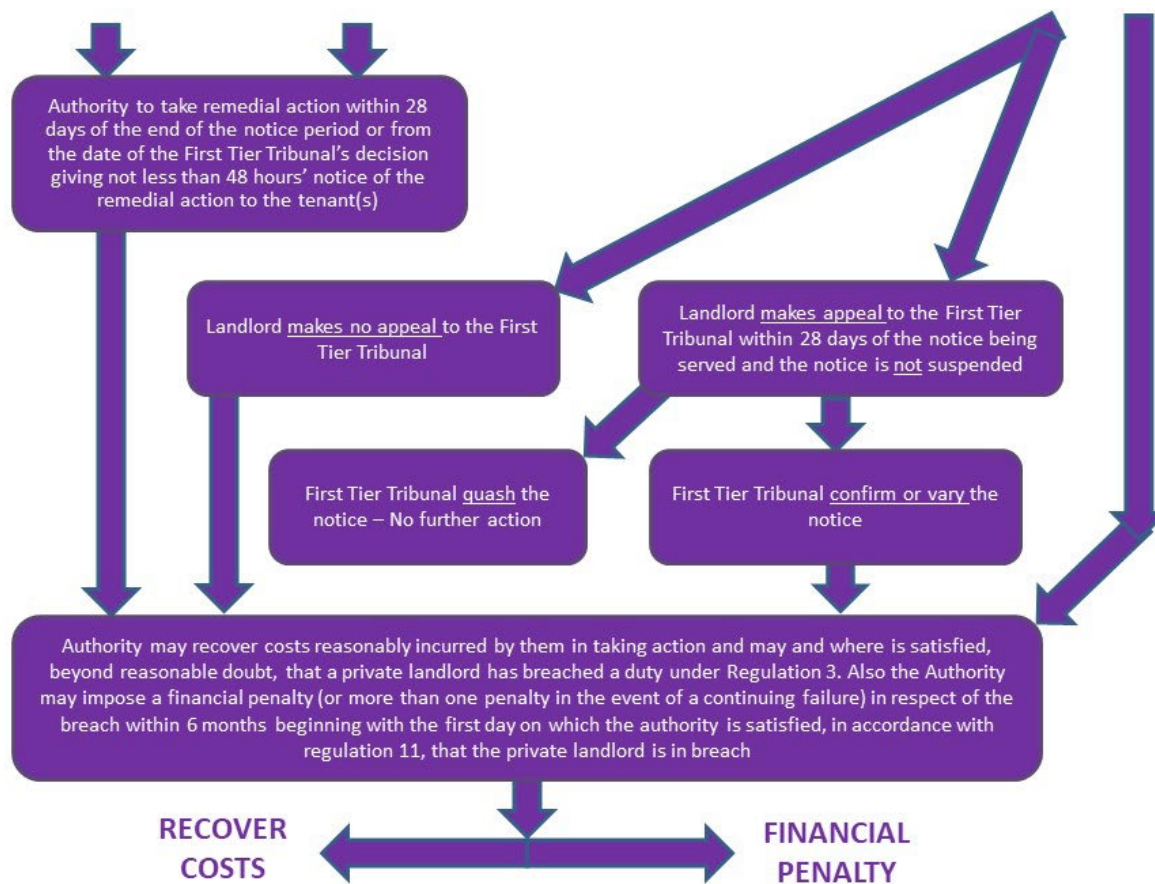
- 3(1)(a), A private landlord who grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the residential premises occupied under a specified tenancy; (new tenancies and any tenancy from 1 April 2021)
- 3(1)(b) A private landlord who grants or intends to grant a specified tenancy must supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test,
- 3(1)(c) A private landlord who grants or intends to grant a specified tenancy must 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(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) (A private landlord who grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days or the period specified in the report if less than 28 days,
- and 3(6) 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) and (5 - *Where paragraph (4) applies, a private landlord must— (a) obtain written confirmation from a qualified person that the 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; (b) 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 each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and (c) 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*) in respect of that further investigative or remedial work

Where required Officer requests current EICR within 7 days

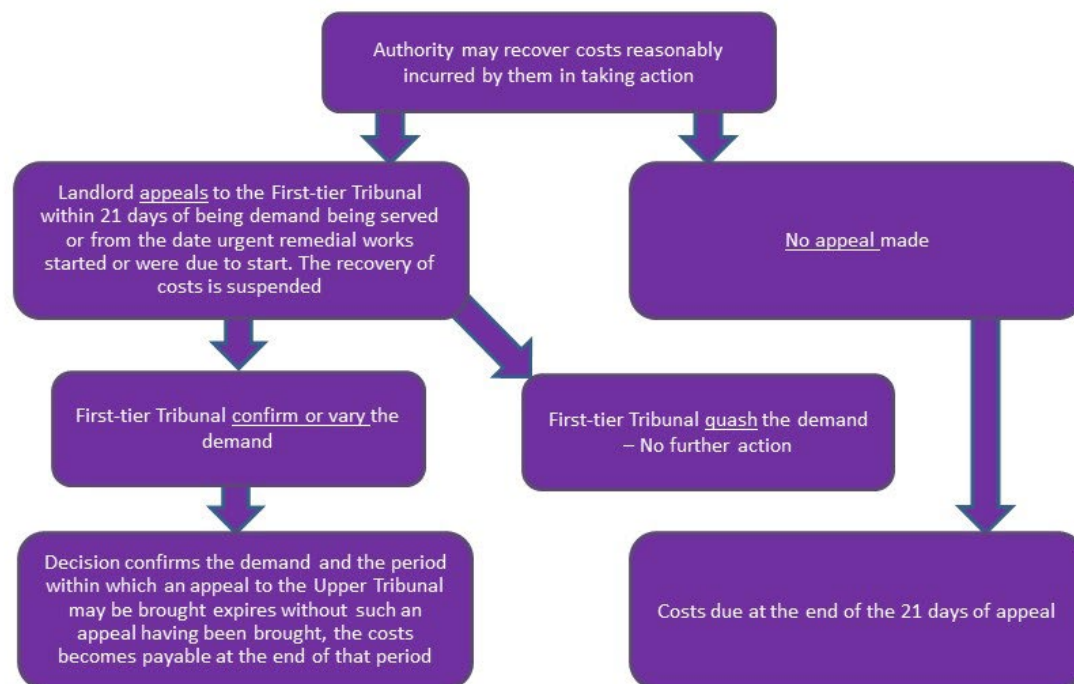
Landlord has supplied Authority with current EICR



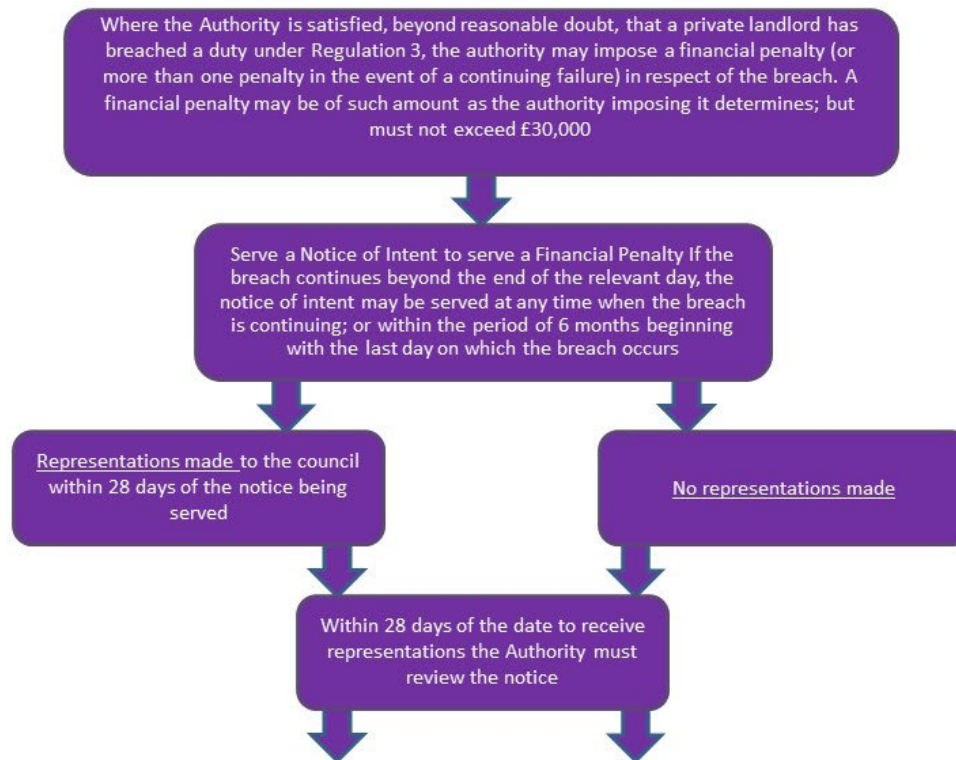


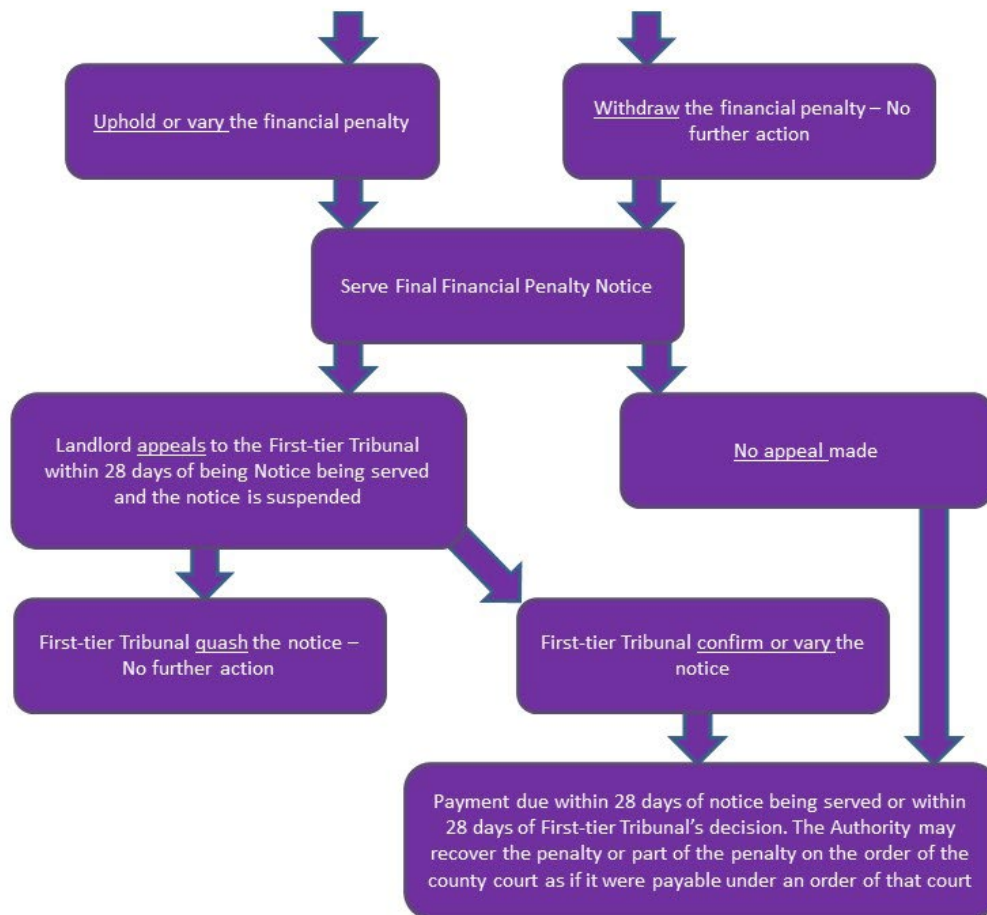


RECOVER COSTS



FINANCIAL PENALTY





Appendix 4

EPC Breach - Process Flow Chart

The Authority has reason to believe that a landlord does not have a valid EPC on a property he rents or has breached one or more of the following:

5. (2) The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant

(a) at the earliest opportunity; and

(b) in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of— (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.

(5) The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant.

6. (2) The person giving the particulars must ensure that

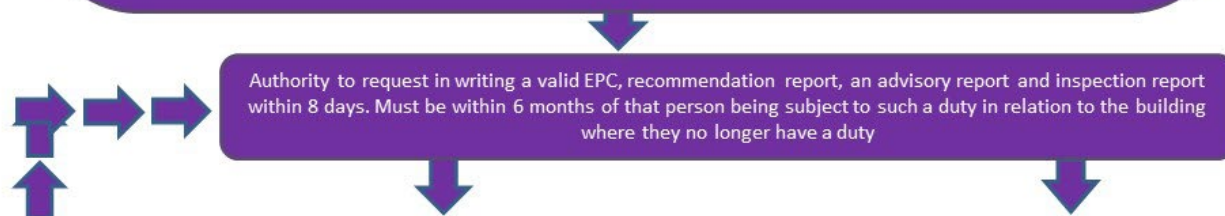
(a) the particulars include the asset rating of the building expressed in the way required by regulation 11(1)(a); or

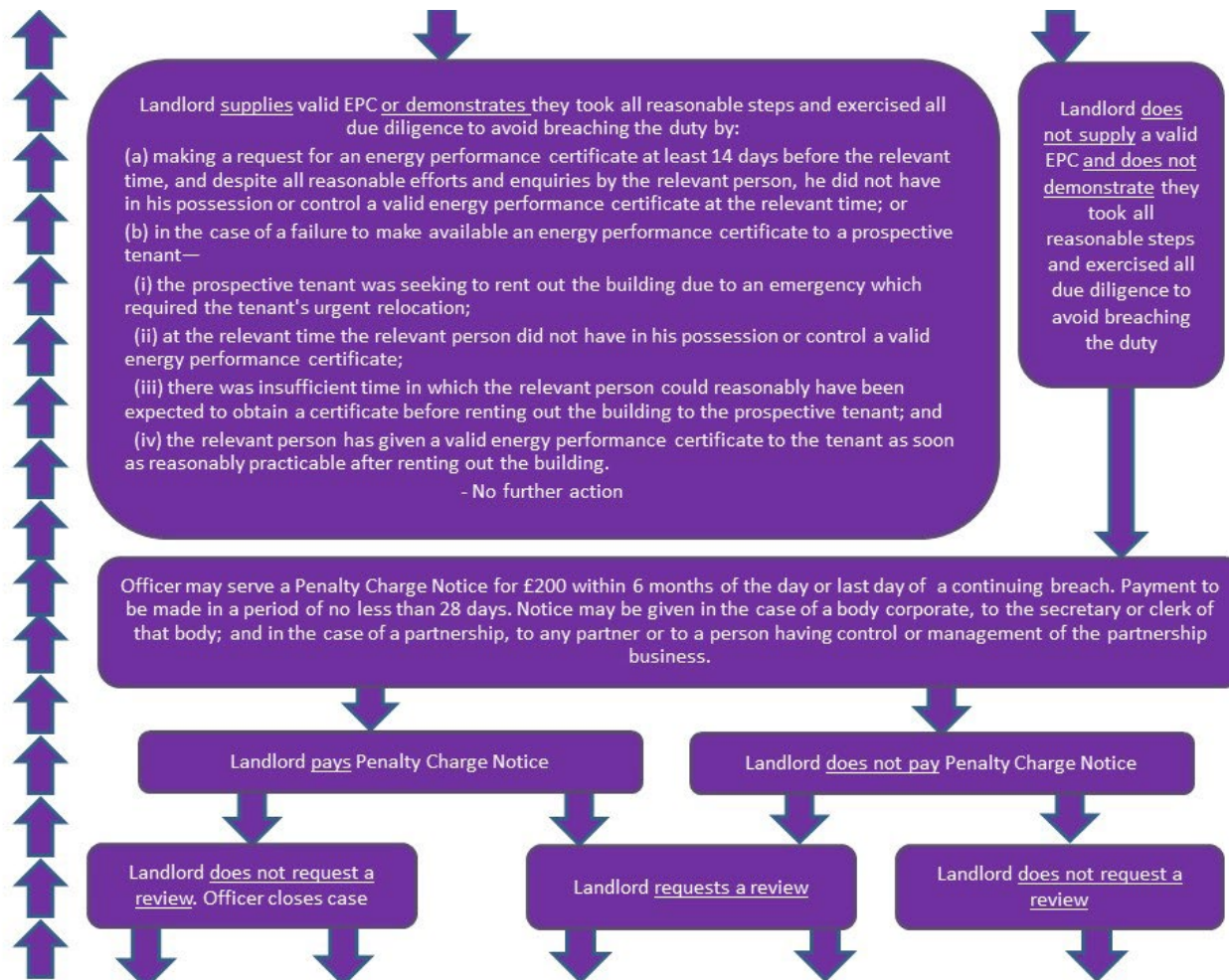
(b) a copy of an energy performance certificate for the building is attached to the particulars.

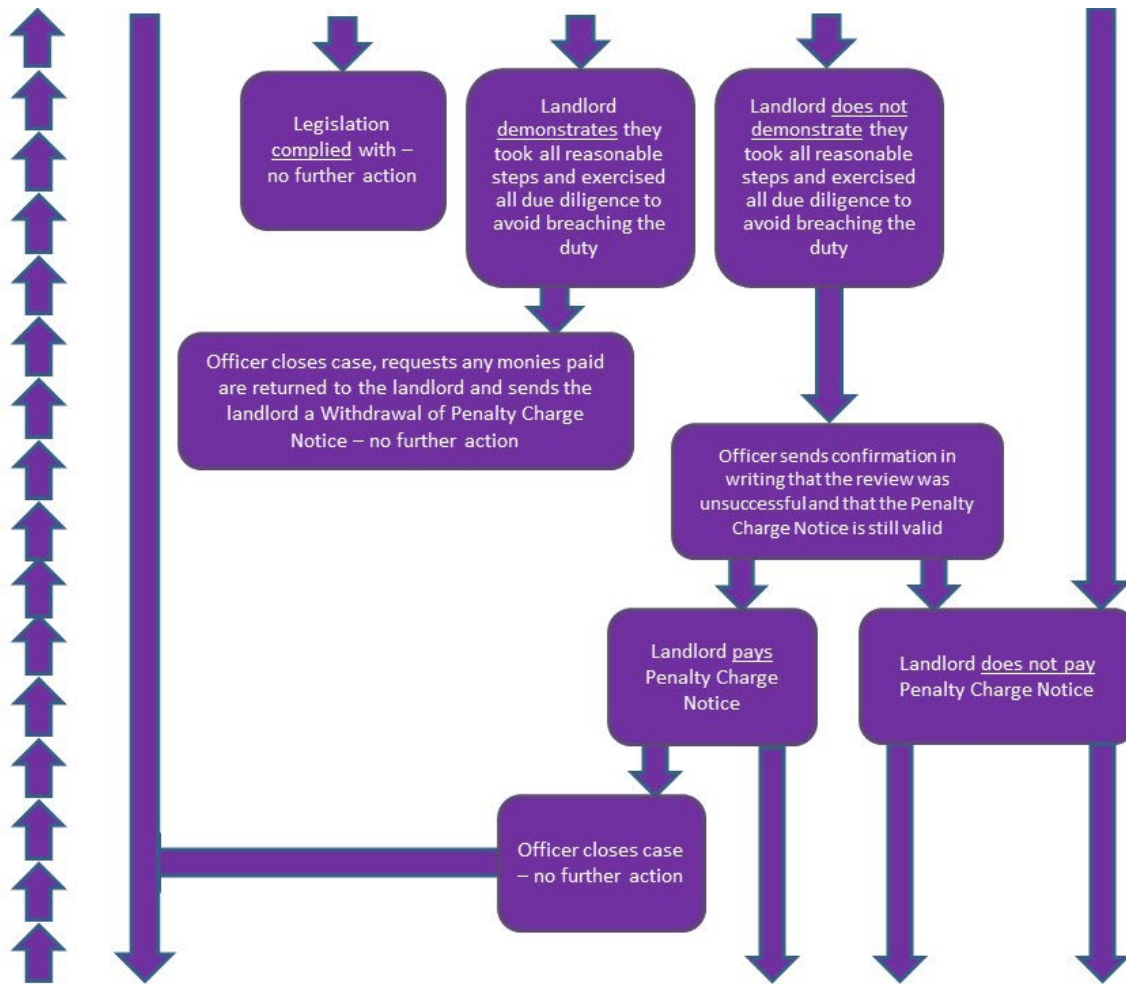
10. (1) Where a relevant person is under a duty under regulation 5(2), 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report.

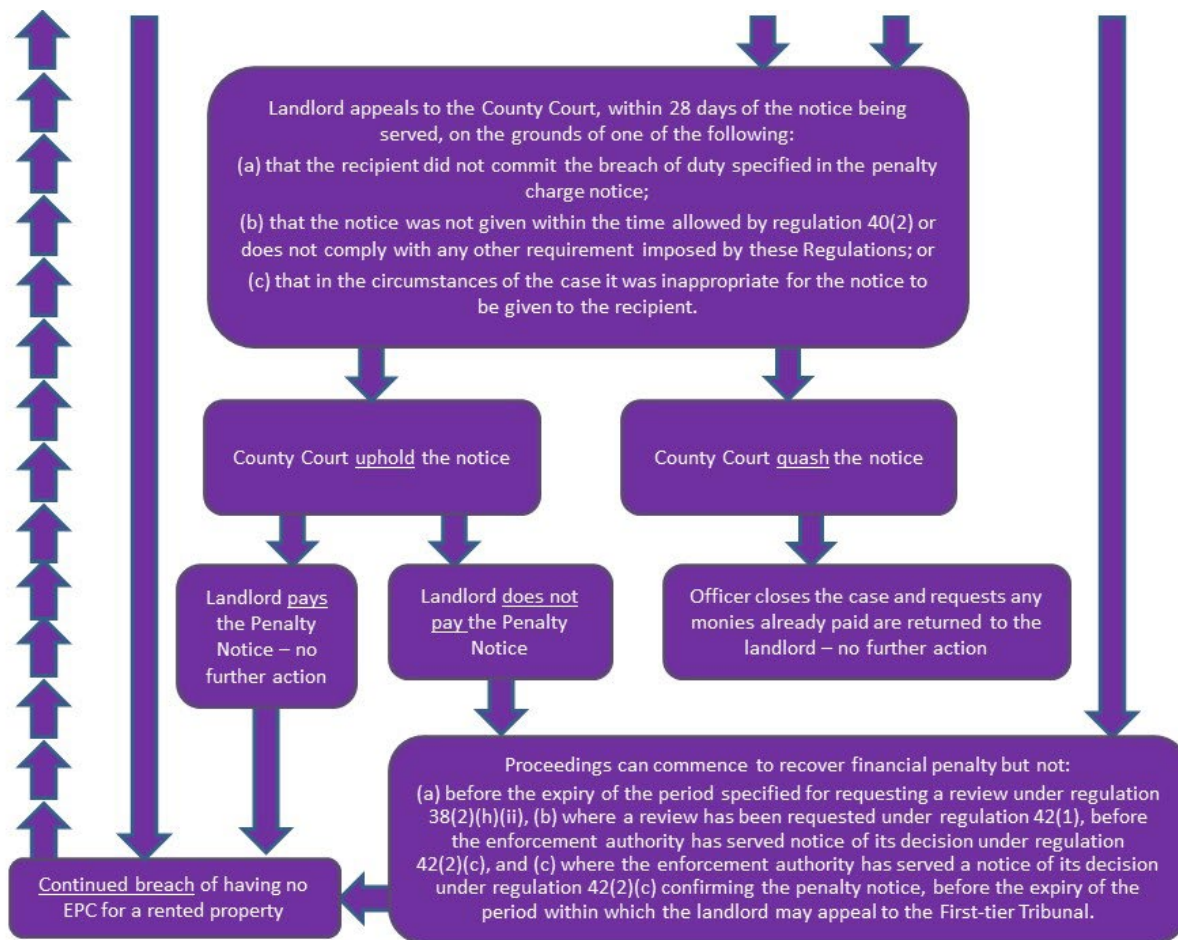
(2) A recommendation report is a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate.

39. (4) It is the duty of a person subject to such a requirement to produce documents within the period of seven days beginning with the day after that on which it is imposed.



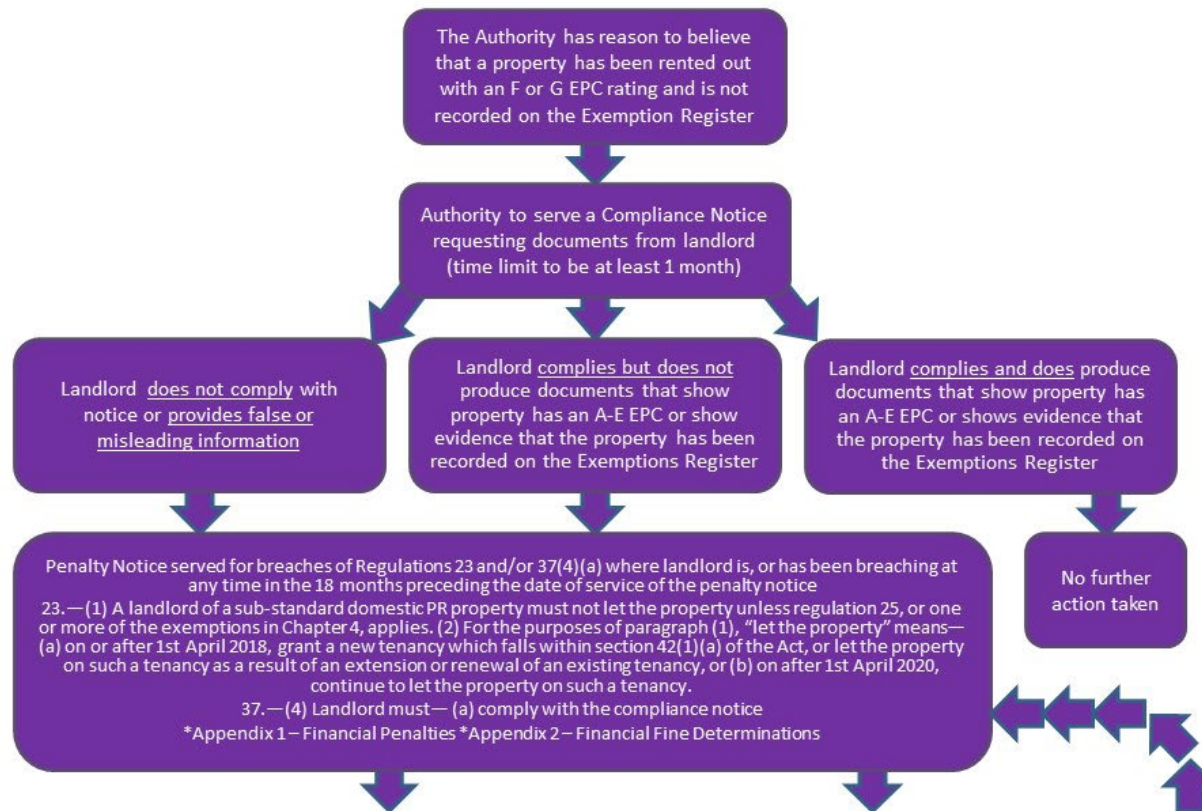


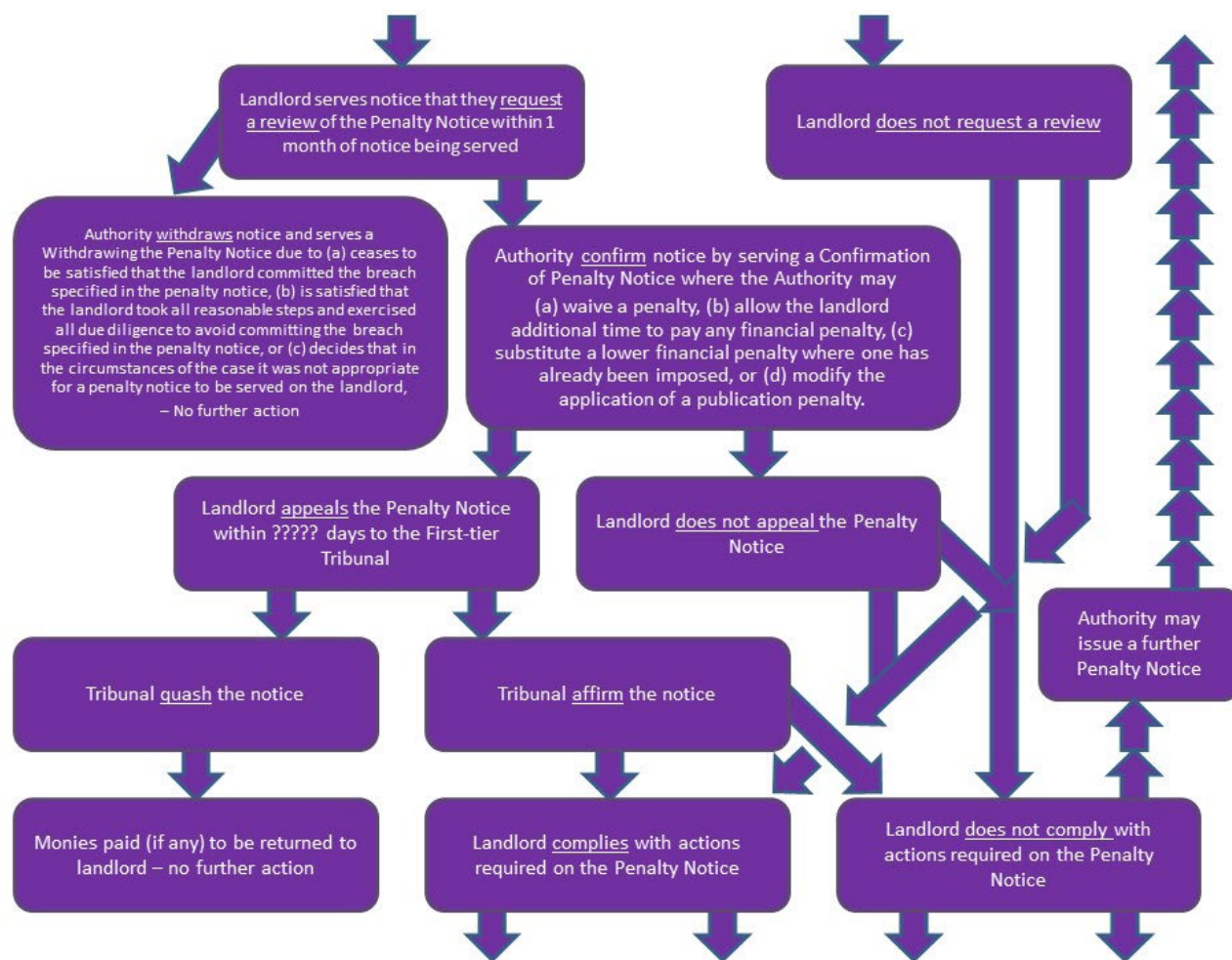


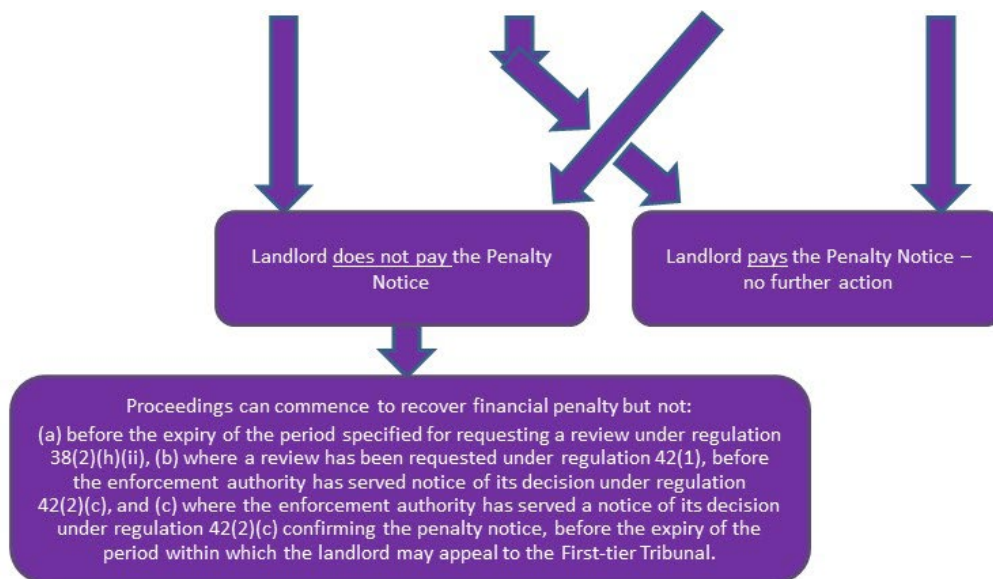


Appendix 5

MEES Breach - Process Flow Chart







Appendix 6

Smoke and Carbon Monoxide Breach - Process Flow Chart

Where a local housing authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1), the authority must serve a remedial notice on the landlord.

4.—(1) A relevant landlord in respect of a specified tenancy must ensure that—

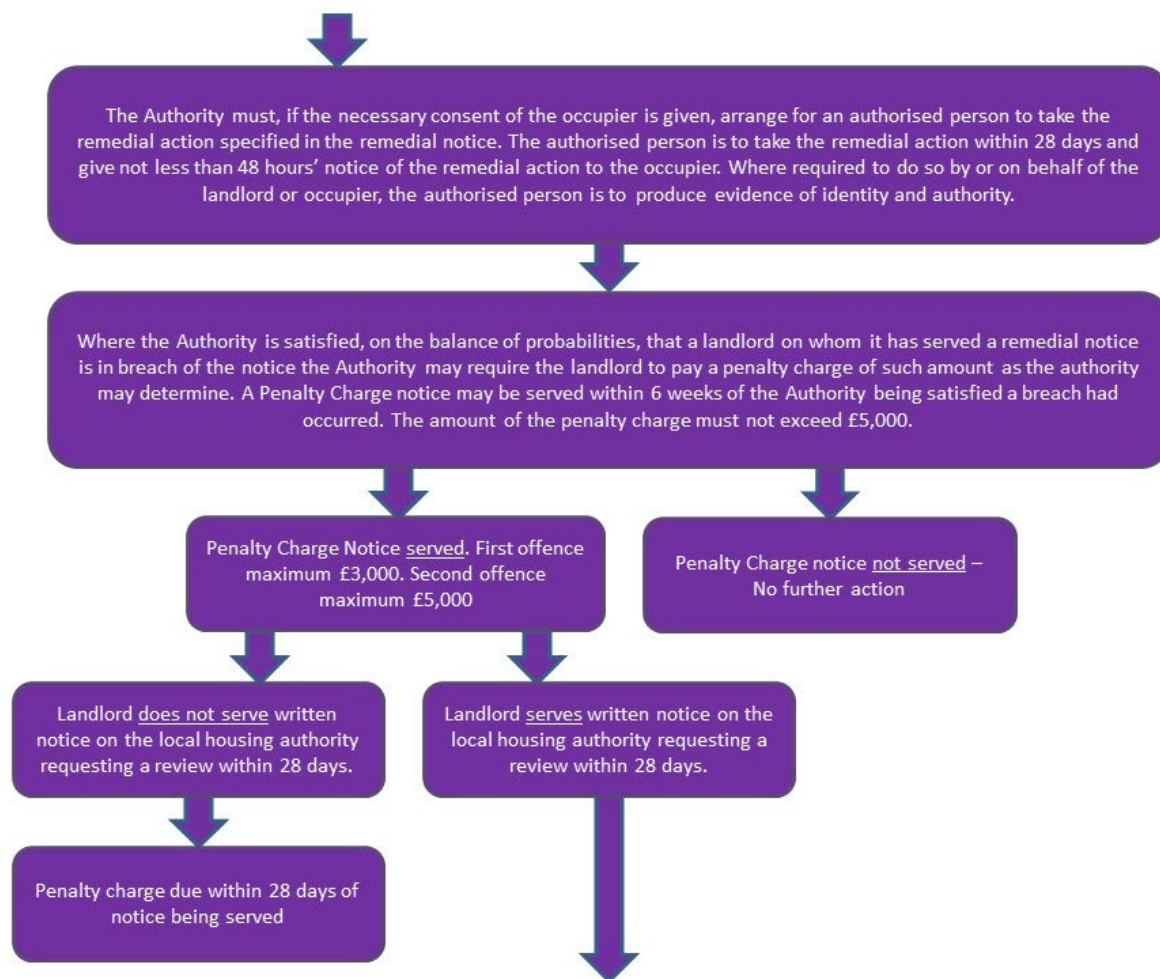
- (a)during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—
 - (i)a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
 - (ii)a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- (b)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.

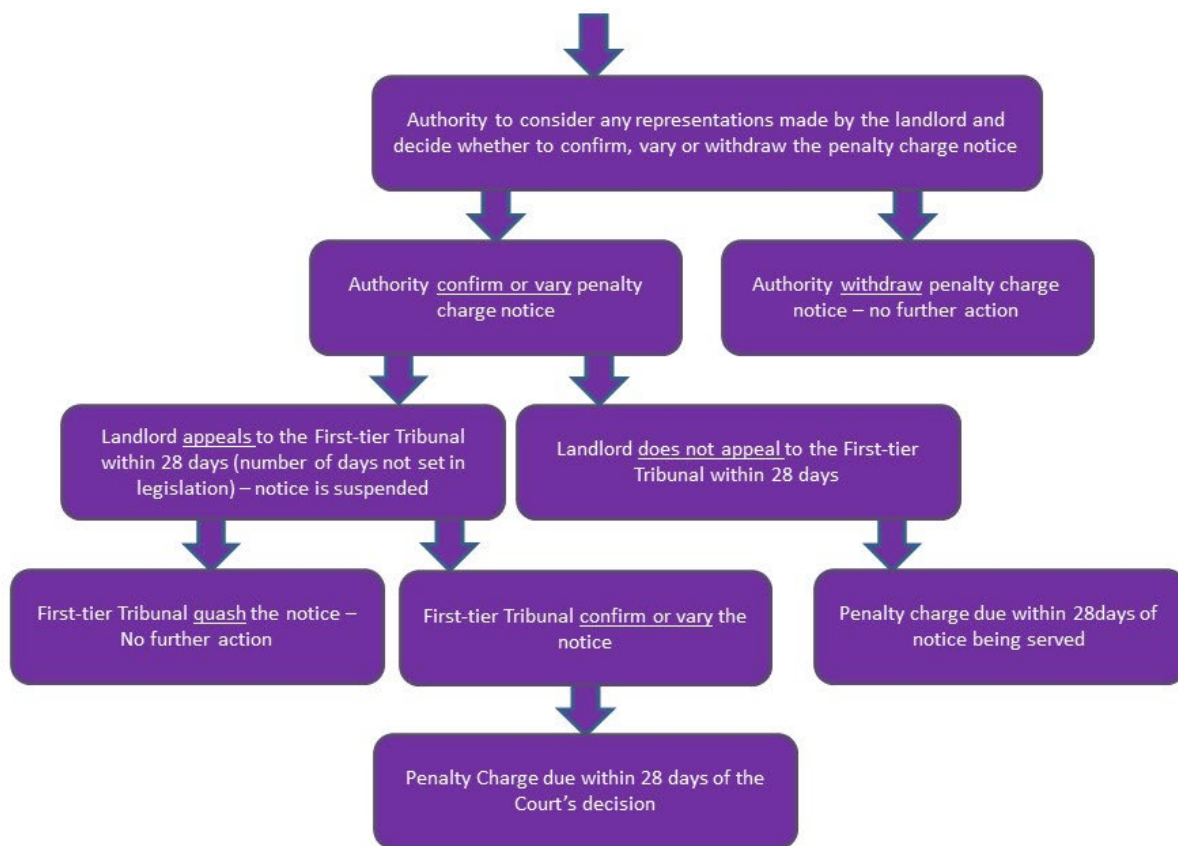
The Authority must serve a remedial notice within 21 days beginning with the day on which the authority decides it has reasonable grounds.

Landlord does not take required action within 28 days on notice being served. A landlord is not to be taken to be in breach of the duty if the landlord can show he, she or it has taken all reasonable steps, other than legal proceedings, to comply with the duty.

Landlord takes required action within 28 days of notice being served

No further action





APPENDIX B

Housing Enforcement Policy



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Introduction

The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector within the district of Fenland.

The policy is based around the Regulators' Code which this Authority has adopted. The general principles of good enforcement, which are set out in the council's Corporate Enforcement Policy including Prevention Intervention and Enforcement, are to be adhered to by the council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.

All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider there are breaches of housing and letting legislation.

Enforcement of housing standards is an integral part of meeting the council's statutory duties in relation to Private Sector Housing. This policy applies to all tenures; housing associations (registered providers), private sector landlords, letting agents and owner occupiers; and sets out to undertake its housing enforcement role in a consistent, practical, open and transparent manner; taking into account the Code of Practice for Crown Prosecutors. This policy sets out the majority of the current regulatory legislation that the Council has at its disposal to use. It is not an exhaustive list and the council reserves the right to implement the enforcement of other legislation, including any new or revised legislation or regulations, prior to any policy updates.

The fees and charges laid out in the policy will be reviewed on an annual basis as part of the council's fees and charges setting process.

Expectations of Stakeholders

Landlords

The council expects landlords to be aware of their responsibilities and to keep updated with any new or amended legislation/regulations. Where a landlord receives a request for service from a tenant the council expects the landlord to respond in a timely manner and resolve the issues at the earliest opportunity and independent of the council's intervention.

Where a landlord fails to respond, or address their tenants concerns, the council may intervene to safeguard the tenant's health and safety, and ensuring the landlord complies with their legal duties.

Where the chosen course of action is informal, council officers will advise landlords on how to comply with legislation. The council may ask landlords to respond with their proposal within a reasonable timescale and consideration will be given to any schedule of works.

However, where there is evidence that a landlord has failed to respond to an informal request from either the tenant, or the council officer, or does not progress as per the agreed schedule of works, the council will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution, either via the criminal or civil route.

There may be times where the council identifies properties that require immediate

intervention to protect the health and safety of residents, visitors or the general public. The council will notify the relevant parties of such intervention within the stipulated legal timeline.

Where remedial works are carried out in default, a legal charge will be registered on the title deeds and attempts to recover the debt(s) will be made via the civil route. Once the debt is cleared the registered charge will be removed.

Tenants

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. Wherever possible this communication should be done in writing, allowing 14 days for the landlord to respond, as the documentary evidence will be required by the housing enforcement officers at a later date.

In certain situations, tenants will not be required to write to their landlord first, e.g.:

- 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 illegal eviction/poor management practice, or
- where the tenant could not, for some other reason, be expected to contact their landlord/managing agent, e.g., a hospital leaver whose property is in poor condition and cannot be discharged

Where no, or an inadequate response from the landlord/agent has been received, it may be deemed appropriate for the council to intervene. The council will advise tenants as to what action it can take and within what timescales.

The council expects tenants to cooperate with the landlord to facilitate the works to be carried out and to advise the council of any remedial work undertaken by the landlord.

The role of the Private Sector Housing team is to ensure house conditions are safe and healthy and **does not** serve to increase applicants' priority on the housing register.

Owners

Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

Letting Agents

The council expects agents to be aware of their responsibilities and to keep updated with any new or amended legislation/regulations. Where an agent is managing the maintenance

contract on behalf of the landlord and receives a request for service from a tenant, the council expects the agent to respond in a timely manner and resolve the issues at the earliest opportunity, independent of the council's intervention.

Where the agent has managing responsibilities and/or has a legal duty to comply with legislation, the council will take appropriate enforcement action in cases of non-compliance and may serve notices on both the landlord and agent where appropriate.

In cases where there is non-compliance, the council will also consider taking prosecution action against the Letting Agent.

Owners of Empty Homes

The council will work with owners of empty homes to bring their properties back into use.

Where properties remain empty for a period of 2 years or more and the owner fails to cooperate with the council, enforcement action, such as Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale, may be considered; particularly where the empty property is having a detrimental impact on the neighbourhood/community.

Housing Act 2004

The Housing Act 2004 is the principal Act covering statutory action delegated to housing authorities in ensuring tenants are afforded safe, warm and healthy homes. The Act makes provisions about housing conditions, to regulate houses in multiple occupation (HMOs) and certain other residential accommodation.

<https://www.legislation.gov.uk/ukpga/2004/34/contents>

Housing Health & Safety Rating System (HHSRS)

The Housing Act 2004, together with Regulations made under it, prescribes the Housing Health and Safety Rating System (HHSRS) as the means by which Local Housing Officers assess housing conditions and evaluate the potential risks to health and safety from any deficiencies identified in dwellings.

The scores for each hazard are ranked in bands. Hazards falling into bands A to C are more serious and are classed as Category 1. Less serious hazards fall into bands D to J and are classed as Category 2. The council has a duty to remove Category 1 hazard and a power to remove Category 2 hazards.

The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the council will not only take account the score, but also whether the council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers/visitors and the presence of other significant hazards in the property.

If a Category 1 hazard is identified, the council has a duty to require the responsible person to remedy the defect. The council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be determined on a case-by-case basis. Where an improvement notice is served, the council will require sufficient works to abate the hazard.

Hazard Awareness Notices

Hazard Awareness Notice relating to Category 1 Hazards; section 28

Hazard Awareness Notice relating to Category 2 Hazards; section 29

The above notices are deemed appropriate where a hazard or hazards have been identified but are not necessarily serious enough to take more formal action. These notices serve to draw the responsible person's attention to the need for remedial action. These notices should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

Improvement Notices

Improvement Notices relating to Category 1 Hazards; section 11

Improvement Notices relating to Category 2 Hazards; section 12

Improvement notices will serve as the most appropriate form of enforcement action where Category 1 and/or Category 2 hazards exist.

Prohibition Orders

Prohibition Orders relating to Category 1 Hazards; section 20

Prohibition Orders relating to Category 2 Hazards; section 21

A prohibition order may be appropriate when conditions present a risk, but remedial action is unreasonable or impractical e.g. where there is inadequate natural light to a room or no protected means of escape in fire. The order may prohibit the use of part or all of a premise for some or all purposes. It may also be used to limit the number of persons occupying the dwelling or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

Suspended Notices & Suspended Prohibition Orders

Suspension of Improvement Notice; section 14

Suspension of Prohibition Order; section 23

These may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes may be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at least every 12 months. The advantage of suspending a notice is that there is a record of the Local Housing Authority's involvement and the situation must then be reviewed. It is also recorded as a land charge.

Emergency Remedial Action, Section 40

When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act. Emergency Remedial Action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The action will be whatever remedial action the council considers necessary to remove an imminent risk of serious harm.

This is likely where the council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made

by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. If this action is taken, a notice will be served within 7 days of taking the Emergency Remedial Action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action was taken, and the rights of appeal.

Emergency Prohibition Orders, Section 43

When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The order specifies prohibition(s) on the use of part or all of the premises with immediate effect.

This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason. Where this action is taken the council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

Demolition Order, Section 46 (Housing Act 2004), Part 9 (Housing Act 1985)

When the council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a Management Order is not in force, or in the case of a building containing one or more flats where the council is satisfied that a Category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State. At the time of writing this policy, no such order has been made.

Clearance Areas, Section 47 (Housing Act 2004), Part 9 (Housing Act 1985)

This may be declared when the council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or when the council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

Statement of Reasons, Section 8

All Notices and Orders will have a Statement of Reason attached to them as appropriate. The Statement should include why one type of enforcement was taken over another. A copy of the Statement must accompany the Notice or Order. Before formal enforcement action is taken regarding a fire hazard in a House of Multiple Occupation, the council will give regard to the memorandum of understanding as agreed with Cambridgeshire Fire & Rescue Service.

Vacated Premises

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all Notices or Orders will be reviewed to consider whether the notices or orders may be varied, suspended, or revoked. The council will seek to deter landlords from undertaking retaliatory eviction and will not consider the removal of tenants a method of achieving compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

Charging for Notices and Recovery of Costs

Local Authorities can make a charge as a means of recovering reasonable expenses incurred, in accordance with Sections 49 and 50 of the Housing Act 2004, in:

- serving an Improvement Notice (including suspended),
- making a Prohibition Order (including suspended),
- serving a Hazard Awareness Notice,
- taking Emergency Remedial Action,
- making an Emergency Prohibition Order, or
- making a Demolition Order under the Housing Act 2004

In Fenland, the cost for a Housing Act Notice is calculated using an hourly rate charge as published within the council's fees and charges statement which can be located on the council website. In cases where chargeable notices and orders are served, the officer will place a registered charge on the Land Registry deeds, which will remain until the debt has been paid, or the property is sold.

Costs will only be waived in exceptional circumstances, and this decision is at the discretion of the Council

When enforcement costs exceed £500 (as a result of multiple notices having been served), the council will normally exercise its rights and remedies under the Law of Property Act 1925 (c.20) which includes, by deed, having powers of sale and lease or accepting surrenders of leases and of appointing a receiver to recover costs.

When enforcement costs do not exceed £500, the council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.

The council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the council's decision on a review and that charge will also be registered as a charge against the property.

Works in Default of a Statutory Notice

The council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:

- The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate,
- that reasonable progress is not being made towards compliance with the notice in relation to the hazard.

In the majority of cases the council will seek to recover the costs incurred in undertaking works in default by placing a registered charge on the Land Registry deeds, until the debt has been paid. Where a debt is not paid, the council will use its legal powers to recover such debt, or, the debt will be repaid at the point of sale

Powers of entry and power to require information

Councils have the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that the officer has:

- written authority from an appropriate officer stating the particular purpose for which entry is authorised, and
- given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No notice is required where entry is to ascertain whether an offence has been committed under:

- sections 72 (offences in relation to licensing of HMOs),
- 95 (offences in relation to licensing of houses), or
- 234(3) (offences in relation to HMO management regulations)

If admission is refused, premises are unoccupied, or any prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace upon written application. A warrant under this section includes power to enter by force, if necessary.

Councils also have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004, and
- investigating whether any offence has been committed under Parts 1-4 of the

Housing Act 2004

Councils also have powers under Section 237 of the Housing Act 2004 to use the information obtained pursuant of s.235 and from the Housing Benefit and Council Tax database held by the council to carry out its functions in relation to these parts of the Act.

Empty Homes Legislation

Not only are empty homes a wasted resource, particularly when considered against the need for housing, these long-term vacant dwellings can have an adverse impact on the local community. Some of these effects include: community safety issues (e.g. anti-social behaviour and vandalism), unsightliness, environmental issues (e.g. pest and vermin infestations) and reducing the value and ease of sale of neighbouring properties. By bringing empty properties back into use, the following can be achieved:

- Maximise the existing housing resource
- Increase the provision of good quality, affordable housing
- Minimise adverse environmental, social and local impacts
- Encourage growth, betterment and investment within communities
- Support other corporate priorities, objectives and strategies

The Council currently employs an Empty Homes Officer, who focuses on properties which have laid empty the longest. The officer works informally with owners, some of whom have inherited an empty home, and provides a bespoke supportive service, in order to bring the property back into use at the earliest opportunity. Whilst enforcement action, such as Empty Dwelling Management Orders, and Enforced Sales, are legislative tools available to the council, such enforcement action will only be used as a last resort. Non-Statutory Inspection Charges

The Private Sector Housing team will charge for non-statutory inspections. These include inspections relating to fitness of dwellings for immigration purposes and stakeholder requests for advice in relation to their duties under the Housing Act 2004. The cost for this service will be charged in accordance with the council's fees and charges statement. The hourly rate includes salary and associated corporate support costs.

Right to Rent Legislation

Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must ensure tenants have the appropriate legal status to reside and work in the UK before offering accommodation.

The Housing and Planning Act 2016

Civil Penalties

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue

landlords, including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution, for certain specified offences.

This power came into force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Income received from a Civil Penalty can be retained by the local housing authority, provided that it is used to support the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (section 30),
- offences in relation to licensing of Houses in Multiple Occupation (section 72),
- offences in relation to licensing of houses under Part 3 of the Act (section 95),
- offences of contravention of an overcrowding notice (section 139), and
- failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction.

In order to achieve a conviction in the magistrates' court, the Council must be able to demonstrate, beyond reasonable doubt, that an offence has been committed. Therefore, in doing this, Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from when the notice was served.

Where written representations are made, a senior officer, not previously involved with the case, will consider the appeal. This officer will take into account any mitigating factors provided by the appellant, including financial declarations. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- withdraw a notice of intent or final notice,
- reduce the amount specified in a notice of intent or final notice, or
- uphold the original decision to issue the notice of intent

At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, the council will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Determining the level of any penalty is detailed later, in the Penalty Structure Chapter.

See Appendix 2 for a flow chart of the Civil Penalty enforcement process.

Prosecution versus Civil Penalty Notice

The decision to impose a Civil Penalty as opposed to pursuing a traditional prosecution will be determined on a case-by-case basis.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

Where a local housing authority decides to prosecute when a landlord has committed breaches in more than one local housing authority area, it should consider the scope for

working together with other local housing authorities.

The following principles will apply to each case to be considered:

- each case will be considered on its own merits and any known mitigating and aggravating circumstances will be considered
- there must be sufficient, reliable evidence to justify the action taken
- the action taken must be in the public interest
- decisions to take enforcement action should always be fair and consistent

Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enables councils to serve financial penalties for breaches of up to £30,000 and came into full force on 1st April 2021.

These new regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at an interval of at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and to their local authority if requested. Landlords of privately rented accommodation must:

- ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations', which are published as British Standard 7671,
- ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years,
- obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test,
- supply a copy of this report to the existing tenant within 28 days of the inspection and test,
- supply a copy of this report to a new tenant before they occupy the premises,
- supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report,
- supply the local authority with a copy of this report within 7 days of receiving a request for a copy,
- retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test,
- where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report, and
- supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works

The council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of a breach. Each breach constitutes a separate offence for which a financial penalty can be imposed.

The same criminal standard of proof is required for a financial penalty as for prosecution. Therefore, the Council must be able to demonstrate, beyond reasonable doubt, that the

offence has been committed. Therefore, in doing this, Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors.

Determining the level of any penalty is discussed later, in the Penalty Structure Chapter.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- withdraw a notice of intent or final notice,
- reduce the amount specified in a notice of intent or final notice, or
- uphold the original decision to issue the notice of intent

If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or

withdrawn.

See the Appendix 3 for a flow chart of the Financial Penalty enforcement process.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be
- **Culpability and track record of the offender.** A higher penalty will 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 expected to be aware of their legal obligations
- **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty
- **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence
- **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:
 - the local housing authority is proactive in levying civil penalties where the need to do so exists, and
 - that the penalty will be set at a high enough level to both punish the offender and deter repeat offending
- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e., it should not be cheaper to offend than to ensure a property is well maintained and properly managed
- **Fairness and proportionality.** The final determination of any civil penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a civil penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total civil penalties are just and proportionate to the breaches.
 - Impact of the civil penalty on the agent's ability to comply with the law and

- whether it is proportionate to their means.
- Impact of the civil penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Civil Penalties issued under the Housing Act 2004 and Financial Penalties in relation to The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 have a maximum penalty amount of £30,000.

When issuing penalties, The Council has decided to base the fine structure in line with the principles contained in; Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline. The Council believes this to be a fair, relevant, and reasonable model to follow.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION	EXAMPLES
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> • Failure to demonstrate compliance or shows a willful refusal to comply with an Improvement Notice where defects are clearly dangerous to the occupants • Breach of a Banning Order • Willful refusal to comply with an overcrowding notice • Failure to comply with HMO management regulations where the conditions are clearly visible as dangerous to the tenants or where a landlord/agent has not made appropriate inspections of the property <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> • Failure to ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations', which are published as British Standard 7671 • Failure to carry out further investigative or remedial work or completing this work within 28 days or any shorter period if specified as

		necessary in the EICR
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> • Failure to licence an HMO • Failure to demonstrate compliance or shows a willful refusal to comply with an Improvement Notice • Failure to comply with an overcrowding notice within the date required • Failure to comply with HMO management regulations <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> • Failure to ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years • Failure to supply the local housing authority with an EICR within 7 days of receiving a written request for a copy where the report is unsatisfactory. • Failure to supply a copy of an EICR to the existing tenant(s) within 28 days of the inspection and test where report is unsatisfactory
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> • Demonstrated actions to resolve the hazards highlighted on an Improvement Notice, but the majority of work has not been completed by the date specified on the notice <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> • Failure to obtain an EICR from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test • Failure to supply a copy of an EICR to a new tenant before they occupy the premises • Failure to supply a copy of an EICR to any prospective tenant within 28 days of receiving a request for the report
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> • Demonstrated actions to resolve the hazards highlighted on an Improvement Notice, but less than half the work required has been completed by the date specified on the notice <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> • Failure to supply the local housing authority

		<p>with a copy of an EICR within 7 days of receiving a written request for a copy where report is satisfactory</p> <ul style="list-style-type: none"> Failure to supply a copy of an EICR to the existing tenant within 28 days of the inspection and test, where the report is satisfactory
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> The majority of the work required on an Improvement Notice has been completed by the date specified but remedial work is still required before completion <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> Failure to supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> Failure to provide documentation to prove works on an Improvement Notice have been completed satisfactorily <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> Failure to retain a copy of an EICR to give to the inspector and tester who will undertake the next inspection and test

Step 2 - the harm factors should be considered and rated from the table below.. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm. Where the breach of legislation is through the breach of a Banning Order the level of harm shall be considered on a case-by-case basis.

RATING	EXPLANATION	EXAMPLES
High	Serious adverse effect on individual or high risk of adverse effect	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> Category 1 Hazards (A-C) <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <ul style="list-style-type: none"> Multiple C1 rating on EICR
Medium	Adverse effects, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled.	<p>The Housing Act 2004</p> <ul style="list-style-type: none"> High Category 2 Hazards (D-E) <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p>

		<ul style="list-style-type: none"> C1 Rating on EICR
Low	Low risk of an adverse effect.	The Housing Act 2004 <ul style="list-style-type: none"> Low Category 2 Hazards (F-J) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 <ul style="list-style-type: none"> C2 Rating(s) on EICR
Negligible	Harm not a consideration in the breach	The Housing Act 2004 <ul style="list-style-type: none"> Failure to licence an HMO The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 <ul style="list-style-type: none"> Absence of an EICR F1 Rating on EICR

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the civil penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below.

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding.

1. £250
2. £750
3. £2,000
4. £5,000

- 5. £9,000
- 6. £13,000
- 7. £17,500
- 8. £22,500
- 9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Rent Repayment Orders

A Rent Repayment Order (RRO) is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to:

- repay an amount of rent paid by a tenant, or
- pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy

The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

Offences for which a Rent Repayment Order can be obtained:

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004, but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004
- Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

The offences under the Housing Act 2004 must relate to hazards within occupied premises

and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether the landlord has been convicted or not.

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied, beyond reasonable doubt, that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see [Code for Crown Prosecutors](#)) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

In deciding whether to apply for a RRO, the Council must under section 41(4) of the Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - [Rent Repayment Orders Guidance](#)).

Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but, in such cases, the tenant will usually be referred direct to the Citizen's Advice Bureau or other appropriate bodies for further support.

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

The objective of an application for a Rent Repayment Order is not only to issue a punishment because of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

If a conviction for the offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances.

The matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2
2.	Has evidence been obtained from Academy / Benefits to confirm that Housing Benefit has been paid by FDC over the 12 months?	If no – no case for RRO. If yes, proceed to step 3
3.	Does the LA have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defense?	If no – case closed, do not pursue. If yes, proceed to step 4
4.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step 5
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If no, proceed to step 7

7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing
8.	Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO?	If yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.

The amount of rent to be repaid cannot exceed the actual amount collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RROs shall be followed.

Factors to influence amount of RRO:

1.	Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
3.	Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	Remove any financial benefits that the offender may have obtained resulting from the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	Are there any other factors the Council considers should be considered?

Consideration of the above points will determine whether the full amount of rent should be reclaimed or if there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

Banning Order Offences

The local Authority may apply to the First-tier Tribunal for a Banning Order against a landlord who it has prosecuted for a banning order offence as described in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

A banning order is an order issued by the First-tier Property Tribunal that bans a landlord 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

Breach of a banning order is a criminal offence.

Determining the sanction

Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Our expectation is that a local housing authority will pursue a banning order for the most serious offenders.

Fenland District Council will consider applying for a Banning Order where the landlord has received a Civil Penalty where the severity of harm is assessed as Category 2 and the culpability is above High (see table Civil penalties section).

The government has issued guidance which details the specific process for making a Banning Order. Fenland District Council will adopt this guidance: [Banning orders for landlords and property agents under the Housing and Planning Act 2016 \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf) or any future amended guidance from the government.

Database of Rogue Landlords and Property Agents

[The database is a tool for local housing authorities in England to keep track of rogue landlords and property agents. Users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf)

If a court makes a banning order, then Fenland District Council must make an entry in the database of rogue landlords and property agents. An entry may also be made if a person is convicted of a banning order offence committed at the time they are a residential landlord or property agent, or if two financial penalties have been imposed on a person for such an offence in a 12-month period. The government has published statutory guidance regarding this database.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf

Licensing of Houses in Multiple Occupation

Under the Housing Act 2004 certain types of Houses in Multiple Occupation (HMO) will require a license to operate. A licensable HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.

This legislation has subsequently been amended, and since October 2018, any HMO which is occupied by 5 persons or more, must be licensed, irrespective of the number of storeys..

The cost of a licence will be charged in accordance with the council's fees and charges statement which can be found on our website.

All HMO's which fall under the definition of s.254 of the Housing Act 2004, irrespective as to whether they require a licence, must comply with The Management of Houses in Multiple Occupation (England) Regulations 2006.

Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within a suitable timescale. If they do not, then the council will use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued, and information made available to help them identify and deal with Category 1 Hazards.

The council will consider issuing a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit upon tenants until the HMO is licensed.

Where a landlord fails to licence a HMO, the council may consider instigating a criminal prosecution or to serve a Civil Penalty.

Where there is no prospect of an HMO being licensed, the act requires that the council use its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the council also having the power to grant tenancies.

If the council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked.

The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

Management Orders

Management Orders effectively mean that the council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, creating tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property; the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.

There are two forms of management order: an interim MO which last for a maximum of 12

months, and a final MO which can last for up to 5 years.

Where a property is subject to licensing but there are no reasonable prospects of it being licensed in the near future or a management order is necessary to protect the health, safety and welfare of persons affected by the condition of the property, the council must make a MO. A threat to evict persons occupying a house to avoid licensing may be regarded as a threat to the welfare of those persons. There are other prescribed circumstances which require the council to make a MO.

The council may apply to a RPT for a MO for an HMO not subject to licensing where it is considered necessary to protect the health, safety and welfare of persons affected by the conditions.

A Final Management Order (FMO) lasts for no longer than 5 years and must be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be made if necessary.

A Special Interim Management Order (SIMO) is an Order authorised after a successful application to a First-tier Tribunal where circumstances fall within a category of circumstances prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors, or neighbours. A FMO can follow a SIMO to protect persons on a long-term basis as described in the Order.

An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to a First-tier Tribunal. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the council feels that unless a Final EDMO is in place the dwelling will become or remain empty. Where the dwelling is already unoccupied the council must have taken all appropriate steps under the interim EDMO with a view to ensuring the dwelling becomes occupied. A final EDMO lasts for 7 years; once a Final EDMO expires a new one may be made if necessary. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.

The council is under a duty to issue Interim and Final Management Orders where necessary. Officers will instigate this action where necessary but as a last resort.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

As of the 1st of April 2019, the Tenant Fees Act 2019 amended the Housing and Planning Act 2016 and made it a requirement that property agents in the private rented sector holding client money obtain membership from a government approved or designated client money protection scheme.

The purpose was to give landlords and tenants confidence that their money is safe when handled by agents. The Client Money Protection (CMP) schemes enable landlords and tenants alike to be compensated if their money is not repaid.

In addition, there is also the requirement to be transparent. This requires:

- a letting agent must display its membership certificate at each of its premises in a place where it will be clearly visible to clients
- publish a copy of the certificate on their website where applicable
- produce a copy of the certificate to any person who may reasonably require it, free of charge
- a regulated property agent must notify all of its clients within 14 days should a CMP scheme membership be revoked
- a regulated property agent must notify all of its clients within 14 days should it change membership schemes and provide the name and address of the new scheme

Breaches of the requirement to belong to a scheme are liable to a financial penalty to a maximum of £30,000 (Regulation 3). Transparency requirements are liable to a maximum of £5,000 (Regulation 4).

Fenland District Council may also impose a penalty on an agent in another district. Should this be the case then Fenland District Council must inform the other local authority of its intention to do so. The other local authority then has no duty or capacity to enforce the regulations in relation to this breach.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach, or at any time when the conduct is continuing.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved in the case, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- decide whether to impose a financial penalty on the property agent,
- if it is decided to do so, decide the amount of the penalty, or
- withdraw a penalty

If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn. Appeals can be made to the First-tier Tribunal against:

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

Fenland District Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

Any financial penalties received by the council may be used 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.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach** - the more serious the breach, the higher the penalty should be. This should include considering:
 - The track record of the agent – a higher penalty will be appropriate where the agent 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. Agents are running a business and should be expected to be aware of their legal obligations; and
 - Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.
- **Deterring agents from breaching the Requirement Regulations 2019** - Breaching the legal requirements of mandatory client money protection is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the financial penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations. This should include

considering:

- Deterring the agent from repeating the breach.
 - Deterring others from committing similar breach, and
 - Removing any financial benefit, the agent may have obtained because of committing the breach.
- **Aggravating and mitigating factors** - In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.
- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches.
 - Impact of the financial penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
 - Impact of the financial penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

A record of each decision and the reason for determining the financial penalty must be made by the enforcement authority.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Financial Penalties issued under The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 have a maximum penalty amount of £30,000 for the breach of the requirement to belong to a client money protection scheme (Regulation 3) and a maximum of £5,000 for breaching the transparency requirements (Regulation 4).

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and

	flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm, occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	High likelihood of harm <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	Medium likelihood of harm <ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect. • Tenants and/or legitimate landlords or agents substantially undermined by the conduct. • The Council's work as a regulator is inhibited • Tenant or prospective tenant misled
Low	Low likelihood of harm <ul style="list-style-type: none"> • Low risk of an adverse effect on actual or prospective tenants. • Public misled but little or no risk of actual adverse effect on individual(s)
Negligible	Negligible likelihood of harm <ul style="list-style-type: none"> • Harm not a consideration in the breach

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below for breaches of the transparency requirements (Regulation 4).

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

And from the following list for the breach of the requirement to belong to a client money protection scheme (Regulation 3)

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding. As below for breaches of transparency requirements.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

And from the following list for the breach of the requirement to belong to a client money protection scheme.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will

be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Energy Act 2011

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

Cambridgeshire County Council (CCC) has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively. This means that, if upon engagement with a landlord or agent, it is determined there is no Energy Performance Certificate (EPC) then the Council can serve a fixed penalty notice. CCC has confirmed that FDC can keep any income from the fixed penalty notice.

These regulations stipulate the following requirements in relation to Energy Performance Certificates (EPCs) and rented properties:

- The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant
 - at the earliest opportunity; and
 - in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of— (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.
- The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant
- The person giving the particulars must ensure that:
 - the particulars include the asset rating of the building expressed in the way required by regulation 11(1)(a); or
 - a copy of an energy performance certificate for the building is attached to the particulars.
- Where a relevant person is under a duty under regulation 5(2), 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report
- A recommendation report is a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate
- It is the duty of a person subject to such a requirement to produce documents within the period of seven days beginning with the day after that on which it is imposed

Breaches of the above are liable to a Penalty Charge Notice of £200.

Landlords can request a review of any Penalty Charge Notice where they consider they can demonstrate they took all reasonable steps and exercised all due diligence to avoid

breaching the duty.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

Where a landlord is unsuccessful with the review, they can appeal the decision to the County Court provided this is within 28 days beginning with the day after the notice was served or a review decision. Appeals can be made on the grounds of:

- that the recipient did not commit the breach of duty specified in the penalty charge notice,
- that the notice was not given within the time allowed by regulation 40(2) or does not comply with any other requirement imposed by these Regulations, or
- that in the circumstances of the case it was inappropriate for the notice to be given to the recipient

See Appendix 4 for a flow chart of the Penalty Charge enforcement process.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

As of the 1st April 2020 any rental property with an EPC rating below an E, therefore any F or G, is deemed sub-standard, and as such, any landlord that rents property with such a low EPC rating, is in breach of the regulations unless it is included on the PRS exemption register.

Where the council considers a landlord appears to be renting out a property, or to have been at any time within the 12 months preceding shall serve a Compliance Notice requesting:

- the energy performance certificate for the property which was valid at the time the property was let,
- any other energy performance certificate for the property in the landlord's possession,
- any current tenancy agreement under which the property is let,
- any qualifying assessment in relation to the property,
- any other document which the enforcement authority considers necessary to enable it to carry out its functions under this Part, and
- may request landlord to register copies of any of them on the PRS Exemptions Register

The council can choose to serve a Penalty Notice where a landlord:

- rents out a sub-standard property, unless one or more exemptions apply,
- has registered false or misleading information when registering information on the PRS Exemptions Register, or
- does not comply with a compliance notice

Penalties vary dependent on the breach for example maximum fines available are as follows:

- for letting a sub-standard property for less than 3 months - £2,000
- for letting a sub-standard property for 3 months or greater - £4,000
- false or misleading information is provided - £1,000
- failure to comply with a compliance notice - £2,000

Where a landlord violates one of the first two listed breaches above and either, or both of the last two, then the total of the financial penalty must not be greater than £5,000.

Where a financial penalty is imposed the local authority is at liberty to publish any of the following information onto the PRS exemption Register for a minimum of 12 months:

- landlords name,
- details of the breach of these Regulations in respect of which the penalty notice has been issued,
- the address of the property in relation to which the breach has occurred, and
- the amount of any financial penalty imposed

Penalty Notices will include any actions required to remedy the breach(es).

The level of the penalty shall be calculated by working from a starting point at 75% of the maximum fine and aggravating or mitigating factors (Appendix 1) will be used to increase or reduce that fine accordingly.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

Where a Penalty Notice is served, then a landlord has one month to request a review of the notice. Where a review is requested, the council must:

- consider any representations made by the landlord and all other circumstances of the case,
- confirm or withdraw the penalty notice, and
- serve notice of its decision to the landlord

Where the council:

- ceases to be satisfied that the landlord committed the breach specified in the penalty notice,
- is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
- decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on the landlord,

then the council shall serve a withdrawing of the penalty notice.

If, after a review the Penalty Notice is confirmed, then a landlord can appeal to the First-tier Tribunal on the grounds that:

- the issue of the penalty notice was based on an error of fact,
- the issue of the penalty notice was based on an error of law,
- the penalty notice does not comply with a requirement imposed by these Regulations, or
- in the circumstances of the case, it was inappropriate for the penalty notice to be served on the landlord

Where a landlord fails to take the action required by a penalty notice within the period specified in that penalty notice, the enforcement authority may issue a further penalty notice.

See Appendix 5 for a flow chart of the Penalty Notice enforcement process.

Energy Act 2013

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These regulations were introduced to ensure that private sector landlords install and maintain at least one smoke alarm on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire or wood burning stove).

It also makes it the landlords' responsibility to ensure that the alarms are in working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in an HMO licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

The enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations.

The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a penalty charge of up to £5,000. Penalty charges for non-compliance are as follows:

	Maximum	Starting Point
First Offence	£3,000	£1,500
Repeat Offence	£5,000	£4,000

In determining the level of the penalty charge notice the Council has considered the likely costs it will incur, and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a repeat offence reflects the seriousness of the offence and is designed to deter repeat offending. The penalty charge will be started at the amount listed in the table above and then any mitigating factors will be taken into consideration in setting the penalty charge notice amount. Factors to be considered are listed in Appendix 1.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

While these charges are set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.

The reviewing officer will have regard to the amount required for the Council to recover its

costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the penalty charge notice the reviewing officer will inform the landlord by service of notice of their decision.

The reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the penalty charge notice the reviewing officer will inform the landlord by service of notice of their decision.

The Landlord or Agent can appeal to the Residential Property Tribunal.

See Appendix 6 for a flow chart of the Penalty Charge enforcement process.

Protection from Eviction Act 1977

The above act provides protection to tenants by making it a criminal offence for a landlord to use unreasonable behaviour resulting in making the tenant feel uncomfortable, distressed or ultimately forcing them to leave their home. Some landlords believe they have the right to enter and control the way the tenant lives. However, landlords must be aware that, when they rent a property to a single household, they 'part with possession' of that property and have to conduct their management of the tenancy in line with housing legislation. If a landlord doesn't comply with legislation their actions could be construed as harassment or illegal eviction. Examples of such behaviour could be:

- changing the locks without ending the tenancy via the due legal process
- entering their tenants' home without permission
- using unreasonable behaviour which makes a tenant feel uncomfortable
- preventing tenants from using the basic services, such as water, electric & gas

The above list is not exhaustive, and each case will be assessed on its own merits. Where an officer receives an allegation of harassment or illegal eviction, an investigation will be carried out. If there is sufficient and reliable evidence that an offence may have occurred pursuant of the Protection from Eviction Act the case will be referred to the council's legal department recommending a criminal prosecution. Upon summary conviction, a landlord will be liable to a fine of up to £5k and/or a prison sentence. Where on conviction on indictment, a fine and/or imprisonment for a term not exceeding 2 years can be imposed.

More information can be found at:

[Private renting for tenants: evictions: Harassment and illegal evictions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/private-renting-for-tenants/evictions-harassment-and-illegal-evictions)

[Protection from Eviction Act 1977 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1977/30)

A landlord does not have to provide 24hr notice of entry to access **communal areas** of a House in Multiple Occupation. Therefore, this would not generally be deemed as harassment.

Enterprise and Regulatory Reform Act 2013

The Act provides directions on imposing sanctions for breaches of sections 83 and 84 in relation to membership of Redress Schemes.

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

This order requires letting agents and property managers to be members of an approved or designated Redress Scheme so that members can be investigated when complaints are made against them in connection with that work.

Where a letting agent or property manager is found not to be a member of a scheme then a monetary penalty can be imposed to a maximum of £5,000.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a monetary penalty. This will set out:

- The reasons for imposing the monetary penalty,
- The amount of the penalty,
- Information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a monetary penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- Decide whether to impose a monetary penalty on the property agent,
- If it is decided to do so, decide the amount of the penalty, and
- Withdraw a penalty

If the decision is made to impose a financial penalty, the council will issue the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the reasons for imposing the monetary penalty,
- information about the amount to be paid,
- information about how the payment may be made,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

Appeals can be made to the First-tier Tribunal against:

- the decision to impose a monetary penalty was based on an error of fact,
- the decision was wrong in law,
- the amount of the monetary penalty is unreasonable,
- the decision was unreasonable for any other reason

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Fenland District Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

Determining Penalties

The Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach** - the more serious the breach, the higher the penalty should be. This should include considering:
 - The track record of the agent – a higher penalty will be appropriate where the agent 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. Agents are running a business and should be expected to be aware of their legal obligations; and
 - Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.
- **Deterring agents from breaching the Requirement Regulations 2014** - Breaching the legal requirements of mandatory redress schemes is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the monetary penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations. This should include considering:
 - Deterring the agent from repeating the breach,
 - Deterring others from committing similar breach, and
 - Removing any financial benefit, the agent may have obtained because of committing the breach.
- **Aggravating and mitigating factors** - In order to determine the monetary penalty,

the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.

- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total monetary penalties are just and proportionate to the breaches.
 - Impact of the monetary penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
 - Impact of the monetary penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

A record of each decision and the reason for determining the monetary penalty must be made by the enforcement authority.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of the monetary penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Monetary Penalties issued under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 have a maximum penalty amount of £5,000.

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	High likelihood of harm <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	Medium likelihood of harm <ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect. • Tenants and/or legitimate landlords or agents substantially undermined by the conduct. • The Council's work as a regulator is inhibited • Tenant or prospective tenant misled
Low	Low likelihood of harm <ul style="list-style-type: none"> • Low risk of an adverse effect on actual or prospective tenants. • Public misled but little or no risk of actual adverse effect on individual(s)
Negligible	Negligible likelihood of harm <ul style="list-style-type: none"> • Harm not a consideration in the breach

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MIMIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding.

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Tenant Fees Act 2019

As of the 1st of June 2020, The Act dictates that landlords or agents will no longer be able to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make payments in connection with a tenancy, excluding:

- rent, provided no earlier period is financially more than any later period
- tenancy deposit to a maximum of 5 weeks' rent where the rent is less than £50,000 per annum and 6 weeks' rent where the rent is £50,000 or higher
- refundable holding deposit to a maximum of 1 weeks rent
- payment in the event of a default which applies to the reasonable costs due to a loss of a key or the late payment of rent by over 14 days, provided it is not greater than the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of 3% above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day
- payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person
- payment on variation, assignment or novation of a tenancy, when requested by a tenant, to a maximum of £50 or reasonable costs incurred if higher
- payment on termination of a tenancy to a maximum of the loss suffered by the landlord as a result of the termination of the tenancy
- payment in respect of council tax
- payment in respect of utilities, etc
- payment in respect of a television licence
- payment in respect of communication services to a maximum of the reasonable costs incurred by the landlord for or in connection with the provision of the service

As of the 1st of June 2020, The Act applies to Assured Shorthold Tenancies (ASTs), student accommodation and licenses to occupy housing (HMOs), in England only. The Act also applies to housing associations and local authorities, where they are letting an AST in the private rented sector.

Where an unlawful fee has been charged there is a maximum penalty of £5,000 for a first offence which is deemed a civil offence. Where a further breach is made within 5 years this constitutes a criminal offence but financial penalties of up to £30,000 can be issued as an alternative to prosecution.

In addition, the Act also dictates how holding fees should be treated. Holding deposits are to be held for up to 14 days from when paid or until a date agreed by the landlord/agent and tenant in writing. Where there is no separate agreement in writing deposits must be returned on the 15th day. The holding deposit is also required to be paid within 7 days from when a tenancy agreement is entered, the day the landlord decides not to enter into a tenancy agreement or where the landlord and tenant fail to enter into an agreement before the deadline for an agreement.

When making the decision whether to prosecute or not the following may be considered:

- history of non-compliance
- severity of the breach
- deliberate concealment of activity or evidence
- knowingly or recklessly supplying false or misleading evidence

- intent of the landlord/agent, individually and/or corporate body
- attitude of the landlord/agent
- deterrent effect of a prosecution on the landlord/agent and others
- extent of financial gain as result of the breach

Where a holding deposit is unlawfully retained, this civil breach can be served with a financial penalty. Enforcement authorities will be able to retain the money raised through financial penalties with this money reserved for future housing enforcement in the private rented sector. Each request for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- an agent/landlord charging different tenants under different tenancy agreements prohibited fees
- an agent/landlord charging one tenant multiple prohibited fees for different services at different times
- an agent/landlord charging one tenant multiple prohibited fees for different services at the same time
- an agent/landlord charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment, e.g., £200 requested for arranging the tenancy and doing a reference check would represent multiple breaches

Where an agent or landlord is being fined for multiple breaches at once and they have not previously been fined, the financial penalty for each of these breaches is limited to up to £5,000 each. The Act provides that the period of five years (in which a second breach could occur) begins on the day on which the relevant penalty was imposed, or the person was convicted. The date on which the penalty is imposed is the date specified in the final notice.

Fenland District Council may enforce this Act, however, local weights and measures authority in England have a duty to enforce in its area. For Fenland this would be Cambridgeshire County Council.

The lead enforcement authority, Bristol City Council, can also enforce the Act and will do so when breaches are reported directly to them.

Where Fenland District Council chooses to enforce this legislation, they will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the date the notice was served,
- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty,
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council

about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer not previously involved will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- Decide whether to impose a financial penalty on the person, and
- If it decides to do so, decide the amount of the financial penalty

If the decision is made to impose a financial penalty, the council will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the date the final notice is served,
- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Fenland District Council may at any time withdraw a notice of intent or final notice; reduce the amount specified in a notice of intent or final notice; or amend a notice of intent or final notice to remove the requirement to pay an amount which the authority required to be paid, which includes:

- any part or all of any prohibited payment to the relevant person,
- an amount which does not exceed the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made,
- any part or all of any holding deposit to the relevant person, or
- any amount, the authority may have required the landlord or letting agent to pay in interest on that amount

Any financial penalties under this act can be used towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach.** - the more serious the breach, the higher the penalty should be. This should include considering:
 - the track record of the landlord or agent – a higher penalty will be appropriate where the landlord or agent 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. Agents and landlords are running a business and should be expected to be aware of their legal obligations; and
 - harm caused to the tenant - the greater the harm, the greater the amount should be when imposing a financial penalty.
- **Punishment of the landlord or agent.** A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the breach and previous track record of the offender, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the landlord or agent and demonstrates the consequences of not complying with their legal obligations. This should include considering:
 - Deterring the landlord or agent from repeating the breach,
 - Deterring others from committing similar breaches, and
 - Remove any financial benefit the landlord or agent may have obtained because of committing the breach.
- **Aggravating and mitigating factors.** In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating and/or mitigating factors in each case.
- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:
 - Totality principle. If issuing a financial penalty for more than one breach, or where the landlord or agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches. Where the landlord or agent is issued with more than one financial penalty, the enforcement authority should consider the guidance 'Offences Taken into Consideration and Totality by the Sentencing Council for England and Wales'.
 - Impact of the financial penalty on the landlord or agent's ability to comply with the law and whether it is proportionate to their means (e.g., risk of loss of home)
 - Impact of the financial penalty on third parties (e.g., employment of staff or other customers)

A record of each decision and the reason for determining the financial penalty must be made by the enforcement authority

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing

this policy.

Financial Penalties issued under the Tenant Fees Act 2019 have a maximum penalty amount of £5,000 for first offences and £30,000 for second offences.

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	High likelihood of harm <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	Medium likelihood of harm <ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect. • Tenants and/or legitimate landlords or agents substantially undermined by the conduct. • The Council's work as a regulator is inhibited • Tenant or prospective tenant misled
Low	Low likelihood of harm <ul style="list-style-type: none"> • Low risk of an adverse effect on actual or prospective tenants. • Public misled but little or no risk of actual adverse effect on individual(s)

Negligible	Negligible likelihood of harm <ul style="list-style-type: none"> Harm not a consideration in the breach
-------------------	---

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

CULPABILITY	CLASS OF HARM			
	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below for first offences.

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

And from the following list for second offences

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding for first offences.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

And from the following list for second offences.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Non Private Rented Sector Properties

Owner Occupied

O Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention"

Housing Associations/Registered Providers (RP)

Upon receiving a complaint relating to an RP property, the council will normally notify the RP that a complaint has been received and/or a hazard identified and seek the RP's comments and proposals. However, the Council will, if deemed necessary, utilise all powers available under this policy, to resolve matters.

Where the council has identified hazards, and the Registered Provider has scheduled a programme of works, which will remove the hazard,, the officer will consider the programme when determining the most appropriate course of action. The council will liaise with the RP to agree a schedule to deal with category 1 and 2 hazards in advance of the planned improvements. In relation to the Space and Crowding hazard, where defect have been scored as a Category 1 or high Category 2 hazard, particular account will be taken of the availability of suitable alternative accommodation

Additional Enforcement Powers

The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

- Environmental Protection Act 1990 Section 80 - Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance
- Building Act 1984 Section 59- Used to deal with defective drainage issues in existing buildings
- Building Act 1984 Section 64- Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance
- Building Act 1984 Section 76 - Used where the property is so defective as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default)
- Building Act 1984 Section 79 – Used where a building or neglected site is in a ruinous and dilapidated condition and requires the owner to execute such works of repair or restoration, or if he so elects, to take such steps for demolishing the building or structure, or any part thereof, and removing any rubbish or other material resulting from or exposed by the demolition
- Building Act 1984 Section 84 – Used where there is unsatisfactory paving and drainage of yards and passages
- Building Act 1984 Sections 95 and 96 – Provides a power of entry to any property at all reasonable hours provided the occupier has been given 24 hours-notice:
 - for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, a contravention of this Act, or of any building regulations, that it is the duty of the local authority to enforce
 - ascertaining whether or not circumstances exist that would authorise or require the local authority to take any action, or execute any work, or the purpose of taking any action, or executing any work, authorised or required by this Act, or by building regulations,
 - for the purpose of taking any action, or executing any work, authorised or required by this Act, or by building regulations, or by an order made under this Act, to be taken, or executed, by the local authority, or
 - generally, for the purpose of the performance by the local authority of their functions under this Act or under building regulations

Section 96 allows an Officer to take with him such other persons as may be necessary

- Public Health Act 1936 Section 287 – Gives the Officer a right to enter any premises at all reasonable hours when giving 24 hours-notice to any occupier for the purpose of ascertaining whether there is, or has been, on or in connection with the premises any contravention of the provisions of this Act, being provisions which it is the duty of the council to enforce, ascertaining those circumstances, for the purpose of taking

action and generally, for the purpose of the performance by the council of their functions under this Act

- Local Government (Miscellaneous Provisions) Act 1982 Section 27 – Gives the power to repair drains and to remedy stopped-up drains
- Local Government (Miscellaneous Provisions) Act 1982 Section 29 (Notice of Intended Entry) - Used to prevent unauthorised access (for example broken windows, doors etc.) to get the owner to secure the premises
- Prevention of Damage by Pests Act 1949 Section 22 - Provides a right of entry to an Officer to inspect for rats and mice and to ascertain compliance with any notice provided any occupier has been given 24 hours-notice
- Housing Act 1985 (As Amended) - Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. Overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence:

- Local Government (Miscellaneous Provisions) Act 1976 Section 16 - Used to formally request information about a premise or a person
- Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000, Investigatory Powers Act 2016 – used in relation to interviews under caution, prosecution and gathering of evidence

Where housing or other related legislation is introduced, which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge, the Council will seek to fully implement any duty or power conferred upon it.

Monitoring and review

In accordance with the Regulators' Compliance Code, the council 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.

Contacts

If you have any comments or queries in relation to this policy, please contact the Private Sector Housing Team.

- Email: privatesectorhousing@fenland.gov.uk
- Telephone: 01354 654321
- Address: Fenland Hall, County Road, March, Cambs, PE15 8NQ

Appendix 1 – Aggravating and mitigating factors to consider when determining certain penalties

Potential factors increasing seriousness (this is not an exhaustive list):

- Previous convictions - Having regard to the nature of the offences to which the conviction relates and its relevance to the current offence; and the time that has been elapsed since the conviction. Therefore, where it is established that there are appropriate previous convictions that should be considered, the level of fine shall be increased to at least one banding higher (if feasible) to reflect the history of offending. This action is to be taken having regard to:
 - the nature of the offences to which the conviction relates and its relevance to the current offence; and
 - the time that has elapsed since the conviction
 - offences committed whilst on bailThis action is only to be taken when a prosecution is not deemed an appropriate action to take.
- Financial incentive - While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Therefore, where an offender lets and/or manages multiple properties nationally or locally the level of fine may be increased to at least one banding higher (if feasible) to ensure that the penalty is high enough to have a real economic impact on the offender.
- Statutory aggravating factors
- Record of non-compliance
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice/obstructive to the investigation
- Record of providing substandard accommodation
- Refusal of free advice
- Tenant is a vulnerable individual

Potential factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):

- No previous convictions/breaches or no relevant/recent convictions/breaches
- Steps voluntarily and promptly taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property/member of an accreditation scheme
- Self-reporting, co-operation and acceptance of responsibility
- Good character/exemplary conduct
- Evidence of health reasons preventing reasonable compliance (poor mental health, unforeseen health issues and/or emergency health concerns)
- Landlord or agent is a vulnerable individual, where vulnerability is linked to the breach being committed
- Whether landlord or agent's primary trade or income is connected to the private rented sector
- Admission of guilt

Appendix 2 – Civil Penalty Process Flow Chart



Appendix 3

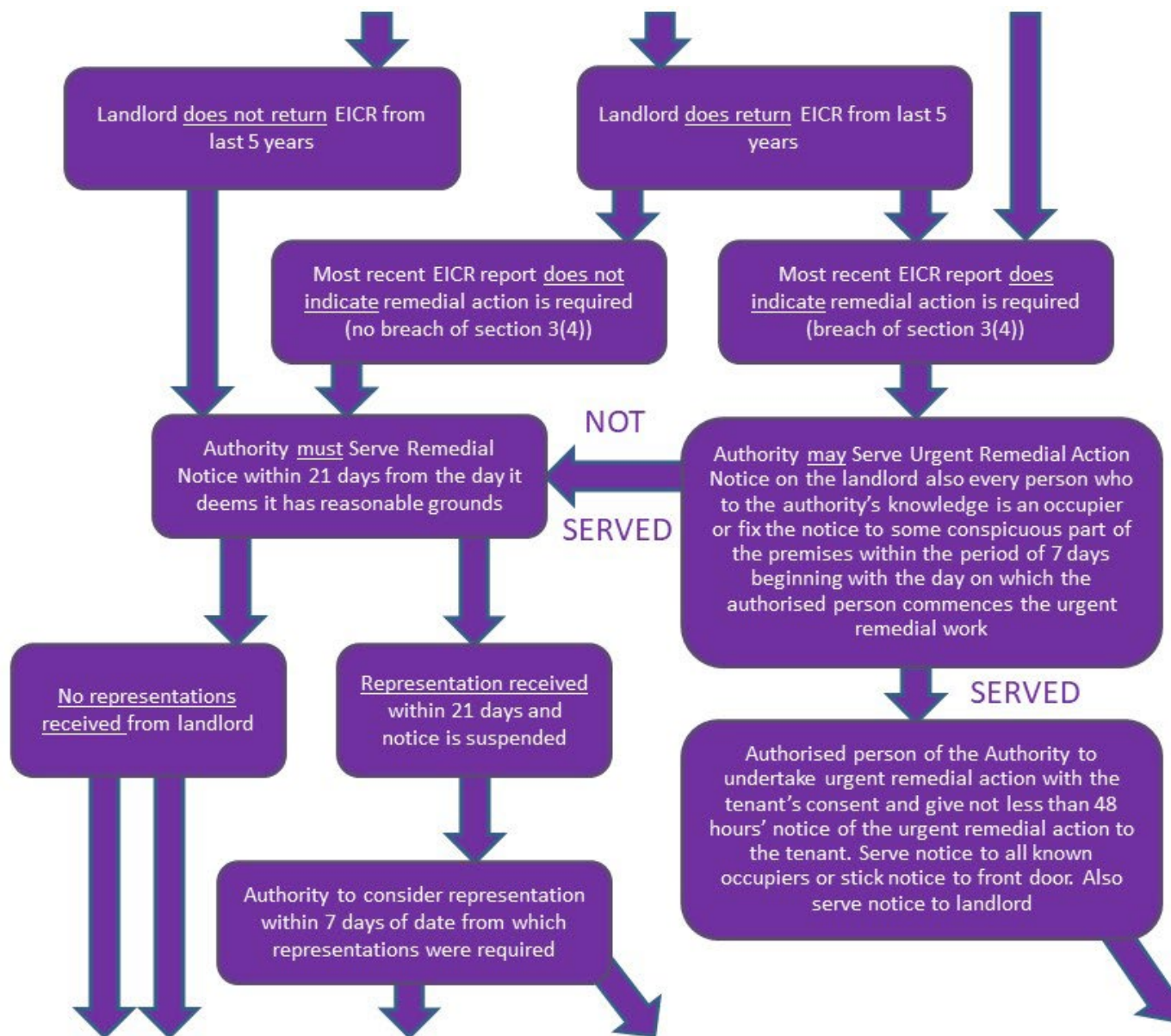
EICR Breach Process Flow Chart

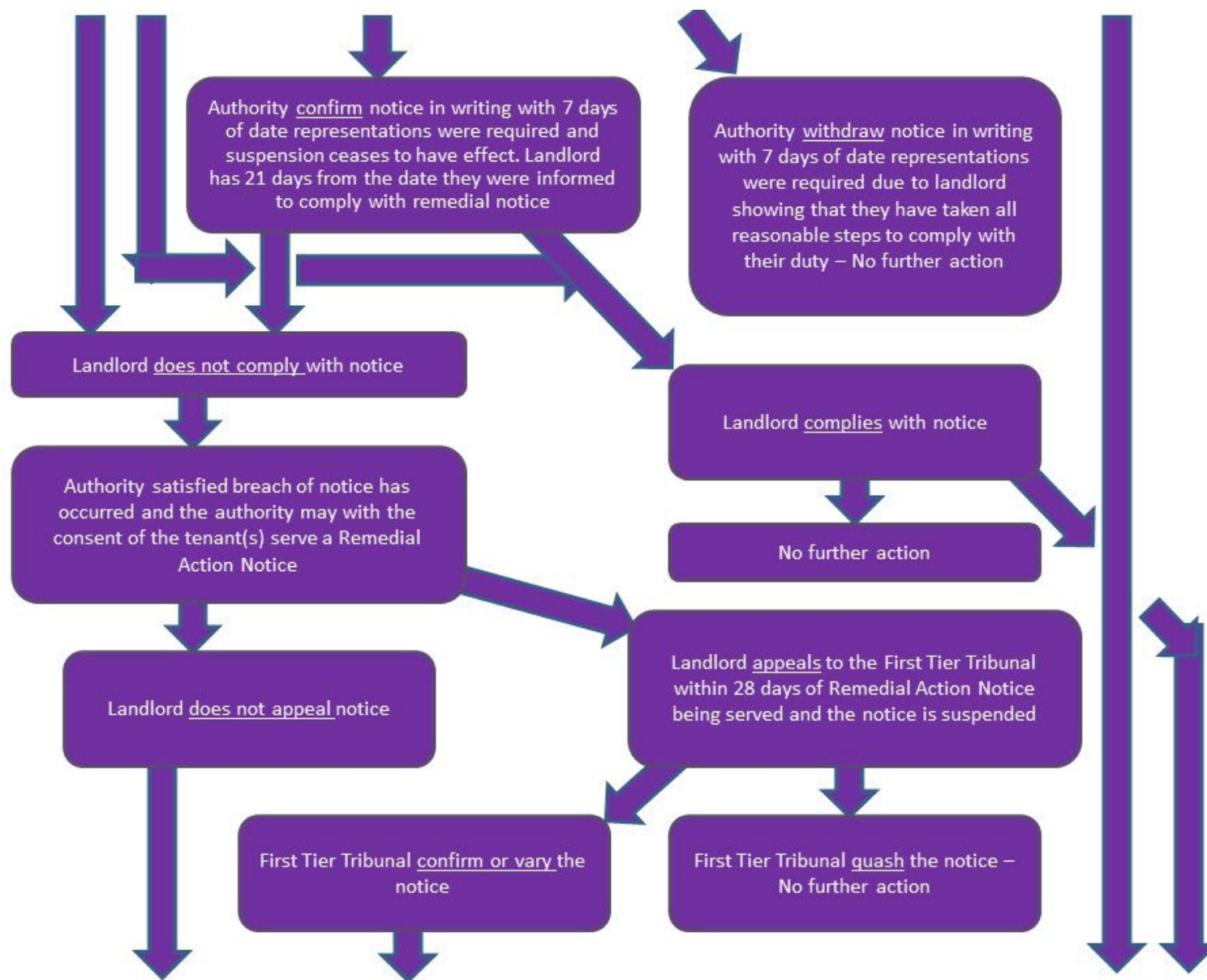
Local housing authority has reasonable grounds to believe that, in relation to residential premises a private landlord is in breach of one or more of the following duties:

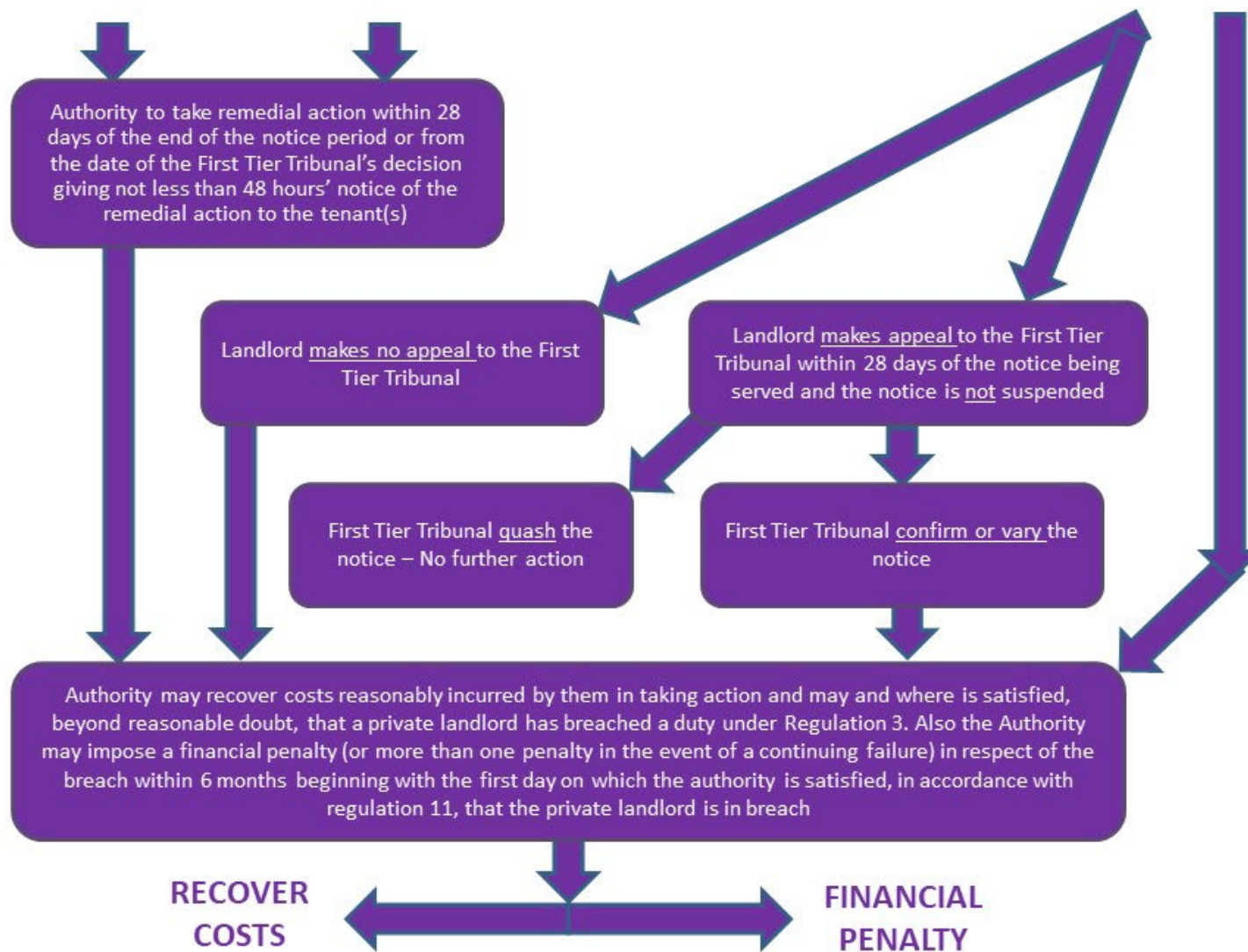
- 3(1)(a), A private landlord who grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the residential premises occupied under a specified tenancy; (new tenancies and any tenancy from 1 April 2021)
- 3(1)(b) A private landlord who grants or intends to grant a specified tenancy must supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test,
- 3(1)(c) A private landlord who grants or intends to grant a specified tenancy must 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(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) (A private landlord who grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days or the period specified in the report if less than 28 days,
- and 3(6) 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) and (5) -Where paragraph (4) applies, a private landlord must— (a) obtain written confirmation from a qualified person that the 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; (b) 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 each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and (c) 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) in respect of that further investigative or remedial work

Where required Officer requests current EICR within 7 days

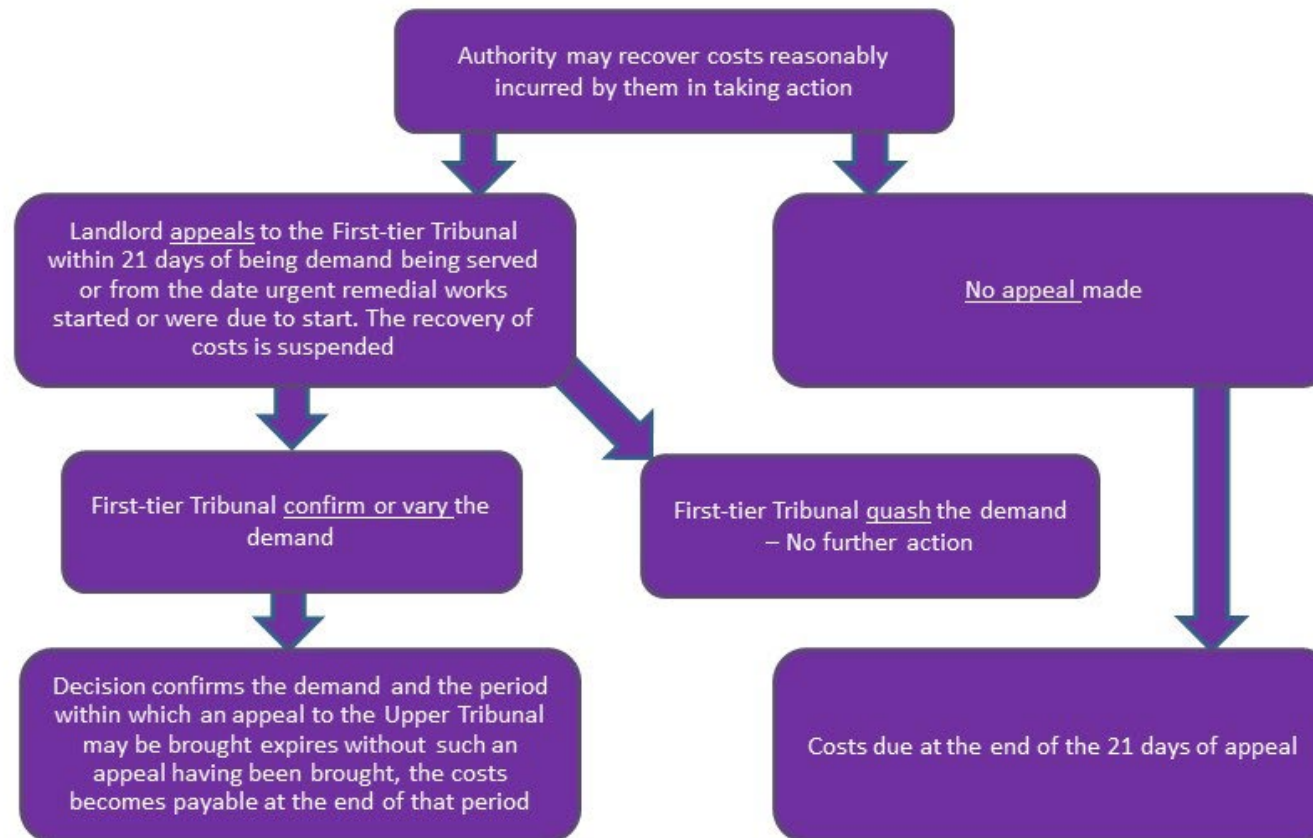
Landlord has supplied Authority with current EICR



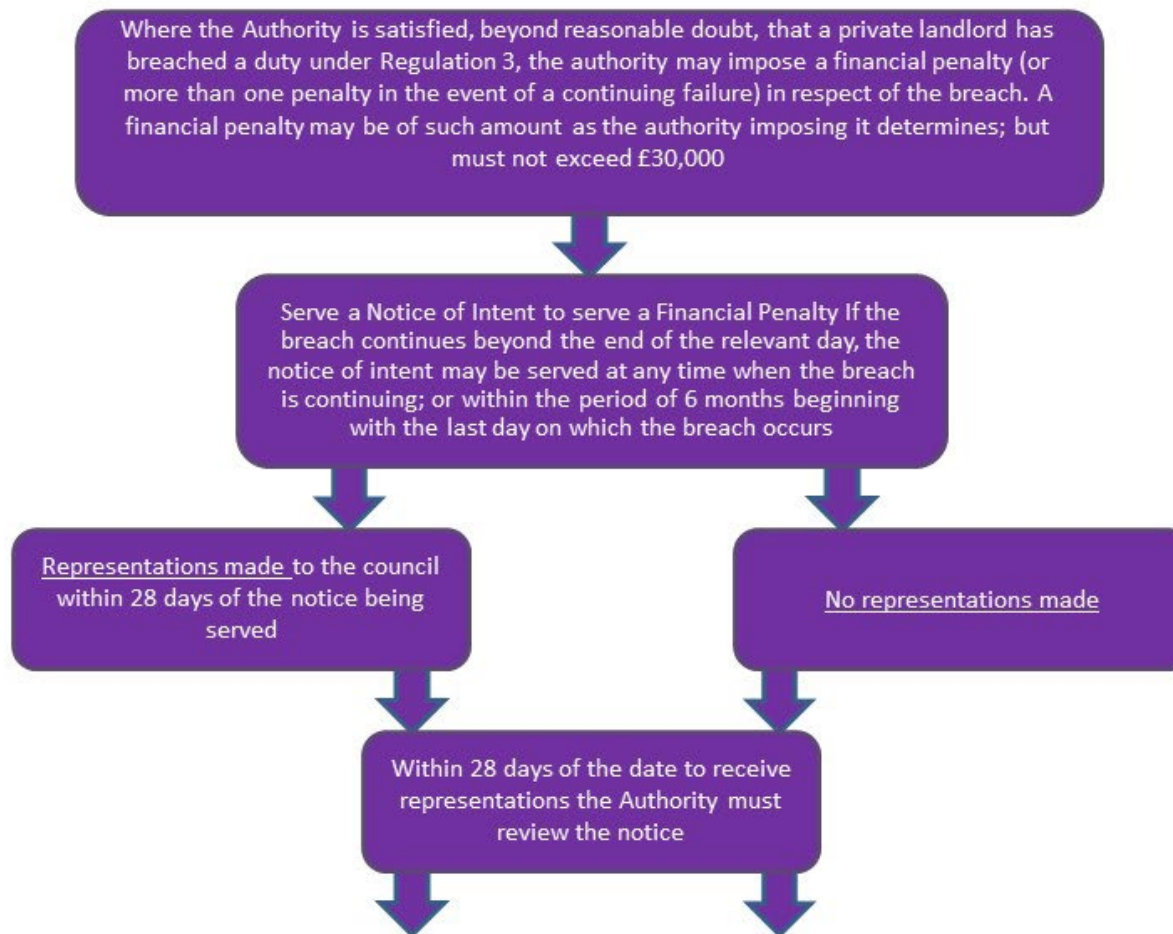


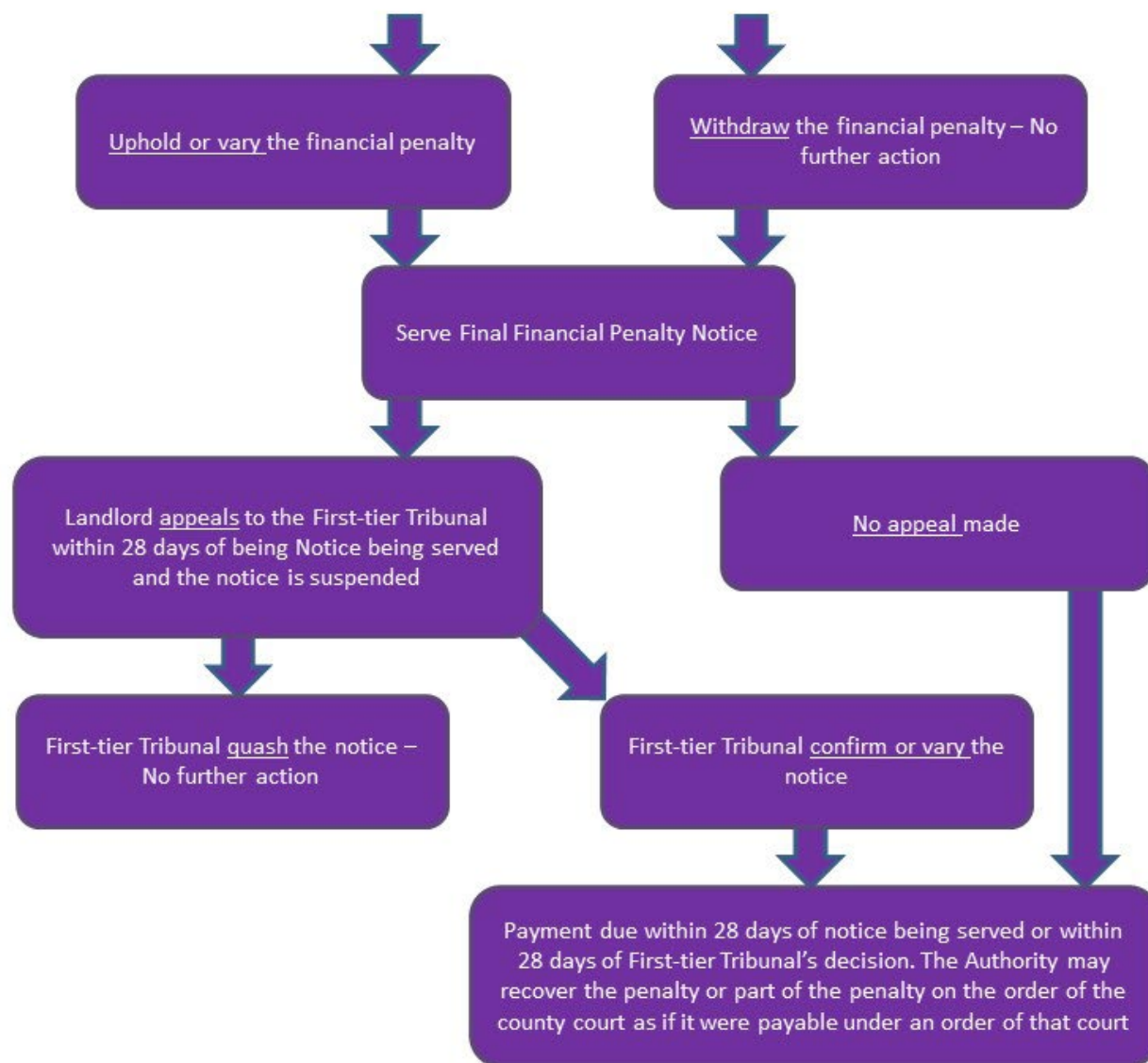


RECOVER COSTS



FINANCIAL PENALTY





Appendix 4

EPC Breach - Process Flow Chart

The Authority has reason to believe that a landlord does not have a valid EPC on a property he rents or has breached one or more of the following:

5. (2) The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant

(a) at the earliest opportunity; and

(b) in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of— (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.

(5) The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant.

6. (2) The person giving the particulars must ensure that

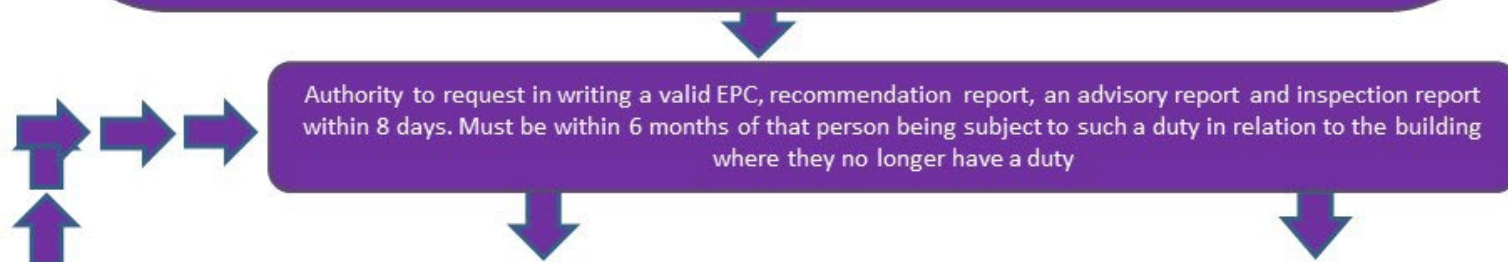
(a) the particulars include the asset rating of the building expressed in the way required by regulation 11(1)(a); or

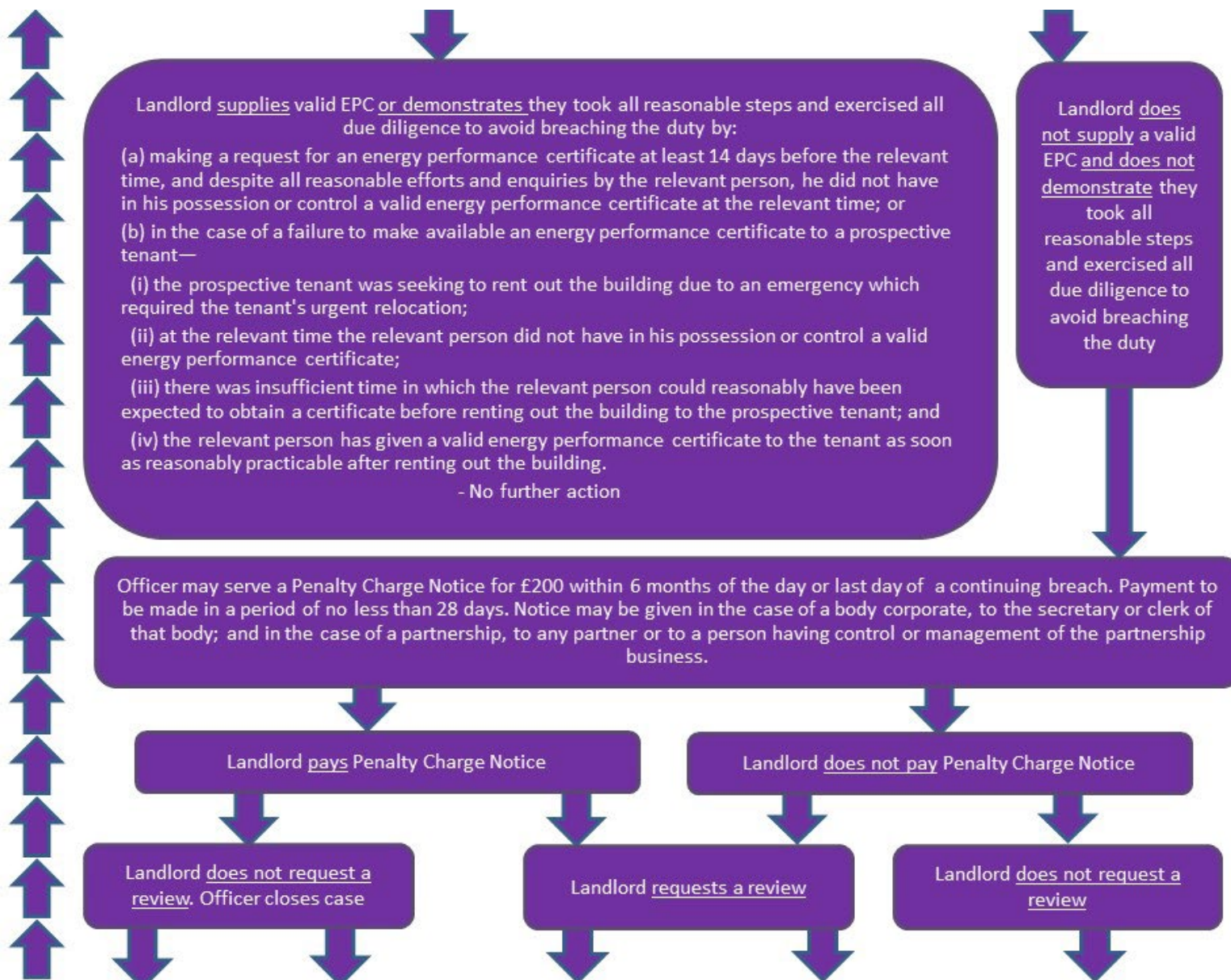
(b) a copy of an energy performance certificate for the building is attached to the particulars.

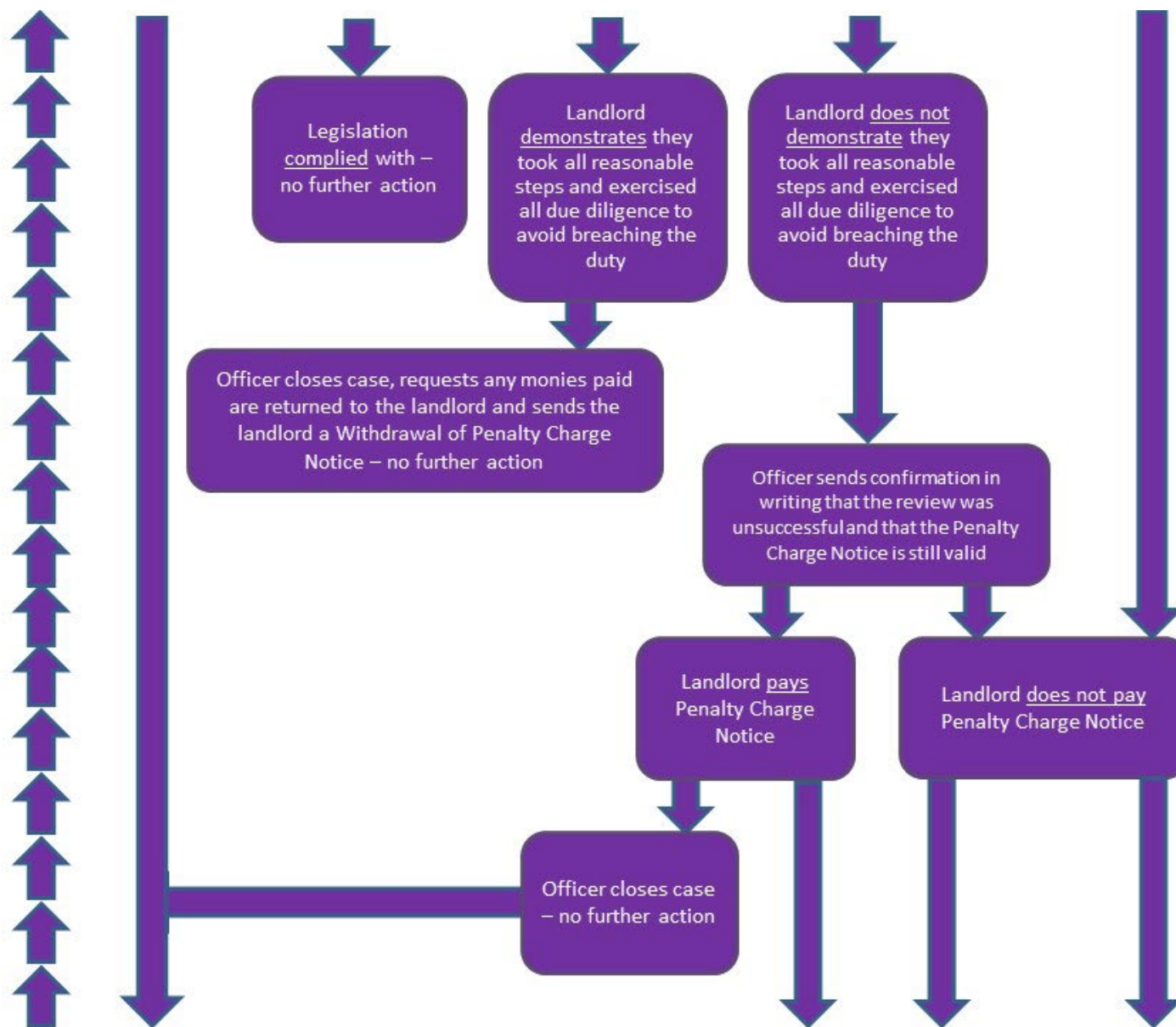
10. (1) Where a relevant person is under a duty under regulation 5(2), 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report.

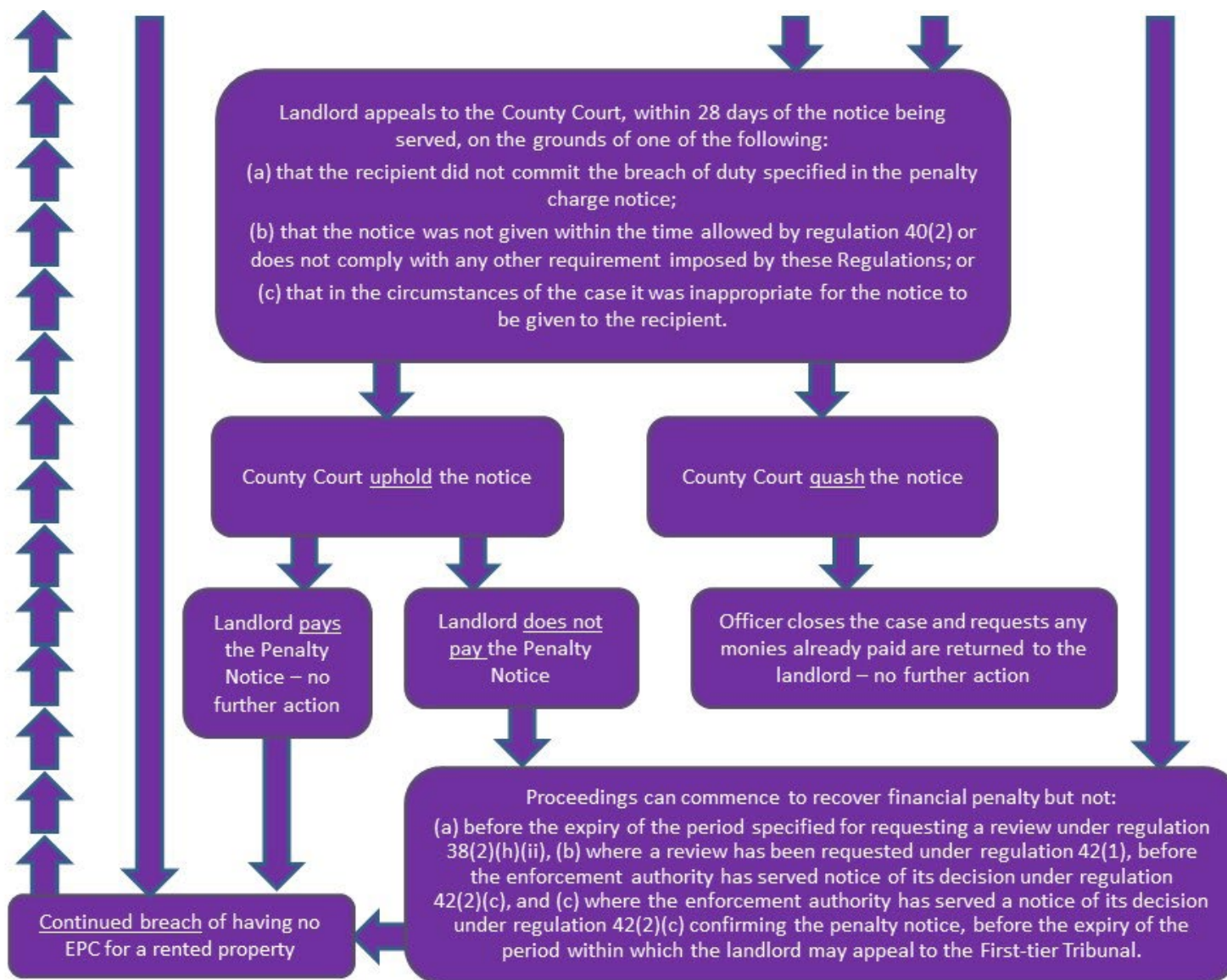
(2) A recommendation report is a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate.

39. (4) It is the duty of a person subject to such a requirement to produce documents within the period of seven days beginning with the day after that on which it is imposed.



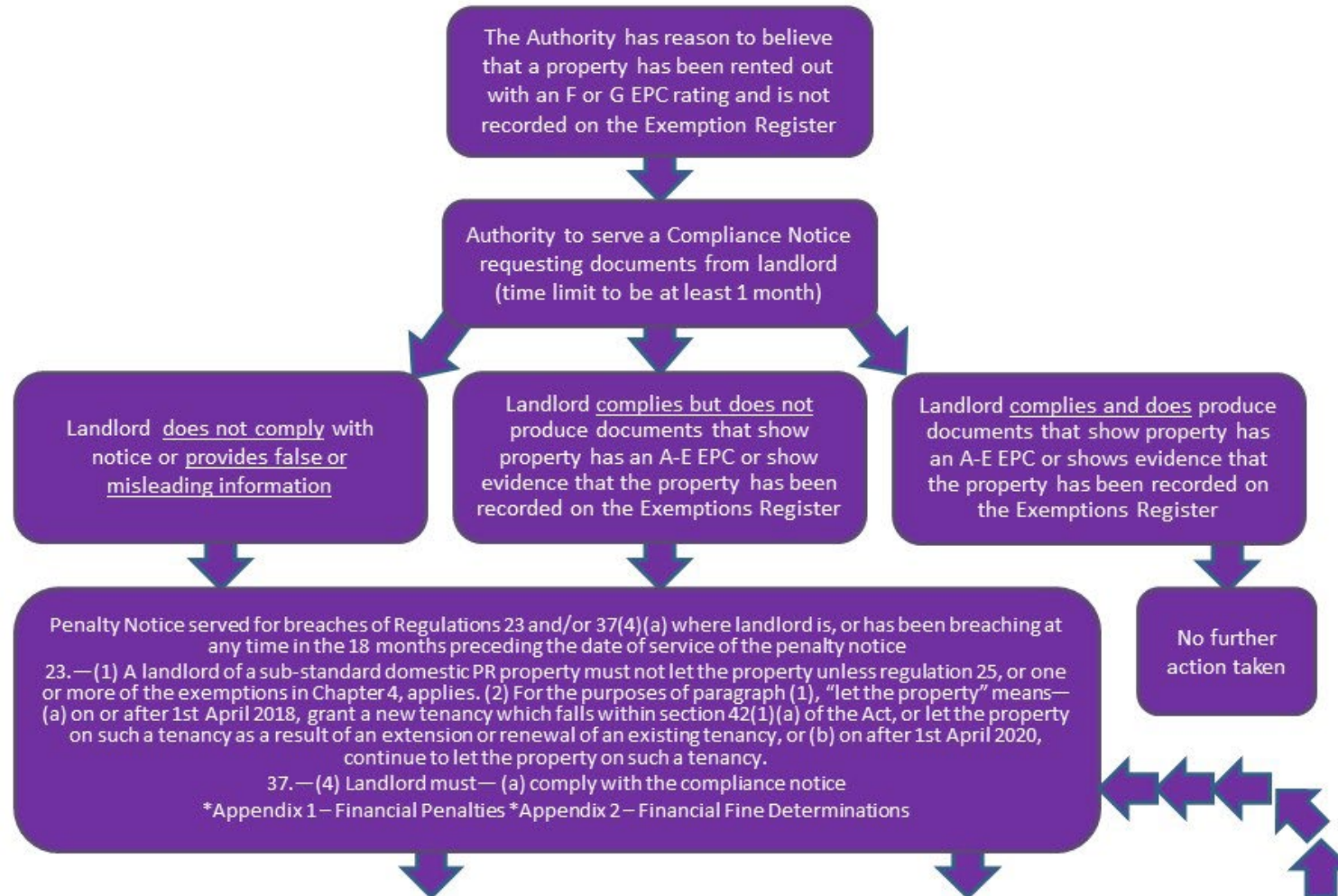


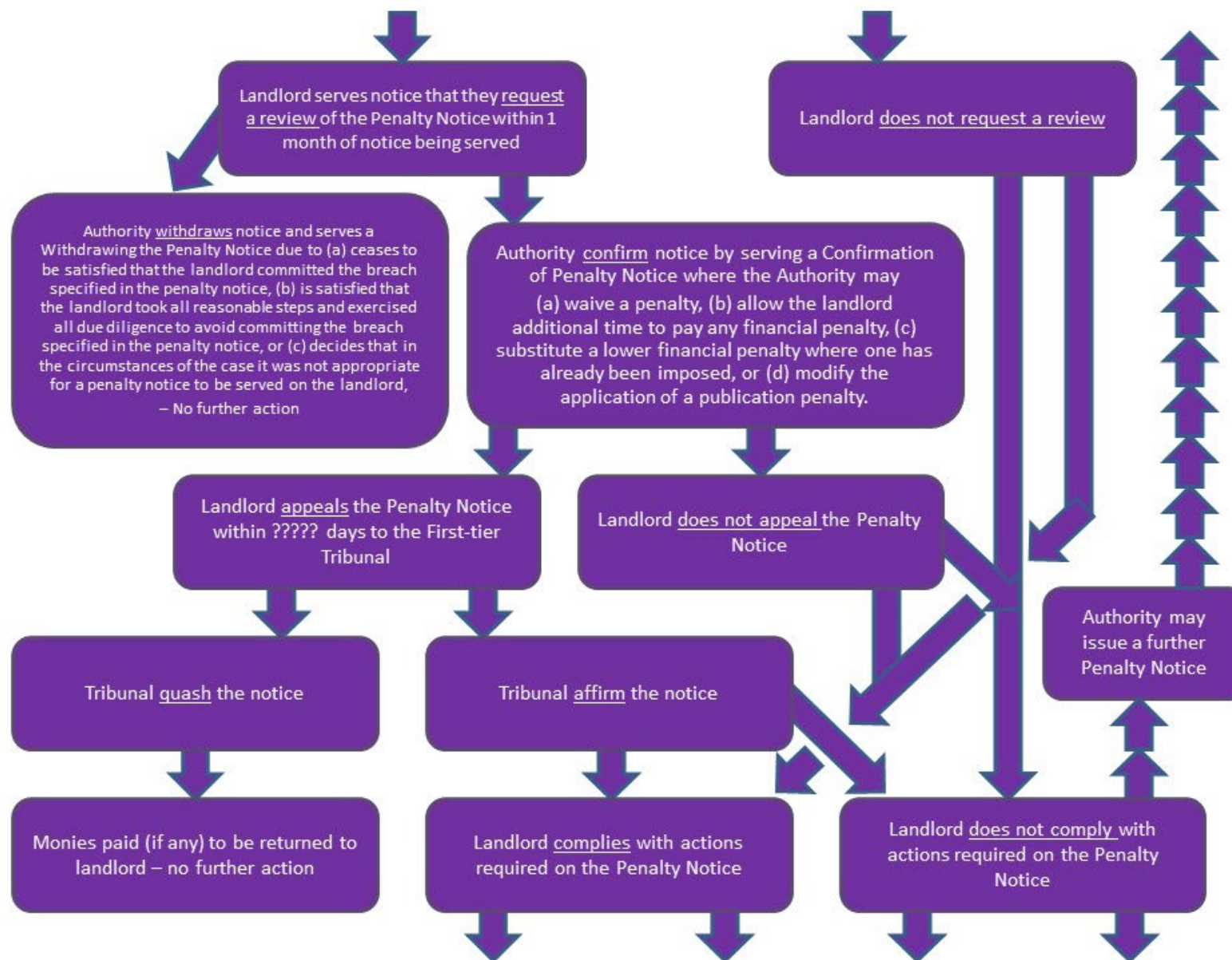


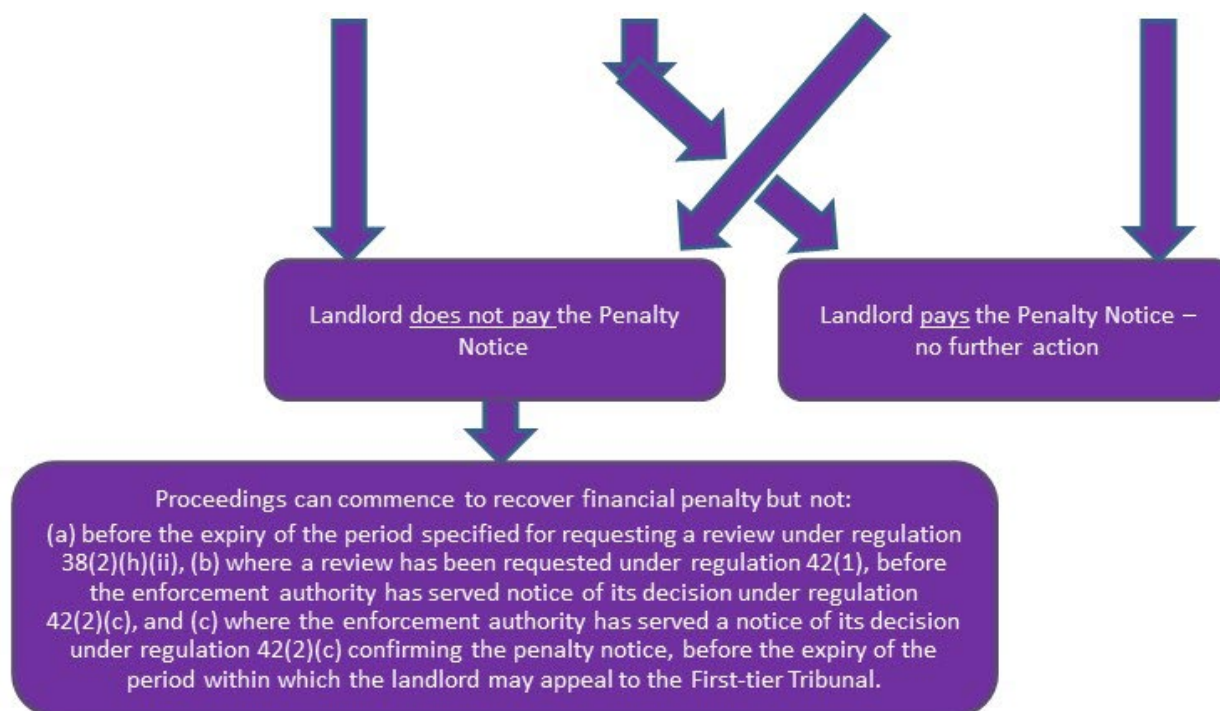


Appendix 5

MEES Breach - Process Flow Chart







Appendix 6

Smoke and Carbon Monoxide Breach - Process Flow Chart

Where a local housing authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1), the authority must serve a remedial notice on the landlord.

4.—(1) A relevant landlord in respect of a specified tenancy must ensure that—

(a) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

(i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;

(ii) 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

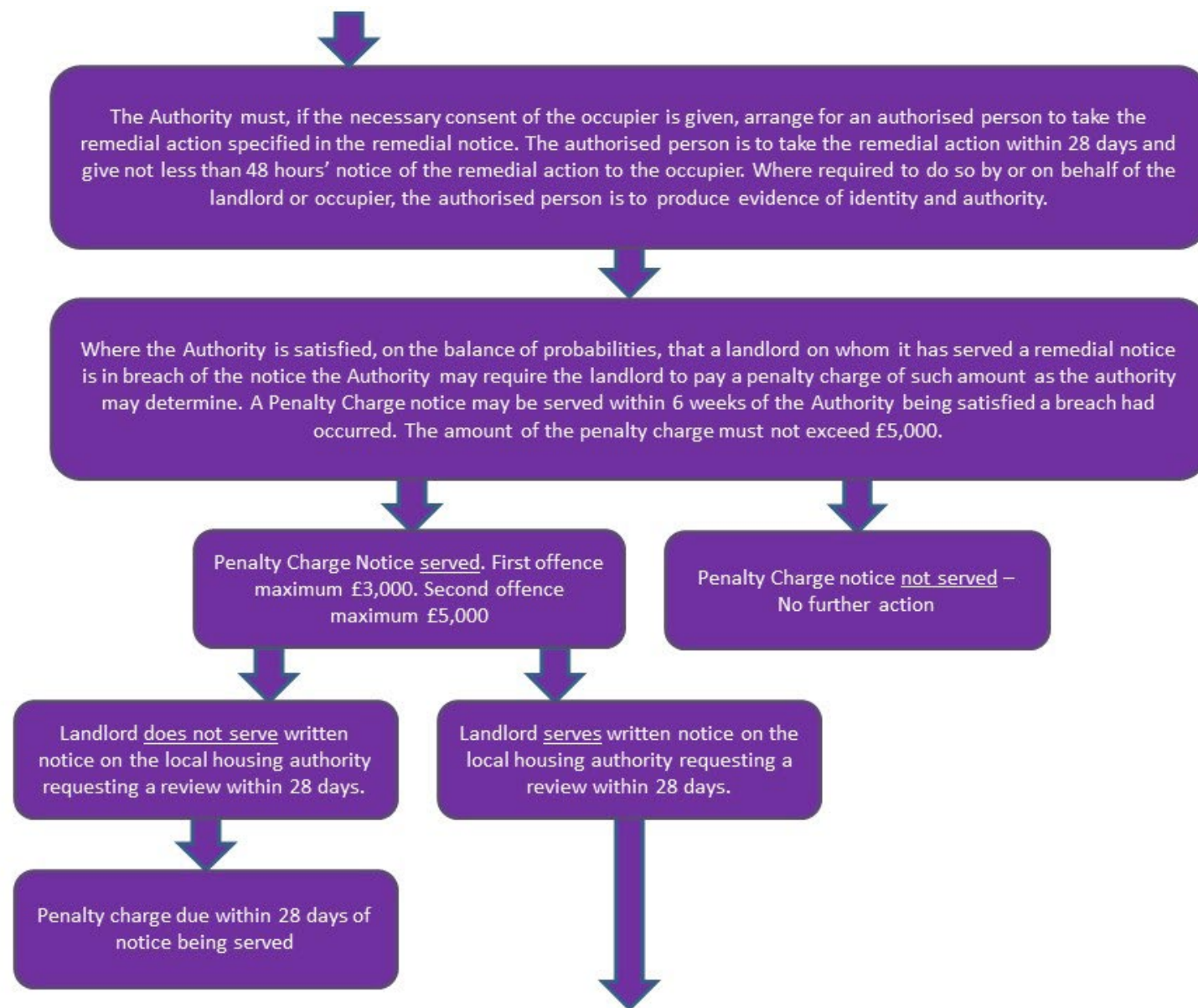
(b) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

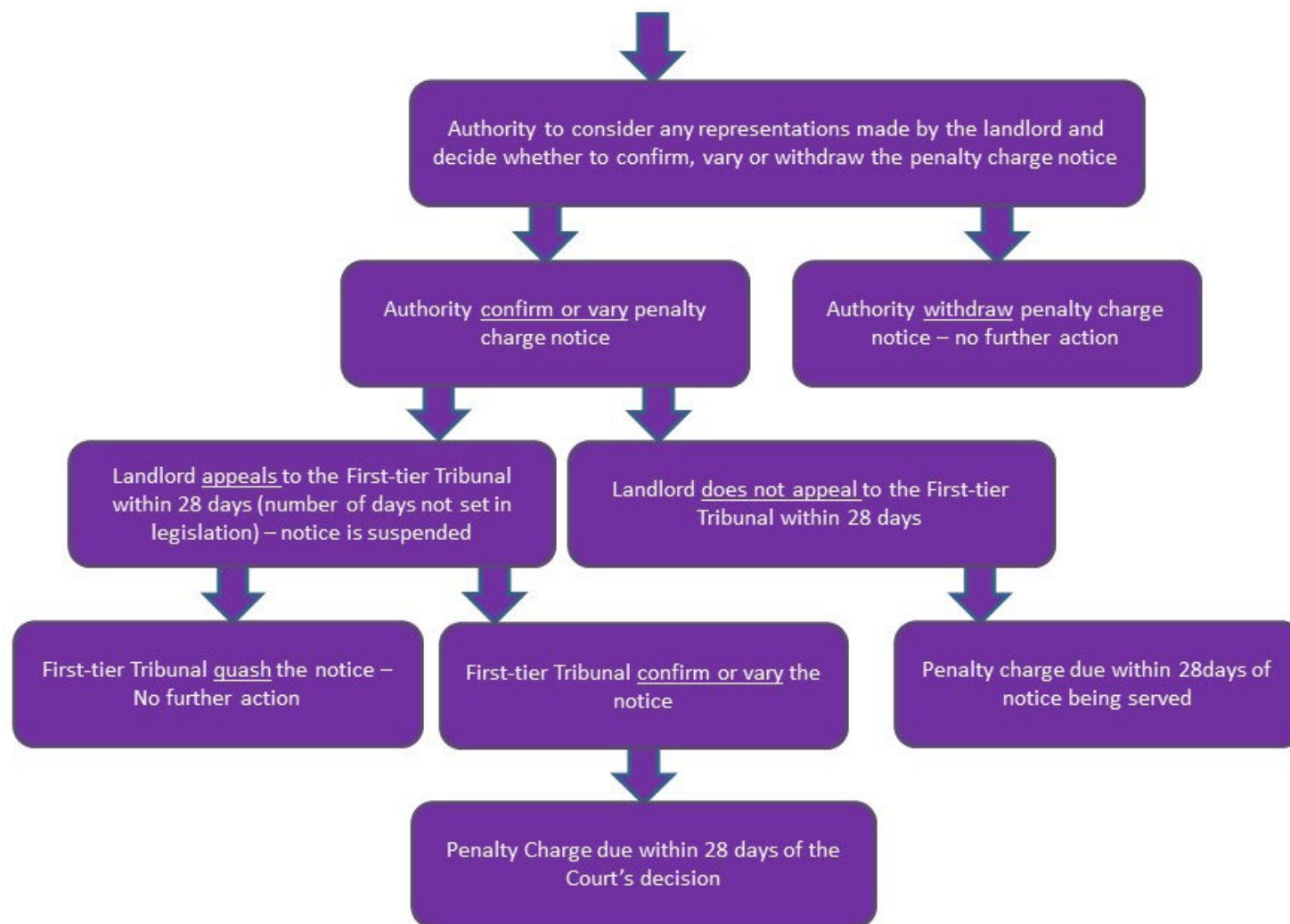
The Authority must serve a remedial notice within 21 days beginning with the day on which the authority decides it has reasonable grounds.

Landlord does not take required action within 28 days on notice being served. A landlord is not to be taken to be in breach of the duty if the landlord can show he, she or it has taken all reasonable steps, other than legal proceedings, to comply with the duty.

Landlord takes required action within 28 days of notice being served

No further action





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DRAFT 6 MONTH CABINET FORWARD PLAN – Updated 1 July 2022



(For any queries, please refer to the published forward plan)

CABINET

CABINET DATE	ITEMS	LEAD PORTFOLIO HOLDER
Currently 15 Aug 2022 New date to be confirmed	<ol style="list-style-type: none"> 1. Accommodation Review 2. Confirmation of Article 4 Direction – Land to the Rear of B1098 3. Development of Phase 2 of South Fens Enterprise Park, Chatteris 4. 24 High Street, Wisbech (TBC) 5. 11-12 High Street, Wisbech (TBC) 6. Cabinet Draft Forward Plan 	<p>Cllr Boden Cllr Laws</p> <p>Cllr Benney</p> <p>Cllr Seaton / Cllr Hoy / Cllr Tierney</p> <p>Cllr Seaton / Cllr Hoy / Cllr Tierney Cllr Boden</p>
3 Oct 2022	<ol style="list-style-type: none"> 1. Whittlesey Neighbourhood Planning Referendum 2. Investment Board Update 3. Council Tax Support Scheme 4. 24 High Street, Wisbech (TBC) 5. Cabinet Draft Forward Plan 	<p>Cllr Laws</p> <p>Cllr Boden / Cllr Tierney / Cllr Benney Cllr Boden</p> <p>Cllr Seaton / Cllr Hoy / Cllr Tierney Cllr Boden</p>
24 Oct 2022	<ol style="list-style-type: none"> 1. 24 High Street, Wisbech (TBC) 2. Cabinet Draft Forward Plan 	<p>Cllr Seaton / Cllr Hoy / Cllr Tierney Cllr Boden</p>
14 Nov 2022	<ol style="list-style-type: none"> 1. 24 High Street, Wisbech (TBC) 2. Cabinet Draft Forward Plan 	<p>Cllr Seaton / Cllr Hoy / Cllr Tierney Cllr Boden</p>
12 Dec 2022	<ol style="list-style-type: none"> 1. Draft Business Plan 2023/24 2. Draft Budget & Mid Term Financial Strategy 2023/24 3. Treasury Management Strategy Statement & Annual Investment Strategy Mid-Year Review 2022/23 4. RECAP Partnership Waste Strategy Review 	<p>Cllr Boden Cllr Boden</p> <p>Cllr Boden</p> <p>Cllr Tierney /</p>

CABINET DATE	ITEMS	LEAD PORTFOLIO HOLDER
	5. Cabinet Draft Forward Plan	Cllr Murphy Cllr Boden

TBC = To be confirmed

Agenda Item No:	13	
Committee:	CABINET	
Date:	11 July 2022	
Report Title:	24 High Street, Wisbech Contract Award	

Schedules 1, 2 and 3 of this item comprise exempt information which is not for publication by virtue of paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

1. Purpose / Summary

To provide Cabinet with an update on progress related to the 24 High Street Project and for Cabinet to consider recommending to Full Council increased funding within the capital programme to fund the project and to recommend to Full Council that the Council enters into a construction contract for 24 High Street.

2. Reasons for Exemption

Schedules 1, 2 and 3 of this Report are not for publication in accordance with paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the financial and business affairs of the Council and 3rd parties and legal advice in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The public interest test has been applied to the information contained within this exempt report and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

3. Progress to Develop the Gap at 24 High Street

3.1 The project to redevelop 24 High Street continues, with pre-contract archaeological assessment work now completed whilst the Council carries out due diligence work with a preferred bidder following a procurement process.

3.2 The results of the procurement exercise carried out using a framework agreement for the construction of 24 High Street reflects the difficulty of development on this site given its position in the High Street, as well as a volatile construction market at present. Costs continue to rise, with material costs, particularly steel, not held for any significant period of time. Whilst the Council has selected a preferred bidder, the bid value was caveated with several terms. The commercially sensitive detail regarding the procurement exercise and financing options are as set out in exempt Schedules 1, 2 and 3. Further, the Council has employed a firm of quantity surveyors to assess the preferred supplier's bid to ensure that Members can be presented with a clear expectation of costs that construction of 24 High Street may incur the Council. Their report may be found in Schedule 2.

- 3.3 The Council has been in contact with the Heritage Lottery Fund (HLF) in regard to increasing the potential grant available for 24 High Street. Currently the grant available for the 24 High Street construction project is £238,000. When this was determined several years ago this was 35% of the expected construction costs. It now represents a significantly smaller proportion of construction costs than 35%.
- 3.4 Council officers have discussed the necessity to increase the grant value and have been advised by HLF that until some certainty regarding work at 11-12 High Street is available no change in grant funding will be possible. Since the private developer pulled out of the 11-12 High Street Project, the Council has sought interest from several other developers with little success. Another firm is currently assessing the site for development and whilst this work is ongoing the Council has commissioned a further piece of work to finalise options should the third-party firm not take development forwards. It is anticipated that a further paper will be brought to Cabinet in August to consider the future of 11-12 High Street. This may then inform flexibility regarding the grant to 24 High Street – with any change dependent on HLF.
- 3.5 It is important to recognise that 24 High Street is a regeneration project and forms an integral part of the Wisbech High Street NLHF scheme. Wisbech has a wealth of heritage assets but unfortunately, due to a combination of factors many historic buildings in the town have suffered, particularly on the High Street. A number remain ‘at risk’ or ‘vulnerable’ and there are gap sites following demolition including at 24 and 11-12 High Street. This was the basis of the grant funding award by NLHF. Residential and commercial properties values are low within the town centre in part as a result of the multitude of deprivation and infrastructure challenges that Wisbech faces. Without market intervention through public sector subsidy there is very little prospect of vacant High Street sites being developed and brought back into use to benefit the local economy. Development of 24 High Street is not viable without public sector subsidy. The return on investment for a commercial developer – the cost of construction set against the resultant capital value and rental income stream that can be achieved – is likely to be negative in both the short and medium term. A much longer return period coupled with identifiable socio-economic outcomes has to be considered to demonstrate best value for that public sector subsidy (this is considered further later in this report). There are tangible benefits to delivering the 24 High Street scheme including:
- the physical regeneration of the site itself
 - avoiding the holding costs of a site which includes structural support of adjacent buildings and ensuring the long-term protection of those adjacent heritage assets which have exposed walls following demolition
 - improving the attractiveness of the High Street for local residents and visitors to the town, thereby helping to drive footfall and support local businesses
 - protecting and enhancing the character and appearance of the Conservation Area

- delivering new apartments in a sustainable location
- stimulating further investment in the town as the town centre is Wisbech's 'shop window'
- the use of available NLHF grant to help subsidise the scheme

4 Recommendations

- 4.1 That Cabinet notes the current position in relation to the Council's redevelopment plans for 24 High Street, Wisbech; and
- 4.2 Following consideration of the information in Schedules 1 and 2 regarding the preferred bidder's submission:
- Notes the anticipated total value of redeveloping 24 High Street capped in accordance with the terms and conditions of the Crown Commercial Services Government Construction Framework RM6088;
 - Recommends that Full Council considers and approves the options available for funding the redevelopment of 24 High Street based on the value anticipated by the preferred bidder and as set out in Schedule 3 and delegates to the Chief Finance Officer, in consultation with the Leader, authority to identify and utilise the most appropriate combination of funding having regard to the Council's wider budgetary duties and obligations; and
 - Subject to the above, recommends that Full Council approves the negotiation and entry into a contract with the preferred bidder in accordance with the requirements of the Code of Procurement and the legal advice and due diligence requirements set out in Schedule 1 seeking at all times to ensure that the Council maintains its best value obligations.

Wards Affected	Medworth Ward	
Forward Plan Reference	KEY21APR22/01	
Portfolio Holders	Cllr Chris Seaton Cllr Ian Benney Cllr Chris Boden	Portfolio Holder for Social Mobility and Heritage Portfolio Holder for Economic Growth Leader of the Council and Portfolio Holder for Finance
Report Originator	Phil Hughes Acting Assistant Director	
Contact Officers	Paul Medd Matt Wright Peter Catchpole Amy Brown	Chief Executive High Streets Project manager Corporate Director and S151 Officer Monitoring Officer and Chief Legal Officer

Background Papers	<p>Quantity Surveyor's report regarding preferred bidders bid contained within Schedule 2</p> <p>20 February 2020 Cabinet Report</p> <p>1 July 2021 Cabinet Report</p> <p>2022 Cabinet reports</p> <p>Planning documentation- application reference F/YR21/0680/FDC</p>
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5 Capital Programme Project Update – 24 Wisbech High Street

- 5.1 Since the previous Cabinet update regarding the Wisbech High Street Programme, there has been positive progress relating to 24 Wisbech High Street.
- 5.2 The preferred bidder has been notified of their status and a quantity surveyor has assessed the bid documentation and caveats contained therein. Details of this work and a report from the quantity surveyors is included in Schedules 1 and 2.
- 5.3 Party wall investigations continue through our private sector partners. Currently we are not aware of any risk to the project programme as a result of this work.
- 5.4 Officers are engaged with the National Lottery Heritage Fund (NLHF) to align the funding agreement. This will allow the funds to be allocated from the external funding body in readiness for delivery of the project and subject to entry into a standard grant funding agreement.

6 Legal Implications

- 6.1 The procurement has been carried out in accordance with Fenland District Council's Code of Procurement which allows the use of Government Buying Contracts. The Council has used the Crown Commercial Services Government Construction Framework RM6088.
- 6.2 Whilst ordinarily the executive has delegated authority to approve entry into contractual arrangements, as one of the options for funding the redevelopment requires the use of funds which are not provided for within the capital programme, Full Council would ultimately be required to determine whether or not the current funding allocated to this project should be increased. In particular, the Council's Constitution prescribes that only Full Council will be responsible for *"making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to policy framework or contrary to/or not wholly in accordance with the budget"* (Article 4) and *"the Cabinet, committee of the Cabinet, individual members of the Cabinet and any officers or joint arrangements discharging executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly*

in accordance with the budget approved by full Council, then that decision may only be taken by the Full Council (Budget and Policy Framework Procedure Rules, paragraph 3).

- 6.3 In view of the deadline for publishing the Agenda for the Council meeting on 11 July 2022, it has not been possible to include information about the tender assessment process within this report due to information that remains outstanding from a third-party assessment of the preferred bidder's submission. It is essential that the accuracy of the financial information and financial impact of caveats contained within bid documents submitted by the preferred bidder are accurately assessed to allow an informed decision to be taken. Regulation 7 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 permit an exception to the requirement for reports to be published 5 clear days in advance of a meeting in circumstances where the information is not available at the time of publication.

Additional information will therefore be published and circulated to Council Members as soon as possible after those processes have concluded in order to facilitate a timely decision in relation to a decision regarding the Council's preferred bidder.

- 6.4 The Council also has a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This applies to all functions of the Council, including activities related to regeneration. Members will need to consider the implications of this duty when weighing up the benefits of proceeding with the scheme as outlined in paragraph 3.5 against the costs of proceeding and any associated financial risks. The Council and members also have a fiduciary duty to tax payers in considering any significant expenditure. In effect this also requires members to carefully consider the benefits and costs of the proposed scheme. A decision will be lawful so long as it takes into account all relevant factors and is reasonable in all the circumstances.

7 Financial Implications

- 7.1 The Council has allocated a capital budget of £1.35M to this project which includes a £238k contribution from the NLHF. This sum falls significantly short of the expected estimated total value of the preferred bidders bid. Due to the value of the increase, the authority of Full Council is required to increase the sum set aside in the Council's capital programme for this project. For the project to proceed Cabinet's recommendation to Full Council should seek an increase in the project's authorised capital programme cost to that detailed in Exempt Schedule 3, paragraph 6.
- 7.2 Details of the cost of financing the project are included in Exempt Schedule 3, paragraph 7 together with information regarding the net income which the Council anticipates it would receive on an annual basis after work on the building has been completed.
- 7.3 As noted above officers are continuing to negotiate with representatives from the National Lottery Heritage Fund (NLHF) to obtain the optimal amount of grant funding to support delivery of the project. However, at this stage there is no guarantee that the NLHF contribution will exceed £238k.

- 7.4 Officers are also in consultation with the Cambridgeshire and Peterborough Combined Authority regarding financial support for this project.
- 7.5 If other funding opportunities arise in the short term, Officers will also consider whether these are applicable to this project and apply for support if suitable.
- 7.6 It should be noted that this project is a regeneration one and not part of the Commercial and Investment Strategy as the investment criteria contained within the Strategy would not be met.

8 Alternative Options Considered

- 8.1 It is important to recognise that 24 High Street is a regeneration scheme rather than a commercial investment proposal and that it is intended to support the wider Wisbech High Street NLHF grant funded project. The site is owned by the Council and forms a gap in a primary retail street in the heart of the town. It is considered that there are two potential alternative options to that recommended in this report.

8.2 Option 1 – To not proceed with the award of a construction contract and to review the situation in 12 months’ time

As set out earlier in this report, there is cost volatility in the construction sector. Materials and labour costs remain high, and many contractors have full order books following delays to construction caused by the Covid-19 pandemic. There could be some levelling off or cost reduction over time but equally the rising cost of inflation together with ongoing raw materials supply issues could see costs rise further rather than decrease. Delaying the project for 12 months could also risk loss of the NLHF funding contribution unless a time extension to the scheme can be agreed. This is a significant risk given that the scheme has already been extended beyond its original 3 years.

8.3 Option 2 – To dispose of the site to a third-party developer

As set out above, this is a regeneration and not a commercial investment proposal and is intended to deliver transformational change to Wisbech through the NLHF scheme. It is not unusual for projects of this nature to face a ‘conservation deficit’ meaning that they require grant funding to bridge an identified financial viability gap. The Council can take a longer-term view about the cost of investment and the return on that investment, unlike a private sector developer who would need to achieve a developer profit and a shorter-term commercial return on investment, particularly where a scheme is subject to development finance. It is considered highly unlikely that a sale to a third-party developer could be achieved in these circumstances.

9.0 Schedules

- 9.1 Schedule 1 – Procurement Update, Legal Advice and Due Diligence Implications.
- 9.2 Schedule 2 – Quantity Surveyor Assessment.
- 9.3 Schedule 3 – Overview of Financing Options and Implications.

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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of the Local Government Act 1972.

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