Social Care Health and Housing Overview and Scrutiny Committee

Schedule
Monday 3 June 2019, 10:00 AM — 2:00 PM BST

Venue
Council Chamber, Priory House, Monks Walk, Chicksands, Shefford, SG17 5TQ

Description
To Chairman and Members of the Committee: -

Cllr Versallion (Chairman)
Cllr Bowater (Vice-Chairman)

Cllrs Crawley, Duckett, Goodchild, Sanders, Smith, Wallace and Whitaker

Substitutes: Cllrs Chatterley, Farrell, Gomm, Harvey and Perham

Notes for Participants
If you wish to speak at this meeting you can register to speak online via the following link: -

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Hard copies of the papers for this meeting are not routinely made available to those in attendance. Should you require a copy of please download this from the Council website beforehand.
## Agenda

1. **Apologies for Absence**
   - To receive apologies for absence

2. **Minutes**
   - To approve as a correct record, the Social Care Health and Housing Overview and Scrutiny Committee held on 18 March 2019.
   - Minutes.doc

3. **Members' Interests**
   - To receive from Members any declarations of interest.

4. **Chairman's Announcements**
   - To receive any matters of communication from the Chairman.

5. **Public Participation**
   - To respond to general questions and statements from members of the public in accordance with the Public Participation Procedure as set out in Part 4G of the Constitution.

6. **Petitions**
   - To receive petitions from members of the public in accordance with the Public Participation Procedure as set out in Part 4G of the Constitution.

7. **Questions, Statements or Deputations**
   - To receive any questions, statements or deputations from members of the public in accordance with the Public Participation Procedure as set out in Part 4G of the Constitution.
8. **Call-in**

To consider any decision of the Executive referred to this Committee for review in accordance with Part 4D of the Constitution.

9. **Requested Items**

To consider any items referred to the Committee at the request of a Member in accordance with Part 4D of the Constitution.

10. **Executive Members' Update**

To receive a brief verbal update from:-
- The Executive Member for Adult Social Care and Housing Operations
- The Executive Member for Health and Wellbeing and Communities and
- The Executive Member for Assets and Housing Development.

<table>
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<tr>
<th>PART A: External and NHS matters</th>
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To review and scrutinise any matters relating to the planning, provision and operation of health services in Central Bedfordshire commissioned by the NHS or external organisations (such as the Clinical Commissioning Group)

**REPORTS**

11. **Introduction to Representatives from the Bedfordshire Clinical Commissioning Group (BCCG)**

To receive a presentation from representatives from the BCCG on its work and the NHS Long Term Plan. (Presentation to follow)

**PART B: Public Health, Social Care and Housing matters**

To review and scrutinise any matters that fall within the remit of the Council's Social Care, Housing and Public Health Directorates.

**REPORTS**
12. Housing Enforcement Policy

Report to Overview and Scrutiny will be to present the draft Policy to Regulate Private Sector Housing Standards and obtain recommendations for Executive.

- Housing Enforcement Policy Final Report.docx
- Item 12 - Appendix 1 - Housing Enforcement Policy.docx
- Item 12 - Appendix 2 - Financial Penalty Policy.docx
- Item 12 - Appendix 3 - HMO Licensing Policy.docx
- Item 12 - Appendix 4 - Rent Repayment Order Policy.docx
- Item 12 - Appendix 5 - Rogue landlords database policy.docx
- Item 12 - Appendix 6 - Banning order policy.docx

13. Stop Smoking Service Remodel

To update the Committee on the implementation of the Public Health Stop Smoking Service remodel, which was implemented on the 1st April 2019.

- Stop Smoking Service Remodel Final Report.docx

14. Nominations for the Joint Health Overview and Scrutiny Committee

Nominations are sought for the Joint Health Overview and Scrutiny Committee. This Committee is made up of representatives from Bedford Borough, Luton and Milton Keynes Councils to scrutinise the work of the Integrated Care System (ICS) previously known as the Sustainability and Transformation Partnership (STP) across the Bedfordshire, Milton Keynes and Luton (BLMK) footprint.

15. SCHH OSC 2019/20 Work Programme and Executive Forward Plan

The report provides Members with details of the currently drafted Committee work programme and the latest Executive Forward Plan.

- SCHH OSC OSC Work programme report.docx
- WP Appendix A.docx
1. Apologies for Absence

To receive apologies for absence
2. Minutes

To approve as a correct record, the Social Care Health and Housing Overview and Scrutiny Committee held on 18 March 2019.
At a meeting of the **SOCIAL CARE, HEALTH & HOUSING OVERVIEW & SCRUTINY COMMITTEE** held in Council Chamber, Priory House, Monks Walk, Shefford on Monday, 18 March 2019.

**PRESENT**

Cllr P Hollick (Chairman)

Cllrs R D Berry  
P A Duckett  
Cllrs K Ferguson  
Mrs S A Goodchild

Apologies for Absence:  
Cllrs Mrs A Barker  
P Downing  
Mrs D B Gurney  
G Perham

Public 3

Members in Attendance:  
Cllrs E Ghent  
Executive Member for Assets and Housing Delivery  
Ms C Hegley  
Executive Member for Adults, Social Care and Housing Operations (HRA)  
B J Spurr  
Executive Member for Health and Chairman of the Health and Wellbeing Board  
Mrs T Stock  
Deputy Executive Member for Health

Officers in Attendance:  
Jo Bellamy  
Policy and Performance Officer, Housing Team  
Mrs P Coker  
Head of Service, Partnerships - Social Care, Health & Housing  
Mrs P Everitt  
Scrutiny Policy Adviser  
Mr T Keaveney  
Assistant Director Housing Services  
Mr S Mitchelmore  
Assistant Director, Adult Social Care  
Mrs J Ogley  
Director of Social Care, Health and Housing  
D Smitten  
Data and Intelligence Analyst, Social Care, Health and Housing

Others in Attendance  
Mrs E Hunt-Smith  
Assistant Director of Unplanned Care, BCCG  
Mr S King  
Senior Locality Manager, East of England Ambulance Trust  
Mr D Simpson  
Chairman Central Bedfordshire Healthwatch  
Mr M Thompson  
Chief Operating Officer BCCG  
Mrs C Welbourne  
Unplanned Care Commissioner BCCG
SCHH/18/144.Minutes

RESOLVED that the Minutes of the meeting of the Social Care Health and Housing Overview and Scrutiny Committee held on 28 January 2019 be confirmed and signed by the Chairman as a correct record.

SCHH/18/145.Members’ Interests

None.

SCHH/18/146.Chairman’s Announcements and Communications

The Chairman provided a synopsis of the work of the SCHH OSC Committee over the past four years. Thanks were extended to the many partners that had attended and contributed to the committee’s work, the general and more specialist areas of work it had influenced and some of its many achievements that included:

- Improved older people’s accommodation provision
- Transitional accommodation provided for the homeless
- Enquiry into the Integration of Health and Social Care that led to the provision of Health hubs
- The excellent working relations developed with BCCG, Healthwatch and other partners.

The Chairman thanked Executive Members, the Director and her team, the Scrutiny Policy Advisor and the Committee for their support, professionalism and their respected views during his term as Chairman.

SCHH/18/147.Petitions

None.

SCHH/18/148.Questions, Statements or Deputations

None.

SCHH/18/149.Call-In

None.

SCHH/18/150.Requested Items

None.

SCHH/18/151.Executive Member Update

The Executive Member for Adult Social Care and Housing Operations advised that two ‘ground breaking’ events had taken place to mark the start of:

- Brewers Hill Road Development with Aldwyck and Catalyst Housing Associations that would consist of 61 mixed tenure homes.
Houghton Regis Central independent living scheme for people aged 55 and over. It would include 168 one and two bedroom apartments for rent, shared ownership and outright purchase.

The Deputy Member for Health informed Members that the new Government funding to schools generally referred to as 'sugar tax funding' had been allocated. An evaluation of the projects would be undertaken and reported back to Members in 2020.

The Executive Member for Health reminded Members that a Central Bedfordshire toolkit would be provided to schools to help with child wellbeing in line with the annual SHUE report. Members were urged to encourage their local schools to take part in the survey.

The Committee were also advised that the current apprentice in the Stop Smoking service had won the top national apprentice award recently.

The Executive Member for Assets and Housing Delivery had attended a MANOP workshop on the proposed affordable extra care scheme at Steppingley Road, Flitwick.

The Committee were informed that progress had been made to create the Housing Development Company by early Autumn.

Each Executive Member wished to record their thanks and compliments to the Chairman for his valuable input and professionalism and that of the Committee.

SCHH/18/152 East of England Ambulance Service Trust - Performance Update

The Sector Head of Service Delivery at the East of England Ambulance Service Trust (EEAST) introduced a presentation that set out current key performance on response and hospital turnaround time measures. The data provided response times for the BCCG area and did not include measures by hospital or the BLMK STP footprint, although residents were taken to other hospitals including Milton Keynes and North East Hertfordshire (The Lister).

The key issues highlighted were:-

- An increase in handover times at the Luton and Dunstable Hospital. EEAST was working jointly with the Trust to improve the handover process.

- Along with partners the Trust had continued to evolve multi-disciplinary services. New initiatives were under discussion with Fire and Police authorities and the Trust was keen to ensure there was collaborative working.

- Non-Emergency Passenger Transport Services (NEPTS) performance had improved; however, the Trust had not been able to fill current vacancies and had sub-contracted to the Private Ambulance Service. There was a drive to recruit for this service locally and across the board.
In response to a question, the Sector Head advised whilst there was a vacancy pressure for NEPTS, the budget overall was not under pressure in Bedfordshire.

The Sector Head advised the helicopter response service was run by a charity and the volume of use was very small. Response times data was included in the general response data.

RECOMMENDED The Committee:-

- Welcomes those areas where the service is meeting and exceeding targets.
- Welcomes work done to improve the non-emergency patient transport service but notes there are still some recruitment challenges.
- Reminds the Service that this Council is responsible for the residents of Central Bedfordshire so its interest is primarily in respect of these residents.

SCHH/18/153. Winter Pressures - Update

The Unplanned Care Commissioner and Assistant Director Unplanned Care, BCCG, introduced a report that set out how the Bedfordshire health and social care system was managed during the 2018/19 winter period. It was reported that the system had experienced pressures throughout the winter, however, there had been an improvement on the previous year. The Operational Pressures Escalation Levels (OPEL) framework had helped to improve coordination of pressures on the system.

The Commissioner advised that Hospital Ambulance Liaison Officers (HALO) had been appointed to Bedford and The Lister hospitals. This initiative had ensured the clinical safety of patients had been maintained and the BCCG had facilitated a system-wide response, within 24 hours.

In light of the report, Members of the Committee discussed the following in summary:-

- That given the mild winter, pressures remained on the care system, not only during the winter but all year round. In response, the Assistant Director advised that due to the ageing population and population growth of the region, there was a surge in demand for care need throughout the year.
- Confirmation that the Integrated Health and Care Hubs were integral to the BCCG’s plans.
- Whether data was collected on the top six reasons for admissions to hospital to inform preventative pathways for residents. The CCG confirmed this information was recorded and analysed and included respiratory, cardio and gastro problems. Other data collected included the time of day residents are admitted, the hospital, age of the resident and where additional support services were required.

The BCCG continued to advise and educate residents on the correct pathway of care for their particular need.

RECOMMENDED the Committee:-

- Requests a report back to its November meeting on the result of the 2018/19 winter review and any steps to be taken and lessons learned looking forward to winter and beyond 2019/20.
• Would like to be better informed as to why residents find themselves in hospital, at the Urgent Treatment Centre, and emphasised the need to further educate the public as to the right service to use.

**SCHH/18/154. Monitoring people from hospital to home**

The Associate Director, Integrated Operations, introduced a presentation that set out how officers monitored residents’ move from hospital to home and how the data informed multidisciplinary teams to deliver the right support.

The Tracker had been heralded as a good practice model and officers worked closely with NHS colleagues on the information provided. Data on readmissions was in the early stages of development but it was recognised the tracker had the potential to be used for this purpose and therefore to inform how health and social care work differently to reduce the number of readmissions.

The BCCG were also looking at systems to provide information on demand within the system, and this includes a NHS database called SHREWD (Single Health Resilience Early Warning Database). It was anticipated the systems utilised will be complimentary to one another.

The tracker was an initiative from Central Bedfordshire council in response to its population being served primarily from 7 main hospitals and it was therefore imperative we had a system which enabled us to monitor the flow of people. In addition, it informed how officers worked to ensure people were appropriately supported.

Clarification was also requested as to whether prevention efforts should be concentrated on older single home occupiers who were more likely to be in most need of NHS, Community Health and Social Care services. The Associate Director would investigate and respond accordingly.

**RECOMMENDED** The Committee:-

• Welcomes a Central Bedfordshire focus and the work done to follow people’s journeys into, through and out of hospital.
• Would like to see information about any re-admissions, given a successful discharge would not usually result in such, either to the original hospital or to another.

**SCHH/18/155. Referral from Corporate Resources OSC on SCHH Fees and Charges**

**NOTED** the referral from Corporate Resources that would be investigated by the Executive Member and Director of Social Care Health and Housing and a response provided in due course.

**SCHH/18/156. Work Programme 2018/19 and Executive Forward Plan**

The Committee considered the current Work Programme and Executive Forward Plan. The Work Programme was approved subject to the addition of a BCCG Winter Planning item in November 2019.
**Housing Demand presentation**

The Assistant Director Housing introduced a presentation that explained the detailed analysis to be used to develop a Housing Demand policy for the next five to ten years. The analysis included those areas where residents wished to live and this information would dovetail into the Housing Enabling Strategy to be considered by Members. With the need required predominantly in the south of Central Bedfordshire, the intelligence captured was fundamental to ensure the right housing and tenure was provided.

In response to a question as to whether the planning process would deliver the right homes, the Assistant Director advised this information would be set out in the Housing Enabling Strategy and the Development Company had an important role to play to deliver the homes.

On the matter of affordability of housing, the Assistant Director advised that officers continued to collaborate with Housing Associations to deliver affordable homes. The hope was the Development Company would also deliver properties for those residents that sat between 'in social need' and able to afford their own homes.

**RECOMMENDED** The Committee:-

1. Welcomed the detailed analysis and noted the pressures on different types of accommodation needed for individuals, families and those of different ages as well as noting the different tenures available which needed to suit those seeking accommodation.
2. Take account of the paper ‘Managing Housing Demand in Central Bedfordshire’ by the Assistant Director Housing and the report from the Tenant Scrutiny Panel on Homelessness and
3. Makes suggestions for areas of research which the Central Bedfordshire Housing Development Company may need to consider and to agree the work streams for Members to join as appropriate.
   - Determine a view on house design to meet the different needs of our residents.
   - Advise on the mix of houses and tenures on new estates.
   - To recognise where there are backlogs of accommodation and bring forward plans how to alleviate such.
   - To take a view on balancing provision for the elderly and homes for first time buyers.
   - To take a view on the balance of homes offered on social and affordable rents.
   - To better understand the interaction between health issues and housing need.
   - To further understand the role of Housing Associations in delivering our housing need.
   - Where housing supply will come from in order to meet housing demand.

(Note: The meeting commenced at 10.00 am. and concluded at 1.25 p.m.)

Chairman…………………………………………

Dated…………………………………………
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To receive from Members any declarations of interest.
4. Chairman's Announcements

To receive any matters of communication from the Chairman.
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To review and scrutinise any matters that fall within the remit of the Council's Social Care, Housing and Public Health Directorates.
REPORTS
12. Housing Enforcement Policy

Report to Overview and Scrutiny will be to present the draft Policy to Regulate Private Sector Housing Standards and obtain recommendations for Executive.
Purpose of this report

The report presents a draft Housing Enforcement Policy and associated specific associated policies that help the Council regulate private rented sector housing standards and tackle rogue landlords, following the introduction of new duties and powers.

RECOMMENDATIONS

The Committee is asked to:

1. Review the draft policies that provide the detail of how the Council will meet new duties and use new powers to regulate private rented sector accommodation and provide comment and/or recommendations to Executive.

Issues

1. The Council’s Housing Service has been reviewing the approach to the regulation of private sector housing standards following the introduction of legislation that enables the Council to use additional powers to improve housing standards. Legislative changes have introduced new duties and powers to regulate the private rented sector, including more powers to tackle
rogue landlords. In recent years, the Council’s Private Sector Housing team have had significantly more successful prosecutions of private landlords.

2. The new powers and duties can be summarized as below:
   • issuing financial penalties as an alternative to prosecution,
   • a new definition of licensable Houses in Multiple Occupation,
   • the power to add a landlord to the Rogue Landlords database,
   • additional offences where Rent Repayment Orders can be made,
   • banning orders to ban landlords from being a landlord

3. The private rented sector has grown in recent years both nationally and locally, from around 13% of Central Bedfordshire’s housing in 2011 to an estimated 15% now. The above new powers include some discretionary elements, which are explained in more detail below.

4. The set of policies are aligned to the overarching Housing Enforcement Policy (appendix 1). This policy was originally approved by Executive on 31st March 2015. The draft at appendix 1 has been updated to take account of the new powers and duties but the approach remains broadly the same as in the 2015 policy, with the addition of Financial Penalty options.

Options for consideration

5. There is some discretion that can be applied to the new duties and powers. Firstly, there is the ability to impose Financial Penalties (fines) instead of prosecuting an alleged offender in court. Financial Penalties provide advantages over prosecution, including reducing cost of legal action, a speedier form of sanction, and fines are received directly by the Council instead of by the Court. To use Financial Penalties, the Council must set out a transparent policy and set of procedures that clarifies levels of fines and how they are determined. The draft policy is at appendix 2 and this contains the process of how penalties are determined in detail. Members are requested to consider the appropriateness of the criteria proposed to set the level of the financial penalty.

6. In respect of houses in multiple occupation (HMOs), the mandatory licensing scheme has been extended to include more HMO’s. The Council has an additional resource to lead on HMO licensing, with additional fee income helping to meet the additional costs. On occasions, landlords will make incomplete HMO licence applications but continue to operate the HMO. If an unreasonable delay is caused by the landlord in not providing the required evidence, or there is a lack of cooperation, it is proposed that the Council would consider reducing the term of the licence from the maximum 5 years. If the application is granted, this would bring additional cost to the landlord as a shorter licence period would mean that the licence would need to be renewed earlier than normal, which incurs a fee. The draft HMO Licensing Policy is attached at appendix 3.
7. Rent Repayment Orders (RRO) have been extended to allow tenants to apply to a First Tier Tribunal for repayment of up to 12 months’ rent where the landlord has been convicted of one of a number of specified offences. These offences are likely to have been due to the action of the Council against the landlord (e.g. failure to remedy serious disrepair) so in many cases, the tenant would benefit from Council Officer support with the application for a RRO. It is proposed that to support the tenant in this process, a fee is charged. Consultation has changed the 10% fee proposal to a fixed fee. Officer support is discretionary but would likely improve the chances of the tenant being successful for a RRO. Appendix 4 sets out when the Council would consider applying for Rent Repayment Orders.

8. The Housing and Planning Act 2016 established a database of rogue landlords and property agents. The database was introduced in 2018 for local housing authorities to keep track of rogue landlords and property agents and help target enforcement activities. The Council can add entries and vary or remove its entries and are able to view entries made by other local authorities. The database is a tool to deter offenders from committing offences and to deter others from offending. The more comprehensive the information on the database, the more effective it will be in improving housing standards in Central Bedfordshire and other areas. The draft policy (appendix 5) proposes how the Council will pursue opportunities to add rogue landlords to the database where appropriate in a fair and consistent way, having regard to the criteria set out in the policy.

9. The Housing and Planning Act 2016 introduced a power for local authorities to ban landlords and property agents from renting out property. Banning orders are aimed at rogue landlords who flout their legal obligations and rent accommodation which is substandard but can only be sought for specified banning orders offences. A banning order may be made by the First-tier Tribunal following an application by a local housing authority. A banning order bans a landlord letting or managing property in England and a breach of a banning order is a criminal offence, where the Council has the power to impose financial penalties (see 5. above) or other enforcement actions. Appendix 6 sets out the Council’s proposed Banning Order policy.

Reason/s for decision

10. The introduction of a range of powers and duties to tackle rouge landlords and sub-standard housing has brought with it a need to consider the Council’s approach, where there is some discretion. The overarching approach of the draft Housing Enforcement Policy (appendix 1) maintains the existing fair and balanced approach to enforcing standards in private sector housing. The associated policies (appendices 2 to 6) have been prepared to provide clarity and ensure a consistent approach.

11. The new duties provide resourcing implications on the Council. There are, however, income generating opportunities to help offset costs of enforcing the new duties. Financial penalties provide the ability for the Council to impose fines, which are paid to the Council rather than the courts. The HMO Licensing
policy will help in the administration of HMO licensing, which should generate additional licence fees from the additional HMOs that require licensing. The draft policies are intended to improve the way that the Council enforces standards in the private rented sector, providing clarity on how the new legislation will be implemented, and recovering costs of implementation where possible.

12. The draft policies have been subject to a targeted four-week consultation from 7th January 2019 to 1st February 2019. In addition, landlords were advised of the likely review of policies at the landlords’ forum in September 2018. The consultation resulted in 14 responses via the consultation survey in addition to feedback from Residential Landlords Association (RLA).

13. The consultation outcome report is included as a background paper. Some keys issues are outlined here. 57% of respondents agreed with the financial penalty proposals, 21% disagreed although some required more clarity on the process. Consequently, the process for determining the fine has been explicitly included into the draft Financial Penalty policy (appendix 2). Overall, 71% agreed with the use of fines as opposed to prosecution. 63% felt that fines would deter future offending although 28% were not sure.

14. 63% of respondents agreed with shortening HMO licence periods where there have been unreasonable delays with applying for a licence. However, following consultation, the definition of “unreasonable delay” has been clarified in the policy (appendix 3). Only 56% agreed with the proposal to charge a 10% fee to support tenants applying for a rent repayment order. In response the fee will be a set amount to reflect the cost of the service. This will be published in the Council’s fees and charges schedule.

Council Priorities

- Protecting the vulnerable; improving wellbeing
- A more efficient and responsive Council.

15. The use of the new powers and duties enables the Council to further tackle rogue landlord and agent activity, improving the standard of private rented accommodation in Central Bedfordshire. Poor condition rented accommodation can impact on the health, safety, and well-being of tenants, who may be vulnerable and unable to secure alternative accommodation. The private rented sector, is however, a key part of the housing market and can provide good accommodation options for our communities. The aim is a higher quality private rental market in Central Bedfordshire, working with landlords to achieve that but also effectively using powers to intervene where necessary.

16. The approach to implementing new housing enforcement tools includes the ability to generate income towards the cost of the new activities, specifically through the use of Financial Penalties and HMO licensing. These opportunities will improve the efficiency of the service undertaking housing enforcement.
Corporate Implications

17. The use of new powers through the proposed approach should help safeguard the health and safety of private tenants in the worst condition accommodation. There are clear links between substandard housing and the health impacts on residents, so the new powers should help provide positive public health implications.

Legal Implications

18. Part 2 of the Housing Act 2004 places a mandatory duty on the Council to license specified types of Houses in Multiple Occupation. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 extends this duty to one and two storey HMOs from 1 October 2018 and the updated HMO Licensing Scheme provides for this change.

19. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment)(England) Regulations 2012 amended the information prescribed in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 that can be requested from a landlord renewing an existing licence. The new scheme incorporates these requirements and limitations.

20. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 prescribed a mandatory condition for HMO landlords to provide smoke alarms on each floor, and carbon monoxide alarms where there are solid fuel burning appliances. The new scheme has been updated with this change.

21. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 introduce new mandatory conditions relating to minimum bedroom sizes and waste disposal provisions. The new scheme incorporates these minimum requirements and uses the council’s discretion to set higher standards for amenity and space and the management of HMOs, while remaining proportionate and steering away from using HMO licensing to deal with problems that are more appropriately addressed through other legislation.

Financial and Risk Implications

22. The new powers and duties bring additional resource and cost implications. Budget pressure of £0.1M was identified over the new Medium Term Financial Plan period, netted off by additional income efficiency of the same amount. The restructure of the Housing Solutions service in 2018 incorporated an increase to the Private Sector Housing team establishment, including a dedicated Manager role, due to the additional and complex legal requirements. The financial implications of the restructure were modelled by Finance colleagues and can be accommodated within the budget envelope (Housing
General Fund). The budget includes additional income resulting from new HMO licensing requirements. Mandatory HMO licensing was extended to more HMOs in October 2018. So, although there is a requirement to implement these requirements, the average licence fee is around £800 and initial research indicates that there are at least 200 HMOs that need to be licensed.

23. The proposals concerning the use of Financial Penalties (which are a discretionary power) provide financial benefits to the Council. Although Officers would prefer to resolve poor standards informally with landlords, when enforcement action has to be taken and is not complied with, subsequent legal action through the courts can be costly to the Council. Financial penalties provide a different approach. Instead of taking a landlord to court, the Council can impose a fine, based upon a clear and published process of determining the level of that fine. The fine is paid to the Council, not the courts. The recovery of non-payment of fines is included in the Financial Penalty Policy.

24. By producing policies that clarify the approach to enforcement, the risk of challenge (that action is disproportionate or inconsistent) is reduced. The policies will be published, and the Housing Service intends to further publicise through a re-established private landlords forum. The risk of an inconsistent approach will be reduced through internal and external training of Officers within the Housing Service.

Equalities Implications

25. The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender re-assignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers. In particular, the Council must pay due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

26. The proposals within the draft policies are aimed at improving the quality of the private rented sector and safeguarding private tenants, who may be faced with lack of security of tenure, poor housing conditions, and inability to choose alternative housing options/tenures. The policies relate to all private rented accommodation, but the powers are designed for tackling rogue landlords.

27. An equalities impact assessment has been completed and found there to be no adverse equalities impacts. The policies set out how the Council can protect tenants that are being unlawfully discriminated against harassed or victimised by their landlord. The policies also set out a firm but fair and balanced approach to enforcement, taking in to account the severity of offences, the
impact on individual tenants and the impact of enforcement action on landlords. In addition, the consultation did not highlight any equality concerns, although the consultation did result in changes being made to the draft policies.

28. The equalities impact assessment and consultation report are included as background papers, with links provided at the end of this report.

Conclusion and next Steps

29. The draft policies provide a clear, consistent, and balanced approach to tackling rogue landlords and improving housing standards in the private rented sector. Members are asked to consider the main issues and proposals set out and provide comment before the draft policies.

30. The consultation indicated that the proposed approach was generally welcomed, with the majority of respondents agreeing to proposals. There were, however, a number of amendments to the draft policies in response to feedback during the consultation.

Appendices

Appendix 1: Housing Enforcement Policy
Appendix 2: Financial Penalty Policy
Appendix 3: HMO Licensing Policy
Appendix 4 Rent Repayment Order Policy
Appendix 5 Rogue Landlord Database Policy
Appendix 6 Banning Order Policy

All appendices are provided through an electronic link:

FINAL housing enforcement policies (company only)

Background Papers

The following background papers, not previously available to the public, were taken into account and are available on the Council’s website:

(i) Housing Enforcement Consultation Report:

19 04 15 Regulation of Housing Enforcement - Consultation Response Report (005).doc (company only)

(ii) Equalities impact assessment

Equality Impact Assessment
**Appendix 1**

**Housing Enforcement Policy**

<table>
<thead>
<tr>
<th>Directorate</th>
<th>Social Care Health and Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>Housing Solutions</td>
</tr>
<tr>
<td>Author</td>
<td>Terry Gilbey, Housing Assistance Manager</td>
</tr>
<tr>
<td>Approved by</td>
<td>Version V2.4</td>
</tr>
<tr>
<td>Approval date</td>
<td>Review date</td>
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</tbody>
</table>

**Version Control**

<table>
<thead>
<tr>
<th>Version no.</th>
<th>Date issued</th>
<th>Author</th>
<th>Change reference</th>
<th>Issued to</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>06/08/18</td>
<td>Jo Bellamy</td>
<td>2014 policy updated with Housing and Planning Act 2016 changes with the addition of: - financial penalty as an alternative to prosecution - banning orders - rogue landlords’ database</td>
<td>Jonathan Arnold, Helen Heanes, Terry Gilbey</td>
</tr>
<tr>
<td>2.2</td>
<td>06/11/18</td>
<td>Jo Bellamy</td>
<td>Amendments to include references to additional policies to support this main policy.</td>
<td>Jonathan Arnold, Helen Heanes, Terry Gilbey</td>
</tr>
<tr>
<td>2.3</td>
<td>04/02/19</td>
<td>Jo Bellamy</td>
<td>Amendments following the engagement process including feedback from officers.</td>
<td>Jonathan Arnold</td>
</tr>
<tr>
<td>2.3</td>
<td>21/03/19</td>
<td>LGSS</td>
<td>LGSS reviewed, no changes required.</td>
<td>Jo Bellamy</td>
</tr>
<tr>
<td>2.4</td>
<td>02/04/19</td>
<td>Jo Bellamy</td>
<td>Deregulation Act 2015 retaliatory eviction protection and breach of Client Money Protection Schemes for Property Agents now included.</td>
<td>Jonathan Arnold and LGSS</td>
</tr>
</tbody>
</table>
1.1 The Housing Solutions Service is responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting health and safety.

1.2 The objectives of the service are to:
1. Improve the standards, condition and quality of housing in Central Bedfordshire
2. To assess local housing conditions
3. To reduce the number of properties with serious risks to health and safety
4. To reduce the number of vulnerable households living in non-decent homes
5. To improve the energy efficiency and warmth of homes and to help reduce fuel poverty
6. To improve the standards in HMOs (houses in multiple occupation).
7. To work closely with private sector landlords towards improving conditions and the standard of management of private rented housing
8. To provide an excellent service that is accessible to anyone living in the private sector that may have poor living conditions.
9. To reduce the number of empty properties in Central Bedfordshire

1.3 The Housing Solutions Service works both reactively and proactively. Reactively the service will respond to:
- Private sector tenants who contact the Council with complaints about disrepair or poor conditions within their home.
- Tenants of Registered Providers who contact the Council to complain that their property contains housing hazards that are not being dealt with suitably after exhausting their complaints procedure.
- Complaints about properties that may be causing problems for neighbouring properties.
- Enquiries from owner-occupiers or private tenants and landlords who would like advice about housing conditions.
- Allegations of harassment and illegal eviction
- Enquiries for advice about the legal minimum housing standards, particularly in HMOs (houses in multiple occupation).
- Complaints about disrepair or poor conditions on licensed caravan sites.
- Deal with enquiries about disabled facilities grants (DFGs), discretionary loan/assistance, local welfare provision.

1.4 Proactively the service will:
- Identify the general types and conditions of the private sector housing stock by carrying out surveys of Central Bedfordshire.
- Operate a programme of inspections for any HMOs discovered in Central Bedfordshire.
- Operate a programme of inspections for all licensed caravan and mobile home sites in Central Bedfordshire.
- Take part in educational forums for landlords about the standards required for letting properties.

1.5 This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of non-CBC housing in the Central Bedfordshire area can expect from officers.
1.6 Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution but includes for example the inspection of premises for the purpose of checking compliance with legislation and provision of advice.

1.7 This policy seeks to support the Council’s corporate aims, objectives and strategies with respect to private sector housing.

2. **Principles of Good Enforcement**

2.1 Any enforcement action will be compliant with relevant legislation and guidelines in line with the principles of good enforcement action outlined in the regulator’s compliance code.

2.2 When regulating businesses, officers of the Council will adopt the principles outlined in the Hampton Report “Reducing administrative burdens: effective inspection and enforcement”, and any subsequent legislation.

2.3 These principles are:

1. Regulators, and the regulatory system as a whole, should use a comprehensive risk assessment to concentrate resources on the areas that need them most;
2. Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
3. No inspection should take place without a reason;
4. Businesses should not have to give unnecessary information, nor give the same piece of information twice;
5. The few businesses that persistently break regulations should be identified quickly;
6. Regulators should provide authoritative, accessible advice easily and cheaply; and
7. Regulators should recognize that a key element of their activity would be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

2.4 Enforcement action will be in accordance with the Regulator’s Compliance Code, the statutory code of practice for regulators that came into force on 6th April 2008.

In exercising their duties and other functions, officers will seek to do so in a firm but fair, open and consistently helpful way.

2.5 **Standards:**

We will draw up clear standards setting out the level of service and performance the public and business people can expect to receive.

2.6 **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with landlords and businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage landlords to seek advice/information from us.
2.7 Applications for approval of licenses etc will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays.

2.8 **Consistency**
We will minimise the costs of compliance for landlords and business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

2.9 **Openness**
Means explaining actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what is desirable).

3. **Shared Enforcement**

3.1 The range of enforcement matters dealt with by the Council in this policy area is such that there may well be occasions when there is a need to work with other agencies, for example the Fire Authority or the Health and Safety Executive, by carrying out joint inspections.

3.2 In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to any potential or existing action of other Council services or outside agencies.

3.3 Where matters are identified by, or reported to our officers that are the enforcement responsibility of another Council service or outside agency, persons involved will, so far as is reasonably practicable, be informed that the matter will be referred to the appropriate service or agency.

3.4 Where enforcement action is being taken by another Council service or outside agency, we will provide all reasonable assistance including the production of witness statements and collection and sharing of evidence etc. subject to any legal constraints and the meeting of any reasonable expenses.

4. **Levels of enforcement action**

4.1 The actions available to the Housing Solutions Service to improve the standards of private sector housing are broadly divided into two categories; Informal and formal action.

4.2 Officers are authorised to operate the service according to this policy and prepare and carry out enforcement work where necessary on behalf of the Council.

4.3 Council officers will seek compliance with legislation by one or more of the following:

**Advice and guidance:**
To assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by
providing both information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.

**Informal warnings:**
These will be used to reinforce advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action. These warnings will be written. Where warnings are issued, follow-up visits will normally be made to ensure the problem is being rectified. Warnings issued in respect of significant breaches of the law will include timescales within which the breaches should be remedied and will always result in follow-up visits to ensure compliance. It should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straightaway.

**Formal enforcement:**
This includes the use of statutory (legal) notices, simple cautions and prosecution. Such action will normally be taken when informal action has failed to achieve a satisfactory resolution and in instances where there is a failure to comply with a notice within the specified time period or there is a subsequent breach of the regulations.

**Immediate action:**
This includes the power to take emergency action by entry to premises, if necessary and making safe areas or articles which are a cause of imminent danger of serious harm.

4.4 Enforcement will normally progress through the advice/informal stages before formal enforcement. In serious cases, where the offence involves a significant breach of the law such that the residents’ health, safety, environment or wellbeing is or has been put at risk, it may be appropriate to commence formal enforcement immediately. Examples of when this may be relevant include offences of harassment and illegal eviction under both the Protection from Eviction Act 1977 and the Caravan Sites Act 1968.

The following guidance will be followed where formal enforcement options are being considered.

4.5 **Power to Charge for Enforcement Action**

Section 49 of the Housing Act 2004, allows the Council to make a reasonable charge as a means of recovering expenses incurred in serving the following:

1. An improvement notice. Making a prohibition order.
3. The expenses are in connection with the inspections of the premises, subsequent consideration of any action to be taken, and the service of notices.
4. Section 9C of the Caravan Sites and Control of Development Act 1960 (CSCDA 1960) allows the Council to make a reasonable charge as means of recovering expenses incurred in serving a compliance notice in relation to a park home site.
5. Section 9F of the CSCDA 1960 allows for the Council to recover expenses in relation deciding whether to take action, serving enforcement notices and carrying out the specified works in relation to both emergency action (Section 9E) and works following conviction for failing to comply with a compliance notice (Section 9D).

5. **Sanctions**

5.1 If the recipient of a notice does not comply with the notice, the Council has various sanctions it can impose. Depending on the type of notice served, non-compliance can be:
- Not doing any work at all,
- Not starting the work by the time specified within the notice,
- Starting the work but then not making reasonable progress, or
- Starting the work and then not finishing it.

5.2 **Works in Default**

5.2.1 Works in default is a power given to the Council, to ensure work is carried out to a property. If the recipient of the notice does not do the work required by the notice, the Council may employ a contractor to enter the property and carry out the work itself.

5.2.2 The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done. It should be noted that carrying out the work in default does not exclude the Council from issuing a formal caution or prosecuting the offender. The Council is entitled to ensure that the work is carried out and to consider if it is appropriate to take further action. In fact, in the case of non-compliance with a compliance notice served under Section 9A of the CSCDA 1960, works in default would only be possible after a successful conviction for breach of licence conditions.

5.2.3 There are various methods by which the Council can recover the costs incurred in carrying out the work in default, dependent on the type of notice that has been served.

5.3 **Sundry debtor method**
Using this method, the Council will send out the appropriate person an invoice requesting payment. The Council’s Finance Department will then be responsible for recovering the owed monies with placing a specific financial charge on the property an option should other methods fail.

5.4 **Charge on the property**
The Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property is made available for sale a local land charges search by the purchaser’s solicitor will show the outstanding Notice and trigger the repayment to the Council from the proceeds of the sale – before the seller obtains his payment.
5.5 **Sequestrating rents**
The Council is entitled to serve Notice on the appropriate person to reclaim the costs of the works in default. In some cases, if this Notice is not complied with (i.e. the costs are not paid) the Council can then serve a Notice on the tenant requiring him to pay the rent direct to the Council until such time as the costs are recovered.

5.6 **Forcing sale of the property**
The ultimate method by which the Council can reclaim its costs is to bring about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default, and less the amount incurred by the Council in selling the property.

5.7 **Revocation of a Park Home Site Licence**
The Council may apply to the courts for a licence to be revoked upon a third or subsequent conviction for not complying with a compliance notice.

5.8 **Simple Caution**
5.8.1 An alternative to prosecution is a Simple Caution. A Simple Caution is where an offender is given written details of the offence and he or she signs to say that he or she admits the offence. A simple caution is not a conviction, although it does form part of an offender’s criminal record and may be cited in subsequent proceedings.

5.8.2 The Council keeps a record of the caution for a period of three years and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited in court if the Council takes legal action for any subsequent offence.

5.9 **Prosecution**
Non–compliance with any of the Notices referred to in this policy document is generally a criminal offence. The Council is the prosecuting authority for such offences and as they are criminal in nature, proceedings are taken in the Magistrates Court.

5.10 **Financial penalty as an alternative to prosecution**
5.10.1 The Council may impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence. “Relevant housing offence” means the following Housing Act 2004 offences:

- section 30 (failure to comply with improvement notice);
- section 72 (offences in relation to licensing of HMOs);
- section 95 (offences in relation to licensing of houses under Part 3 selective licensing);
- section 139(7) (failure to comply with overcrowding notice); or
- section 234 (failure to comply with management regulations in respect of HMOs).

5.10.2 Only one financial penalty may be imposed on a person for each type of offence, but a penalty can be issued for each separate breach of the House in Multiple
Occupation management regulations. The Council cannot impose a financial penalty in respect of an offence that the person has previously been convicted of, or if there are ongoing criminal proceedings.

5.10.3 Where both a landlord and a letting or managing agent have committed the same offence, a financial penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case. The amount of financial penalty imposed is determined by the Council as set out in the Procedure for Establishing Level of Financial Penalty under Housing and Planning Act 2016.

5.10.4 If a person fails to pay the whole or any part of a financial penalty which the person is liable to pay the Council may recover the penalty through the county court as if it were payable under an order of that court.

6. **Taking Action and Imposing Sanctions**

6.1 The decision to take informal or formal action will be made by the officer in charge of the case seeking assistance from peers or relevant managers if they require it. In deciding whether to issue a simple caution or proceed with a prosecution, the initial decision will be made by the officer in charge of the case in consultation with the relevant manager.

6.2 **When enforcement Action will be taken.**

6.2.1 Enforcement Notices are not served lightly. They are issued when there is no alternative and when reasonable attempts have been made to achieve the necessary action voluntarily.

6.2.2 In determining whether or not to serve a notice each case is looked at individually and the following factors by way of example only are taken into account;
- The effects of the situation on the health and safety of those affected.
- The intentions of the perpetrator in respect of those affected.
- Any previous complaints about the perpetrator or formal action taken against them for similar situations.
- The future life of any property involved.
- The willingness of the perpetrator to correct any problems without the need for formal enforcement action.
- Whether the Registered Provider tenant has exhausted the Registered Provider’s internal complaints procedure, where reasonably practicable. The perceived risk of a retaliatory eviction of the tenant. The Deregulation Act 2015 s33 offers protections against retaliatory eviction if a tenant makes a complaint about the condition of their property and the Council has served either an improvement notices relating to category 1 and category 2 hazards or a notice of emergency remedial action in relation to that complaint. We will consider, alongside all the facts of the case, whether action should be taken to enable the s33 protection from retaliatory eviction.

6.2.3 The above list is non-exhaustive and as each case is considered on its merits, will need to take into account factors relevant to the case in hand.
6.3 When we will impose sanctions
In all cases when an offence is committed, consideration will be given as to whether a sanction should be imposed and if so, which one. In some cases, it may be appropriate to impose two sanctions for example, carrying out the work in default and also prosecuting the offender.

6.4 Works in default

6.4.1 When determining if work in default is appropriate, officers will consider the following:
- The reason for non-compliance to the original notice.
- The effects of not carrying out the work on the health and safety of those affected.
- The wishes of the tenant where the Notice has been served in respect of a rented property.

6.4.2 The reason for the work not being carried out in the first place. This is not an exhaustive list and other factors may be taken into account.

6.5 Caution, Prosecution or Financial Penalty

6.5.1 Prosecution
The decision to either offer a simple caution or take prosecution is one that is not taken lightly. Officers recognise that their decision is significant and could have far reaching consequences upon the alleged offender and others.

6.5.1.1 Each case is unique and must be considered on its own merits. However, there are general principles that apply to the way in which officers decide whether an action should be applied and if so which one. Officers will have regard to The Code for Crown Prosecutors when making a decision. The decision to offer a simple caution or to take a prosecution will be made by the Council’s Legal section in consultation with the relevant manager.

6.5.1.2 There are two overarching tests used by this Section in determining whether to impose a sanction. These are the evidential test and the public interest test.

6.5.2 The Evidential Test
Enforcement officers must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This involves considering what the defence may be and how it affects the prosecution case. It is an objective test and means that a court is more likely than not to convict the offender of the charge alleged. This is separate test from the one the criminal courts will apply; a court should only convict where it is sure of the defendant’s guilt.

6.5.2.1 In deciding whether there is a realistic prospect of conviction, consideration is given to matters such as:
- Is the evidence admissible in court? There are certain legal rules that might mean that evidence that seems relevant might not be used at a trial.
- Is the evidence reliable? Officers must consider whether there is evidence that may detract or support any admission by the offender.
- Officers have to consider the witness they may use and whether there are concerns about their accuracy or credibility.
The Public Interest Test

If the evidential requirements are met, officers must then consider whether the public interest requires a prosecution. It is not the case that officers will prosecute simply because an offence has been committed. There should generally be a public interest in bringing an offence to Court. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence, or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

6.5.3.1 The following factors are examples of factors taken into account when determining public interest:

1. The seriousness of the offence. In housing terms, for example, this will mean officers looking at the effect of not complying with a Notice.
2. Whether there was violent or intimidating behaviour on the part of anyone involved during the time of committing the offence.
3. The vulnerability of the victim of the offence. This is a particularly important consideration when harassment or unlawful eviction has also occurred and the victims are elderly, suffering ill health or disability or it has affected young children.
4. The history of the offender. In particular, officers will have regard to whether Notices have been served in the past, the response to those Notices and any previous related convictions.
5. The likely penalty. Consideration will be given to whether the offence is such that it would only attract a nominal penalty from the Courts.
6. Reason for the offence occurring. Although there may be, on the face of it, a breach of the law, there may be a statutory defence available in housing offences. For example failure to comply with a Notice may only be an offence if the person intentionally failed to comply with it. Other factors will also be considered. For example, if the offence results from genuine mistake or misunderstanding these may be factors against prosecution that would be balanced against the seriousness of the offence. This is not an exhaustive list and other factors may be taken into account.

6.5.4 Financial Penalty as an alternative to prosecution

Generally, prosecution will be used instead of a civil financial penalty where one or more of the following criteria apply:

1. Aggravating features such as non-co-operation, hostility or aggression towards tenants, third parties or officers
2. Previous convictions for the same offence or two previous financial penalties have been imposed by the same Council, within a five year period from the first offence occurring.
3. Multiple offences relating to different properties
4. Belief by officer that fine will have no impact on changing behaviour or deterrent effect
5. Serious injury or death caused by the offence.
6.5.4.1 In all other cases where a financial penalty is available in law, the financial penalty will normally be more appropriate than prosecution.

6.5.4.2 In respect of specified offences where it will act as a sufficient deterrent against reoffending. Officers will not issue a fixed penalty notice unless the offence justifies prosecution; there is believed to be sufficient evidence to enable follow up proceedings should the offender not pay the charge; and it will act as a sufficient deterrent against re-offending. Prosecution will in general be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk, serious nuisance or other similar situations affecting any individual or the environment and will not be used as a punitive response to minor breaches.

6.5.4.3 Before imposing the financial penalty, the officer in the case must assemble sufficient evidence to be able to:
   a) Substantiate that an offence has been committed in its severity at a First Tier Tribunal if the penalty is appealed, and / or
   b) Substantiate the grounds for imposing the penalty at a county court if it is necessary to obtain a county court order in relation to non-payment.

6.5.4.4 The authority to impose a financial penalty is delegated only to Housing Solutions managers, not officers to ensure consistency in the level of fines imposed.

6.5 Simple Caution

A simple caution should be used for low level offending. The aims of the simple caution are to deal quickly and simply with less serious offences where the offender has admitted the offence. It will divert offenders where appropriate from appearing in the criminal courts. In addition, it will record an individual’s criminal conduct for possible reference in future criminal proceedings or relevant security checks, and reduce the likelihood of re-offending.

6.5.5.1 When deciding if a simple caution is appropriate, the Council must consider whether:
   • There is a realistic prospect of conviction,
   • The offender has admitted the offence,
   • It is in the public interest to use a simple caution as a means of disposal
   • A simple caution is appropriate to the offence and the offender
   • The offender must understand the significance of the caution and give his informed consent to accepting the caution.
   • In addition, the Council will have regard to Home Office guidance on administering a simple caution.

7. Legislation

7.1 This section lists the legislation commonly enforced by the Housing Solutions Service and outlines the provisions. It is not an exhaustive list and is not a full statement of the law – it is a summary.

7.2 The Council has a range of enforcement options to address hazards as defined in part 1 of the Housing Act 2004 that can exist in residential premises as follows:
   • Improvement notices – section 11 and 12 Housing Act 2004
   • Prohibition Orders – section 20 and 21 Housing Act 2004
• Emergency Remedial Action – section 40 Housing Act 2004
• Emergency Prohibition Order – section 43 Housing Act 2004

7.3 The first five options are available for both category 1 and category 2 hazards. The last two are not available for category 2 hazards.

7.4 The action the council takes must be the most appropriate course of action in relation to the hazard and have close regard to the Government’s Housing Health and Safety Rating System Enforcement Guidance or its equivalent should there be amendments to legislation and guidance relating to housing health and safety.

7.5 In particular, officers should have regard to advice in the Enforcement Guidance in relation to considering formal or informal action for identified category 2 hazards. The Council will not normally take enforcement action in relation to category 2 hazards. However, the following should be considered by Officers in addition to the Government’s Enforcement Guidance:

1. Where a high score band D hazard is identified (800 or above), Officers should consider use of discretionary enforcement powers,

2. Where a number of individual category 2 hazards are identified in one building, Enforcement Guidance relating to Multiple Hazards should be considered in relation to overall safety of that building,

3. Where significant category 2 hazards occur in addition to category 1 hazards in the same building, it is reasonable to take enforcement action in relation to these significant category 2 hazards as well,

4. In exceptional circumstances and where agreed by the Head of Housing Solutions or Assistant Director of Housing enforcement action can be taken in relation to Category 2 hazards not covered by the above. However, in all cases, consideration of Enforcement Guidance should be made.

7.6 The following table gives a summary of the legislation that the Council can use where appropriate:

<table>
<thead>
<tr>
<th>Housing Act 2004</th>
<th>This notice may be served when the Council is satisfied that:</th>
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<tbody>
<tr>
<td><strong>Improvement Notices</strong> Section 11</td>
<td>A Category 1 hazard exists on any residential premises and may relate to more than one Category 1 hazard.</td>
</tr>
<tr>
<td><strong>Improvement Notices</strong> Section 12</td>
<td>A Category 2 hazard exists on any residential premises and may relate to more than one Category 2 hazard.</td>
</tr>
<tr>
<td><strong>Prohibition Orders</strong> Section 20</td>
<td>A Category 1 hazard exists on any residential premises and may relate to more than one Category 1 hazard.</td>
</tr>
<tr>
<td><strong>Prohibition Orders</strong> Section 21</td>
<td>A Category 2 hazard exists on any residential premises and may relate to more than one Category 2 hazard.</td>
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<tr>
<td><strong>Hazard Awareness</strong> Section 28</td>
<td>A Category 1 hazard exists on any residential premises and may relate to more than one Category 1 hazard.</td>
</tr>
<tr>
<td><strong>Hazard Awareness</strong> Section 29</td>
<td>A Category 2 hazard exists on any residential premises and may relate to more than one Category 2 hazard.</td>
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<table>
<thead>
<tr>
<th><strong>Emergency Measures</strong></th>
<th><strong>This action may be taken when the Council is satisfied that:</strong></th>
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<tbody>
<tr>
<td><strong>Emergency Remedial Action</strong> Section 40</td>
<td>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 and no Management Order is in force. May be taken for more than one Category 1 hazard on the same premises or in the same building containing one or more flats.</td>
</tr>
<tr>
<td><strong>Emergency Prohibition Orders</strong> Section 43</td>
<td>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 and no Management Order is in force. May be taken for more than one Category 1 hazard on the same premises or in the same building containing one or more flats.</td>
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<thead>
<tr>
<th><strong>Other Measures</strong></th>
<th><strong>This action may be taken when the Council is satisfied that:</strong></th>
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<tbody>
<tr>
<td><strong>Demolition Orders</strong> Section 46</td>
<td>A Category 1 or 2 hazard exists in a dwelling or HMO, which is not a flat, and a Management Order is not in force. In the case of a building containing one or more flats that a Category 1 or 2 hazard exists in one or more of the flats contained in the building or in any common parts of the building. For Category 2 hazards, this also has to meet circumstances laid out in an order made by the Secretary of State.</td>
</tr>
<tr>
<td><strong>Clearance Areas</strong> Section 47</td>
<td>Each of the residential buildings in the area contains a Category 1 or 2 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. This is as a result of their bad arrangement or the narrowness or bad arrangement of the street. For Category 2 hazards, this also has to meet circumstances specified or described in an order made by the Secretary of State.</td>
</tr>
<tr>
<td>Offences in relation to the Licensing of HMOs</td>
<td>An offence of operating an HMO without a licence or for failing to satisfy the conditions of the license has taken place without reasonable excuse. This may take the form of revocation of a license and/or prosecution.</td>
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<td>---------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 72 as updated by The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018</td>
<td></td>
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<tr>
<td>Offences in relation to the management of HMOs</td>
<td>A person managing an HMO fails to comply with the management of HMO regulations and so commits an offence under section 234(3) of the Housing Act 2004. The offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.</td>
</tr>
<tr>
<td>Section 234</td>
<td></td>
</tr>
<tr>
<td>Rent Repayment Order</td>
<td>A HMO is operating without a license or a selective license and notice has not been received from them to notify that particular steps are being taken to no longer require the house to be licensed.</td>
</tr>
<tr>
<td>Section 96</td>
<td></td>
</tr>
<tr>
<td>A HMO is operating without a license or a selective license and notice has not been received from them to notify that particular steps are being taken to no longer require the house to be licensed. The Housing and Planning Act 2016 extended Rent Repayment Order to also cover the following situations:</td>
<td></td>
</tr>
<tr>
<td>Interim Management Order</td>
<td>A HMO is operating without a license or the license has been revoked but is not yet in force or, in coming into force the revocation will mean that the health and safety condition will be satisfied. In these</td>
</tr>
</tbody>
</table>
circumstances where the property is not required to be licensed, an interim management order must be made by application to the Residential Property Tribunal.

Interim management orders can be made in cases where a banning order has been made, Schedule 3 of the Housing and Planning Act 2016 amends management order powers under the Housing Act 2014.

| Final Management Order Section 113 | The house would be required to be licensed or, if not required to be licensed, on expiry of the Interim Management Order for the purpose of protecting the health, safety and welfare of the occupying persons.

Final management orders can be made in cases where a banning order has been made, Schedule 3 of the Housing and Planning Act 2016 amends management order powers under the Housing Act 2014. |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Empty Dwelling Management Order (EDMO) Section 133</td>
<td>A dwelling has been wholly unoccupied for a period of at least 6 months, there is no reasonable prospect that the dwelling will become occupied unless an Interim EDMO is made and they themselves have made reasonable efforts to notify the proprietor of the dwelling and to ascertain what steps are being taken to occupy that dwelling.</td>
</tr>
<tr>
<td>Final Empty Dwelling Management Order (EDMO) Section 136</td>
<td>The dwelling is likely to become or remain unoccupied, they have taken all such steps as was appropriate to securing the occupation of the dwelling, they have taken into account the interests of the community and the effect that the order will have on the rights of the relevant proprietor and the rights of third parties. Under such circumstances the Council may make a final EDMO in respect of a dwelling.</td>
</tr>
<tr>
<td>Overcrowding Order Section 139</td>
<td>Having regard to the rooms available, an excessive number of persons are being or are likely to be, accommodated in the HMO concerned.</td>
</tr>
<tr>
<td>Compulsory Purchase Orders Housing Act 1985</td>
<td>The local authority may compulsorily purchase a property for immediate resale to a registered social landlord where it is felt that all other actions will fail.</td>
</tr>
<tr>
<td>Banning orders (section 21 of the Housing and Planning Act 2016)</td>
<td>Banning orders can be sought for specified banning orders offences.</td>
</tr>
</tbody>
</table>
A financial penalty can be imposed as an alternative to prosecution for breach of a banning order.

| Financial penalty as an alternative to prosecution | The Council may impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence in respect of premises in England. “Relevant housing offence” means an offence under:  
  - section 30 (failure to comply with improvement notice);  
  - section 72 (offences in relation to licensing of HMOs);  
  - section 95 (offences in relation to licensing of houses under Part 3 selective licensing);  
  - section 139(7) (failure to comply with overcrowding notice); or  
  - section 234 (failure to comply with management regulations in respect of HMOs). |
| Financial penalties as alternative to prosecution | The Housing Act 2004 is amended to include section 249A “Financial penalties for certain housing offences in England.” |
| Confidential Order | The Council’s Financial Investigation Unit (FIU) assists prosecuting authorities to recover criminal assets. The FIU can make an application for a confiscation order for the following Proceeds of Crime Act 2002 banning order offences:  
  - Section 327 Concealing criminal property  
  - Section 328 Arrangements  
  - Section 239 Acquisition, use and possession. |
| Remedial notice, remedial action and penalty charge | We have reasonable grounds to believe that a relevant landlord is in breach of one or more of the duties that require smoke and carbon monoxide in the property as set out in regulation 4(1).  
If the landlord fails to comply with the notice, we must, if the occupier consents, arrange for the alarms to be fitted and/or tested. We can also levy a civil penalty charge on the landlord of up to £5,000.  
Where appropriate, we will initially proceed with an informal approach to seek compliance with the regulations. |
| Penalty notice and publication penalty | A PR property is “sub-standard” where the energy performance certificate indicated an energy performance indicator below band E. Penalty notices can be served for breach of regulations prohibiting the letting of sub-standard domestic properties and failure to comply with an Energy Efficiency compliance notice. The Housing Service is not responsible for enforcement of regulations relating to non-domestic properties. |
We will seek to resolve disputes informally, where possible.

We may publish on the PRS Exemptions Register of information relating to a penalty notice.

<table>
<thead>
<tr>
<th>Fine for failure to provide documents</th>
<th>Failure to provide information required to investigate any offence committed related to Part 1 to 4 of the Housing Act 2004, i.e. housing conditions, licensing of HMOs and other residential accommodation and management orders.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 235 and 236 of Housing Act 2004</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fine for failing to provide information connected with land.</th>
<th>Where a person fails to comply with the requirements of a notice served in pursuance of information connect with land or provides false information.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Government (Miscellaneous Provisions) Act 1976, section 16.</td>
<td>A fine will be sought if the lack of information significantly impacts on our enforcement responsibilities.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Entry on to database of rogue landlords and property agents</th>
<th>The landlord has been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent. The Rogue Landlords Database Policy sets out the council’s approach.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing and Planning Act 2016 section 30</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Client Money Protection (CMP) Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2018</th>
<th>There has been a breach of a requirement to belong to a client money protection scheme or a breach of the transparency requirements as set out in regulations 3 and 4.</th>
</tr>
</thead>
</table>

7.7 Caravan Sites

7.7.1 The Caravans Sites and Control of Development Act 1960 (as amended by the Mobile Homes Act 2013) provides the majority of the formal enforcement tools to deal with caravan and mobile home sites (commonly referred to as park home sites).

7.7.2 Operating without a Licence
Section 1 of the amended act makes it an offence for an “occupier” to cause or permit their land to be used as a caravan site without holding a licence for the site. A fine of level 5 on the standard scale can be levied upon summary conviction for an offence under this section.
7.7.3 Compliance Notices
Where conditions on a site licence are breached the Council can serve a
compliance notice under Section 9A of the amended act setting out what
conditions have been breached, what steps are required to remedy the
breaches and the timescales for compliance. Failure to comply with the
compliance notice may result in a fine of level 5 on the standard scale upon
summary conviction. Where two or more convictions for non-compliance with
site licence conditions had occurred prior to conviction then the Council can
apply to the Court for an order revoking the site licence. The Council may
carry out works in default under Section 9D following conviction.

7.7.4 Emergency Action
The Council may take emergency action under Section 9E of the amended
act where the site operator has failed or is failing to comply with a site licence
condition and, as a result of such failure, there is an imminent risk of serious
harm to the health or safety of any person who is or may be on the land.

7.7.5 Offences by Bodies Corporate
Under Section 26A of the amended act an officer of a body corporate (as well
as the body corporate itself) can be guilty of an offence under the
aforementioned sections and punished accordingly if proven that the offence
was committed with the consent or connivance of the officer of that body
corporate or as a result of their negligence. Further details on how the
Council should deal with enforcement in relation to Park Homes can be found
in the Historical Breaches Policy and also the DCLG Best Practice Guide for
Local Authorities on Enforcement of the New Site Licensing Regime which
was published in March 2015.

7.7.6 Harassment or Illegal Eviction of Park Home Residents
Section 3 of the Caravan Sites Act 1968 (as amended by the Mobile Homes
Act 2013) makes it an offence for a site owner or their agent to interfere with
the peace or comfort of the occupier or persons residing with them or to
withdraw/withhold services or facilities reasonably required to occupy the
park home as a residence knowing that this may cause them to abandon the
unit or remove it from site. A fine not exceeding the statutory maximum
and/or up to 12 months imprisonment can be levied upon summary
conviction, or on conviction on indictment to a fine and/or imprisonment of up
to 2 years.

7.8 Other legislative provisions
The Housing Solutions Service is also responsible for enforcing some
provisions within other legislation such as the Public Health Acts 1936 and
1961, the Prevention From Eviction Act 1977, the Building Act 1984 and the
Environmental Protection Act 1990.

8. Publicity as a deterrent
Where appropriate the Council will publicise prosecutions so as to deter
landlords at risk of private sector housing offences addressed in this policy. In
deciding the appropriateness of publicising housing enforcement activity, we
take into account our responsibilities under the Data Protection Act 2018 and
the Ministry of Justice’s guidance that sets out the factors that Council’s should consider when deciding whether to publicise sentencing outcomes.

9. **Confidentiality**

The Council will at all times strive to maintain the confidentiality of persons requesting its service. However, in the case of prosecution and witness statements, it may be required to reveal the names and addresses of both parties involved in a complaint.

10. **Monitoring the Policy**

To ensure that officers comply with this policy, a senior officer will check files to ensure that the necessary considerations have been given to a case and that the appropriate documentation is in place on the file.

10.1 **Ensuring accuracy in taking formal action**

10.1.1 Officers should consult with Social Care/Welfare, Tenancy Support, Housing Management Officers, Legal Services, and Housing Options Officers within Housing Solutions as appropriate. This is particularly important for the purposes of determining a suitable approach to enforcement and after-care where there are vulnerable occupants.

10.1.2 Formal action should only be taken where every attempt has been made to ensure that the details relating to the action are correct and accurate. Where there is any doubt, Officers must consult with colleagues and/or managers. Consultation with managers must occur for significant formal action, where any errors may have significant implications for the Council. These requirements are aimed at minimising reputational risks to the Council, minimising risk of delays to the desired action, and minimising potential costs to the Council.

11. **Responsibilities**

11.1 The Head of Housing Solutions is responsible for the implementation and monitoring of the policy.

11.2 The decision to approve updates to this policy with minor amendments or in light of amendments to existing legislation such as HHSRS and HMO definitions can be delegated to the Director of Social Care, Health and Housing.

12. **Review**

This policy will be reviewed every three years unless amendments are required before this time.
Housing Enforcement: Financial Penalty Policy

**Directorate**  
Social Care Health and Housing  
Housing Solutions

**Author**  
Jonathan Arnold – Senior Environmental Health Officer  
Siobhan Breheny – Housing Demand Manager

**Approved by**  
Version  
V0.4

**Approval date**  
Review date

### Version Control

<table>
<thead>
<tr>
<th>Version no.</th>
<th>Date issued</th>
<th>Author</th>
<th>Change reference</th>
<th>Issued to</th>
</tr>
</thead>
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<tr>
<td>0.1</td>
<td></td>
<td>Jonathan Arnold &amp; Siobhan Breheny</td>
<td>First draft</td>
<td>Jo Bellamy</td>
</tr>
<tr>
<td>0.2</td>
<td></td>
<td>Jo Bellamy</td>
<td>Split policy from procedure. Transfer to policy template, clarified scope. Checked for compliance with legislation and guidance.</td>
<td>Jonathan Arnold</td>
</tr>
<tr>
<td>0.3</td>
<td></td>
<td>Jonathan Arnold</td>
<td>Corrections to 4.2 and 4.5, section 9 – responsibilities and details added to section 8 – monitoring and reporting.</td>
<td>Jo Bellamy</td>
</tr>
<tr>
<td>0.4</td>
<td>04/02/19</td>
<td>Jo Bellamy</td>
<td>Incorporating feedback from colleagues.</td>
<td>Jonathan Arnold</td>
</tr>
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</table>
SECTION 1. INTRODUCTION

The Housing and Planning Act 2016 introduced the option for local housing authorities to impose a financial penalty on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004.

SECTION 2. PURPOSE

The purpose of this policy is to set out the circumstances in which the Council would seek to impose a financial penalty as an alternative to prosecution. This policy, supported by a procedure, explains the factors considered when deciding on the level of financial penalty to be imposed to ensure consistency.

SECTION 3. SCOPE

This policy relates to the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act (HA) 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the HA 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the HA 2004)
- Offences of contravention of an overcrowding notice (section 139 of the HA 2004)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the HA 2004).

A financial penalty can be imposed as an alternative to prosecution for breach of a banning order (section 21 of the Housing and Planning Act 2016) but this is dealt separately in the Banning Order policy and procedure.

A financial penalty notice is not available for a Breach of a Prohibition Order as local housing authorities can seek a rent repayment order in addition to prosecuting the landlord.

This policy supports Central Bedfordshire Council’s Policy to Regulate Private Sector Housing Standards. This policy is supported by the Procedure for Establishing Level of Financial Penalty under Housing and Planning Act 2016.

SECTION 4. POLICY DETAILS

4.1 The power to impose a financial penalty as an alternative to prosecution

The Council may impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence in respect of premises in England. “Relevant housing offence” means an offence under:

- section 30 (failure to comply with improvement notice);
- section 72 (offences in relation to licensing of HMOs);
- section 95 (offences in relation to licensing of houses under Part 3 selective licensing);
- section 139(7) (failure to comply with overcrowding notice); or
- section 234 (failure to comply with management regulations in respect of HMOs).
Where both a landlord and a letting or managing agent have committed the same offence, a financial penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case.

The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000. The maximum amount will be reserved for the very worst offenders.

The procedure for Establishing Level of Financial Penalty under Housing and Planning Act 2016 sets out the factors that the local authority will consider when establishing the severity of the offence and determining the level of fine. These factors are:

a) Seriousness of the offence (the more serious the offence the higher the penalty)
b) Culpability (are they primarily or solely guilty of the offence or was there joint culpability with another person e.g. managing agent or “head” tenant)
c) History of offences (e.g. landlord with a large portfolio, links to other crime, been prosecuted by us before, high levels of profit)
d) Harm to tenants (higher number of tenants or vulnerable tenants the greater the harm)
e) Mitigating factors (number of breaches, each breach is a separate fine; attempts to remedy; co-operative etc)
f) Proportionality (small portfolio i.e. one to two properties or a large portfolio i.e. has more than two properties)
g) Impact of fine (economic impact on the landlord; must serve as a deterrent to other landlords)

The level of severity is scored against these individual factors. The type and extent of the offence is set within a band and the score applied to the relevant band.

The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if the person has been convicted of the offence in respect of that conduct, or if there are ongoing criminal proceedings.

Only one financial penalty may be imposed on a person in respect of the same conduct but a penalty can be issued for each separate breach of the House in Multiple Occupation management regulations.

4.2 When a financial penalty should be imposed as an alternative to prosecution

Generally, prosecution will be used instead of a civil financial penalty where one or more of the following criteria apply:
1) Aggravating features such as non-co-operation, hostility or aggression towards tenants, third parties or officers
2) Previous convictions for the same offence or two previous financial penalties have been imposed by the same Council within a five-year period from the first offence occurring.
3) Multiple offences relating to different properties
4) Belief by officer that fine will have no impact on changing behaviour or deterrent effect
5) Serious injury or death caused by the offence.

In all other cases where a financial penalty is available in law, the financial penalty will normally be more appropriate than prosecution.

In respect of specified offences where it will act as a sufficient deterrent against reoffending. Officers will not issue a financial penalty notice unless the offence justifies prosecution; there
is believed to be sufficient evidence to enable follow up proceedings should the offender not pay the charge; and it will act as a sufficient deterrent against re-offending.

Prosecution will in general be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk, serious nuisance or other similar situations affecting any individual or the environment and will not be used as a punitive response to minor breaches.

The circumstances where prosecution is appropriate are set out in Central Bedfordshire Council’s Housing Enforcement Policy

4.3 Notice required to impose financial penalty

Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority’s proposal to do so (a “notice of intent”). The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates but if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs. A person’s conduct includes a failure to act.

After the end of the period for representations the local housing authority must:
(a) decide whether to impose a financial penalty on the person, and
(b) if it decides to impose a financial penalty, decide the amount of the penalty.
If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

4.4 Evidence required to impose a financial penalty

Before imposing the financial penalty, the officer in the case must assemble sufficient evidence to be able to:
a) Substantiate that an offence has been committed in its severity at a First Tier Tribunal if the penalty is appealed, and / or
b) Substantiate the grounds for imposing the penalty at a county court if it is necessary to obtain a county court order in relation to non-payment.

The officer should therefore before imposing the penalty collect all documentary and other evidence and keep it securely either in electronic or paper form, to an evidential standard. The officer should write a “statement of reasons” and keep it in two forms – one which can be disclosed to the recipient of the notice at the time the notice of intent is sent, and one in witness statement form, signed and dated.

4.5 Consequences of receiving a financial penalty

Where a person receives two or more financial penalties over a 12 month period, local housing authorities may include that person’s details in the database of rogue landlords and property agents so that other local housing authorities are made aware that formal action has been taken against the person.
4.6   **Consequences of non-payment of a financial penalty**
If a person fails to pay the whole or any part of a financial penalty which the person is liable
to pay the Council may recover the penalty through the county court as if it were payable
under an order of that court. If necessary, the local housing authority may use county court
bailiffs to enforce the order and recover the debt. A certificate signed by the chief finance
officer of the local housing authority which states that the amount due had not been received
by a specified date will be treated by the courts as conclusive evidence of that fact.

4.7   **Withdrawal or amendment of notice**
A local authority may at any time withdraw a notice of intent or final notice, or reduce the
amount specified in a notice or final notice.

4.8   **Works in default**
The local housing authority may carry out works in default where a financial penalty is
imposed for failure to comply with an improvement notice under Section 30 as Section 31
and Schedule 3 of the Housing Act 2004 relating to works in default continue to operate.

4.9   **Appeals**
Appeals against a Final Notice must be made to the First Tier Tribunal.

An appeal relating to a Final Notice is to be a re-hearing of the local housing authority’s
decision to impose a civil penalty, but may be determined having regard to matters of which
the authority was unaware. If a person appeals, the Final Notice is suspended until the
appeal is determined or withdrawn. On an appeal, the First-tier Tribunal may confirm, vary or
cancel the Final Notice but the Final Notice may not be varied so as to make it impose a
financial penalty of more than the local housing authority could have imposed, that is not
more than £30,000.

**SECTION 5.   LEGAL AND REGULATORY FRAMEWORK**

Housing and Planning Act 2016 Schedule 9 - Financial penalties as alternative to
prosecution.

The Housing Act 2004 is amended to include section 249A “Financial penalties for certain
housing offences in England”.

The local housing authority (i.e. the Council) may impose a financial penalty on a person if
satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing
offence in respect of premises in England. “Relevant housing offence” means an offence
under:
section 30 (failure to comply with improvement notice);
section 72 (offences in relation to licensing of HMOs);
section 95 (offences in relation to licensing of houses under Part 3 selective licensing);
section 139(7) (failure to comply with overcrowding notice); or
section 234 (failure to comply with management regulations in respect of HMOs)

**SECTION 6.   EQUALITY AND DIVERSITY**

Central Bedfordshire Council is committed to the elimination of unlawful discrimination
harassment and victimisation. The Council seeks to advance equality of opportunity between
people who share a protected characteristic and people who do not share it and foster good
relations between people who share a protected characteristic and people who do not share
it.
This policy seeks to improve the condition and quality of housing in Central Bedfordshire and protect vulnerable households living in non-decent homes through imposing financial penalties where appropriate.

**SECTION 7. MONITORING AND REPORTING ARRANGEMENTS**

Key outputs of this policy and its function will be monitored every six months. The Private Sector Housing Manager and Head of Housing Solutions will review:

- The financial penalties issued,
- The number of landlords that have more than one financial penalty issued within a three-year period to understand how effective financial penalties are as a deterrent,
- The number of appeals (thrown out, upheld and varied),
- The officers’ time spent on each offence relating to a financial penalty (to understanding the cost of officer time),
- The number of prosecutions carried out in that period,
- Benchmarking regional prosecutions and financial penalties, fines and penalties.

**SECTION 8. TRAINING**

Training to implement this policy and related procedures will be delivered within teams.

**SECTION 9. RESPONSIBILITIES**

The Private Sector Housing Manager or person acting up in this capacity is responsible for the monitoring, implementation and review of the policy.

The authority to impose a financial penalty is delegated only to the Private Sector Housing Manager or person acting up in this capacity, not officers. This is to ensure as far as possible that there is consistency on when financial penalties are imposed and the level of the penalty. The Manager should scrutinise the evidence presented by the officer before agreeing to impose the penalty.

The decision to approve updates to this policy with minor amendments or in light of amendments to existing legislation can be delegated to the Director of Social Care, Health and Housing.

**SECTION 10. REVIEW**

The policy will be reviewed every three years, unless amendments are required before this time.
Appendix A: Procedure for Establishing Level of Financial Penalty under Housing and Planning Act 2016

The process for determining the financial penalty to be imposed has two steps.

Step 1:
Decide which band the offence sits within, according to the “Level of Financial Penalty under Housing and Planning Act 2016 – Central Bedfordshire Council” table.

Step 2:
Determine the level of severity of the offence within the band – this will be:
- Low
- Medium
- High or
- Very high

The level of severity within the allotted band determines the level of the financial penalty

To establish the level of severity the following needs to be considered:

a) Seriousness of the offence (the more serious the offence the higher the penalty)
b) Culpability (are they primarily or solely guilty of the offence or was there joint culpability with another person e.g. managing agent or "head" tenant)
c) History of offences (e.g. landlord with a large portfolio, links to other crime, been prosecuted by us before, high levels of profit)
d) Harm to tenants (higher number of tenants or vulnerable tenants the greater the harm)
e) Mitigating factors (number of breaches, each breach is a separate fine; attempts to remedy; co-operative etc)
f) Proportionality (small portfolio i.e. one to two properties or a large portfolio i.e. has more than two properties)
g) Impact of fine (economic impact on the landlord; must serve as a deterrent to other landlords)

Points will be allocated from 1 (low) to 4 (high) for each of the 6 categories from b. to g. below. The total of these points (minimum 6, maximum 24) will determine the severity level:

Severity score
- 6 - 10 Low
- 11-15 Medium
- 16-20 High
- 21-24 Very high

Factors to determine level of severity

a) Seriousness of the offence:
This is determined by the Band in Step 1

b) Culpability:
1 = Actions were not deliberate, error of omission only
2 = Actions were careless or negligent but not deliberate non-compliance or are shared with another person
3 = Actions were deliberate failure to comply with obligations and may have been shared actions
4 = Actions were deliberate action by a sole person who runs a business and was or should have been aware of their legal obligations

c) Offence History:
1 = No previous history
2 = Previous history in our local authority (LA) area or one other LA area
3 = Previous history in our LA area and in other LA areas
4 = Previous history in our LA area and in other LA areas and has history of prosecutions

d) Harm to tenants:
1 = Little or no actual impact on occupiers
2 = Inconvenience, financial loss, stress or anxiety to occupiers
3 = Actual physical or mental harm to occupiers or third parties; also, as per 2 but more than 4 persons affected
4 = Serious illness or injury caused to occupiers or third parties; also as per 3 but more than 4 persons affected

e) Mitigating Factors:
1 = Significant
2 = More than a little
3 = A little
4 = None

f) Proportionality (based on intelligence gathering process)
1 = Individual only has the one property
2 = Small business; Individual has up to three properties
3 = Medium size business with more than three properties
4 = Large portfolio with a large income.

g) Financial Impact on Landlord (based on Experian credit report and assessment of property portfolio rental income from average local rents):
1 = Significant (e.g. in administration or near bankrupt)
2 = More than some (e.g. landlord not wealthy)
3 = Some (e.g. landlord comfortably well off)
4 = Minor (e.g. wealthy Landlord)
### Table - Level and banding of financial penalty under Housing and Planning Act 2016 – Central Bedfordshire Council

<table>
<thead>
<tr>
<th></th>
<th>Band 1 (£600 - £1,000)</th>
<th>Band 2 (£2K - £8K)</th>
<th>Band 3 (£10K - £16K)</th>
<th>Band 4 (£20K - £30K)</th>
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<td></td>
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<td>1  2  3  4</td>
<td>1  2  3  4</td>
<td>1  2  3  4</td>
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<tr>
<td>Low 6-10</td>
<td>£600  £600  £600  £600</td>
<td>£2K  £2K  £2K  £2K</td>
<td>£10K  £10K  £10K  £10K</td>
<td>£20K  £20K  £20K  £20K</td>
</tr>
<tr>
<td>Medium 11-15</td>
<td>£700  £700  £700  £700</td>
<td>£4K  £4K  £4K  £4K</td>
<td>£12.5K  £12.5K  £12.5K  £12.5K</td>
<td>£22.5K  £22.5K  £22.5K  £22.5K</td>
</tr>
<tr>
<td>Medium 11-15</td>
<td>£1K  £1K  £1K  £1K</td>
<td>£8K  £8K  £8K  £8K</td>
<td>£17.5K  £17.5K  £17.5K  £17.5K</td>
<td>£30K  £30K  £30K  £30K</td>
</tr>
</tbody>
</table>

**Failure to comply with Improvement Notice**
- Category 2 Hazards F and below
- Category 2 Hazards D or E or 5 or more D-J hazards
- Category 1 Hazards C
- Category 1 Hazards B
- Category 1 Hazards A

**Failure to comply with Overcrowding Notice**
- Overcrowding according to Housing Act 1985 but little health hazard to occupiers
- Overcrowding according to Housing Act 1985 and significant health hazard to occupiers

**HMO Licence exceed occupier maximum**
- Occupancy levels exceeded temporarily (less than 3 months) by one or two occupiers
- Occupancy levels exceeded by 3 people above maximum or by any number for more than 3 months
- Occupancy levels exceeded by 4 or more people above maximum

**HMO Licence failure to comply with condition**
- Conditions related to "signage" or information for tenants
- Conditions related to procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts and means of escape, decoration etc
- Conditions related to provision of documentation regarding fire detection, emergency lighting, gas, electricity installations
- Conditions related to condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas, electricity installations or fire detection and prevention including provision of safe means of escape

**HMO Licence failure to obtain licence**
- Failure to obtain HMO licence for 5 person HMO
- Failure to obtain HMO licence for 6 or 7 person HMO
- Failure to obtain HMO licence for 8 or more person HMO

**Breach of HMO Management Regulations**
- 3 or 4 person HMO
- 5 person HMO
- 6 or 7 person HMO or any size HMO where breach relates to provision of safe gas, electricity or water supplies
- 8 or more person HMO or any size HMO where breach relates to provision of fire safety measures
Appendix 3

Houses in Multiple Occupation Licensing Policy

<table>
<thead>
<tr>
<th>Directorate</th>
<th>Social Care Health and Housing</th>
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<td>Service</td>
<td>Housing Solutions</td>
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<tr>
<td>Author</td>
<td>Jo Bellamy, Policy and Performance Officer</td>
</tr>
<tr>
<td>Approved by</td>
<td>Version V0.3</td>
</tr>
<tr>
<td>Approval date</td>
<td>Review date</td>
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Version Control

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<td>21/11/18</td>
<td>Jo Bellamy</td>
<td>First draft</td>
<td>Jonathan Arnold</td>
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<td>0.2</td>
<td>04/02/19</td>
<td>Jo Bellamy</td>
<td>Incorporating feedback from colleagues and the engagement activity.</td>
<td>Jonathan Arnold</td>
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<td>Amendments to the list of application documents required and removal of the second fee as a discretionary condition of the licence following feedback from Ruksana Munir at LGSS.</td>
<td>Jonathan Arnold</td>
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SECTION 1.  INTRODUCTION

Houses in multiple occupation (HMOs) are properties that have more than one household living in it and sharing the toilet, bathroom or kitchen facilities. There are also several tests that the building should meet to be considered an HMO.

Landlords in many cases require a mandatory licence for an HMO if the property is occupied by five or more people that are living in two or more separate households.

The Housing Act 2004 introduced licensing of HMOs to protect often vulnerable people from risks such as overcrowding and fire that can be greater than with other types of accommodation. The licensing regime ensures that landlords with properties that do not meet the required standards or conditions are required to make improvements or prevented from managing HMOs.

The Housing Solutions service is responsible for delivering the HMO licensing function within the Central Bedfordshire area, which includes determining applications for a licence and enforcing licence conditions.

SECTION 2.  PURPOSE

As the Local Housing Authority, Central Bedfordshire Council is required (for the area of Central Bedfordshire) to:

- promote the implementation of HMO licensing;
- ensure that we deal with HMO licensing applications promptly; and
- enforce housing standards (Part 1 functions of the Housing Act 2004) for licensed HMOs as soon as possible and within five years of the first application for a licence.

The council's approach to HMO licensing is set out in this policy, specifically:

- the expected standards of all HMOs in Central Bedfordshire,
- our approach to regulating HMOs, including enforcement action, and
- our local service standards and expectations of applicants to co-operate with the licensing process.

This policy has been produced to ensure that we, the council, delivers the HMO licensing function in a fair, consistent and transparent way.

SECTION 3.  SCOPE, DEFINITIONS AND RELATED POLICIES

As a local housing authority, we have a duty to make arrangements to effectively implement an HMO licensing regime in our local authority (s55(5)(a) of the Housing Act 2004).

There are three types of licences set out in the Housing Act 2004 – mandatory, additional and selective. This policy only relates to mandatory licensing.

Planning permission or Building Control requirements for HMOs are not within the scope of this policy.
Definitions

**Houses in Multiple Occupation** – means a building or part of a building (such as a flat), which is occupied by more than one household. The legal definition is lengthy (see the Housing Act 2004 sections 254 - 260) but it includes:

- Houses and flats that are shared by more than two unrelated people (student houses are a typical example),
- Houses or flats divided into separate units but with some sharing of facilities, such as a bathroom or kitchen (bedsits are a good example),
- Part-converted buildings that contain one or more self-contained units as well as others which share facilities,
- Buildings converted entirely into self-contained flats but which were not converted to the standard set by the Building Regulations 1991 and which are also less than two-thirds owner-occupied.

**Mandatory licensing** - An HMO that requires a mandatory licence is prescribed under section 55 of the Housing Act 2004 and *The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018*. The definition is:

(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate households; and
(c) meets:
   (i) the standard test under section 254(2) of the Act;
   (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
   (iii) the converted building test under section 254(4) of the Act.

**Additional licensing** - a local authority can choose to licence landlords operating an HMO that is too small to require mandatory licensing. Additional licensing is not in the scope of this policy.

**Selective licensing** - allows the licensing of all non-HMO landlords in a specific area that is, or is likely to become, an area of low housing demand for the purposes of improving the social or economic conditions in the area. Selective licensing is not in the scope of this policy.

**HMO landlord** – for the purposes of this policy, an HMO landlord includes a person managing or controlling an HMO. This will include property or letting agents or anyone in the business of renting out an HMO.

**Relates policies and guidance**

- Central Bedfordshire Council Housing Strategy 2016-2021
- Central Bedfordshire Council’s Housing Enforcement Policy
- Amenity Guidance for Houses in Multiple Occupation and Other Houses.
- Houses in Multiple Occupation: A guide for landlords, managers and tenants
- Memorandum of Understanding to understand fire safety standards within Housing in Multiple Occupation.
SECTION 4. POLICY DETAILS

HMO landlords that require a mandatory licence

A landlord requires a mandatory licence of an HMO:
(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate households; and
(c) meets:
   (i) the standard test under section 254(2) of the Housing Act 2004;
   (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
   (iii) the converted building test under section 254(4) of the Act.

This is prescribed under section 55 of the Housing Act 2004 and The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. The new conditions that were introduced in 2018 apply to HMOs which are required to be licensed under Part 2 of the 2004 Act from 1 October 2018. The condition does not apply to existing licences issued before 1 October 2018, until the current licence expires.

Exemptions are:
- Where a temporary exemption notice is in force in relation to the property under section 62 of the Housing Act 2004,
- Where an interim or final management order is in force in relation to the property under Chapter 1 of Part 4 of the Housing Act 2004.

Identification of HMOs

We will proactively identify HMOs to ensure that all HMO’s are appropriately licenced. We will achieve this by:
- Raising awareness of the definition of an HMO that requires a mandatory licence, the landlords' obligations in applying for a licence and the benefits of HMO licensing and related enforcement to HMO tenants, neighbours and HMO landlords themselves. This is achieved through CBC web pages dedicated to HMO licensing and guidance for landlords on how to apply for a licence.
- Encouraging those living in an HMO and their neighbours, colleagues, partners, local letting agents and voluntary sector organisations to report suspected HMOs that may not be licensed.
- Request data from Tenancy Deposit Protection schemes to aid the identification of licensable HMOs which we have not licensed or received an application for.
- Using data available to the Housing Solutions team to check for possible unlicensed HMOs.

Temporary Exemption

If a landlord notifies us of their intention to take particular steps to ensure that the property is no longer licensable, we may serve a temporary exemption notice (TEN) for a three-month period, in exceptional circumstances when requested, we may serve a second TEN for a further three months.
If we decide not to serve a TEN we will, without delay, serve on the landlord a notice to inform them of the decision to not allow temporary exemption, the reasons for it and the right to appeal against the decision.

**Failure to obtain a licence**

It is an offence to have control of or manage an unlicensed HMO where a licence is required, unless a Temporary Exemption Notice is in force or if an application for an HMO licence has been duly made (s72(1) of the Housing Act 2004).

If an unlicensed HMO is in operation where a licence is required, we will take action on a case by case basis, this could include instigating legal proceedings, which may result in prosecution.

In proceedings against a person for failing to obtain a licence, it is a defence that there is a reasonable excuse for not having a licence or having applied for a licence.

A person who commits this offence is liable on summary conviction to an unlimited fine as ordered by the court.

**Rent Repayment Orders**

Where the landlord of a property has failed to obtain a licence for a property that was required to be licensed, we can seek to recover rent paid through Housing Benefit or Universal Credit. Where the tenant paid the rent themselves, then the rent must be repaid to the tenant, the tenant can also recover their contributions to rent.

The Rent Repayment Order Policy sets out our approach to Rent Repayment Orders including support for tenants to recover their contribution to the rent paid.

**Non-licensable HMOs**

Where an HMO does not require a licence, the Housing Standards set out in Part 1 of the Housing Act 2004 are still in place and we advise non-licensable HMOs to observe the good practice set out in our guides for HMOs that require a licence.

**Mandatory HMO licence application**

HMO landlords must complete the HMO licence application form so that we can decide if an HMO is ‘suitable for occupation’ for licensing purposes and, if any improvements or restrictions are needed that should be included in the licence conditions.

An HMO licence is only valid for one property. If the applicant has more than one property, they will need a licence for each of them. We will only accept applications for HMOs located in the Central Bedfordshire area.

The application form must be complete and required documents supplied for the application to be considered valid. The requirements for an application are set out in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (Regulation 7 and Schedule 2).
A valid application

An application will be regarded as valid if a duly completed application form, signed and dated (this can be subject to certain agreed omissions in certain circumstances) has been returned to the Housing Solutions team with the following:

1. The appropriate fee,
2. A reasonably accurate floor plan of the property indicating room dimensions and the position of standard amenities, plus the location of any smoke/heat detectors and fire doors,
3. A current valid gas safety certificate (if property has a gas supply),
4. A current valid fire alarm test certificate,
5. A current valid Electrical Safety inspection certificate (and produce safety certificates for all electrical appliances when requested),
6. A current valid emergency lighting test certificate, if emergency lighting in the property,
7. PAT (Portable appliance testing) certificate for any electrical equipment supplied to tenant that is over a year old,
8. EPC Energy Performance Certificate (rating),
9. Basic DBS check for the manager of the property.

Applicants who have failed to provide the full details required for a valid licensing application will be given 21 days to provide the missing information or documentation. Failure to provide the required information within 21 days may be regarded as deliberate avoidance of applying for a licence and legal proceedings may be instigated, which may result in prosecution. Where landlord can show that action is being taken to acquire the evidence, this will be considered when making a decision to instigate legal proceedings.

This would also be the case where the initial component of the licence fee has not been paid within 21 days of being invoiced. In both cases no valid application will have been made and therefore no licence can be issued.

Non-payment of the second component of the licence fee may result in the debt being pursued as a civil debt.

In addition, the licence may be granted for a lesser period than five years to reflect the delay in making a full valid application. Where a valid application is made, but only after the aforementioned 21 days has passed, we may decide to issue a licence for a lesser period than five years.

Processing an application

We have a statutory duty to investigate as soon as is reasonably practicable, that the HMO that the licence application relates to has no hazards in respect of Part 1 of the Housing Act 2004. We will carry out a Housing Health and Safety Rating System (HHSRS) inspection once the licence fee has been received and the proposed licence holder has passed our fit and proper person check.

The proposed licence holder must co-operate with the application process and allow an HHSRS inspection of the property. If we consider that a lack of co-operation has led to an unreasonable delay to the property being inspected, the licence may be granted for a lesser period than five years to reflect the delay in co-operating with the application process.
Making a decision on an application

We have a duty to grant a mandatory licence if we are satisfied that:

a) the HMO is reasonably suitable for occupation by the number of persons permitted under the licence, having regard to the number and suitability of facilities available or that it can be made suitable by the imposition of conditions;

b) the proposed licence holder is the most appropriate person to be the licence holder and is a fit and proper person to be the licence holder;

c) the proposed manager of the house is the person having control of the house or an agent or employee of that person and is a fit and proper person to be the manager of the house; and

d) the proposed management arrangements for the house are otherwise satisfactory.

To assess whether we are satisfied with the above we have a set of standards for the Central Bedfordshire area, based on legislation and regulations. The standards apply to the above as follows:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Test or standard to be met</th>
<th>Legislation and regulations</th>
<th>Links to CBC documents/guides</th>
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<td>Appropriate proposed licence holder</td>
<td>Fit and proper person test</td>
<td>Section 63 of the Housing Act 2004 As amended by the s125 of the Housing and Planning Act 2016</td>
<td>Fit and proper person test (see appendix A)</td>
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<td>Appropriate proposed manager</td>
<td>Fit and proper person test</td>
<td>Section 63 of the Housing Act 2004 As amended by the s125 of the Housing and Planning Act 2016</td>
<td>Fit and proper person test (see appendix A)</td>
</tr>
</tbody>
</table>
Mandatory conditions

The mandatory conditions that we must include in mandatory licences are specified in Schedule 4 of the Housing Act 2004, as amended by The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.

Discretionary conditions

We may impose additional conditions that we consider appropriate for regulating the management, use and occupation of a licensed HMO and its condition and contents. Those conditions may, include where appropriate:

(a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
(b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;
(c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65 of the Housing Act: Tests as to suitability for multiple occupation;
(d) conditions requiring such facilities and equipment to be kept in repair and proper working order;
(e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;
(f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233;

We will carry out an inspection of the property during the licence period. We take a risk-based approach to determining when an inspection is required and if a re-inspection is necessary.

As space standards changed in October 2018, we may allow room size conditions to be met within a period after the licence has been granted. When granting the licence, we will give the landlord notice of the room size condition that we consider that the landlord is not complying with. The council cannot bring enforcement action before that period elapses. The maximum period that we may specify is 18 months.

Duration of licence

We can grant a licence of up to five years, but we may reduce the length of the licence if:

- the property does not meet all of the requirements, such as if works are required at the property or we have concerns regarding the management arrangements,
- there is a lack of confidence in management,
- there was a delay in making a full valid application.

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Granting a licence

To grant a licence we will serve a notice and consider any representations during the consultation period set out in the notice. If following the consultation period, modifications are made to the proposed licence we will serve a second notice and consider any representations during the consultation period set out in the notice. The applicant can appeal to the appropriate tribunal if they are not satisfied with the terms of the licence.

Refusal of a licence

We can refuse to issue a licence where we decide that the landlord is not a ‘fit and proper’ person, or the property does not meet the conditions, and there is no reasonable prospect of appointing an alternative licence holder or bringing the property up to standard within an acceptable time period.

To refuse a licence we will serve a notice and consider any representations during the consultation period set out in the notice. If we proceed to refuse the licence, the applicant may appeal to the appropriate tribunal.

If the licence is refused, we have a duty to issue an Interim Management Order (IMO). This allows us to manage the property, including collecting the rent and this order can last for a year or until suitable permanent arrangements can be made. If the IMO expires and there is no likelihood of a positive change in the circumstances, then we can make a Final Management Order (FMO) by application to the appropriate tribunal. This removes the property from the control of the owner for a period of five years. We can seek a renewal of this order.

HMO register

It is a legal requirement for local authorities to provide a register of all specific details relating to licensable HMOs. The public register will contain information as required by Section 11 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. The CBC Public Register of HMO Licences is available on our website.

Mandatory Licence Fees

Our HMO mandatory licence fees are reasonable, proportionate and are based on the costs of running the service as required by The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.

The method in which we calculate the fee and what costs are taken in to account are clear and transparent. There are two types of fees for the application to reflect the costs in processing the application for a new licence and a renewal of an existing licence. The new licence and renewal licence fees are split in to two components. The first component is to cover the costs of the application and so that our fees are proportionate to the occupancy of the HMO, we apply a fee per property and a further fee per flat or lettable room. The second component of the fee is levied once a licence is granted and covers the costs of the inspection required during the licence period.
A copy of the breakdown of costs is available on request. The fee is reviewed annually as part of the Fees and Charges review cycle and is approved by Executive.

**Refunding application fees**
We do not refund fees if the property reverts to a property that no longer needs a licence before the term of the existing licence is complete (e.g. if the property becomes owner occupied or is no longer let as an HMO in the licence period).
We do not refund fees if an application for a licence is refused.

**Enforcement of licensing**
The licence holder will be breaching the licence if they:
- knowingly permit the HMO to be occupied by more persons or households than is authorised by the licence;
- fail to comply with conditions of the licence.

Where a potential breach regarding over-occupation has been identified, we will consider the individual circumstances in determining whether a landlord has knowingly permitted over-occupation. Where we conclude that the landlord has unknowingly permitted over-occupation, we will require that the breach is resolved within a reasonable period.

Where the landlord has failed to comply with a condition of the licence, we will take a proportionate response, using enforcement options available to us as set out in our Housing Enforcement Policy. Depending on the severity of the offence, we may either allow the landlord to comply with the licence condition within a reasonable period, take enforcement action to remedy the breach or we may revoke the licence.

**Varying a licence**
We have the power to vary a licence if we consider that there has been a change of circumstances since the time when the licence was granted. The licence holder can appeal the decision to vary the licence at the appropriate tribunal. The landlord can also apply to vary a licence if circumstances have changed.

A variation made with the agreement of the licence holder takes effect at the time when it is made, otherwise, a variation does not come into force until the period for appealing against the decision to vary the licence expires or when decision to vary is confirmed on appeal.

**Revoking a licence**
If the landlord sells the property, reduces the number of occupiers below licensing requirements or it becomes a single-family household, the landlord can apply to revoke their licence. If the property requires a licence at a later date, a new application for a licence will need to be submitted and the application fee paid.

If ownership of the property changes, any existing licence cannot be transferred to the new owner and the licence will be revoked. If the property is still licensable, the new landlord would need to apply for a new licence and the application fee paid.
We have a duty under Schedule 6 of the Housing and Planning Act 2016 to revoke a licence if a banning order (section 16 of the Housing and Planning Act 2016) is made against:

a) the licence holder.
b) a person who owns or has an interest in the whole or part of the house and is a lessor or licensor of the whole or part of the house.

We have the discretion to revoke a licence in the following circumstances as in accordance with s70 of the Housing Act 2004:

• with the agreement of the licence holder, or
• where we consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition, or
• where we no longer consider that the licence holder is a fit and proper person to be the licence holder, or
• where we no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management, or
• where the HMO ceases to be a licensable HMO, or
• where we consider at any time that, were the licence to expire at that time, we would, for a particular reason relating to the structure of the HMO, refuse to grant a new licence to the licence holder on similar terms in respect of it. This includes where the HMO is not reasonably suitable for the number of households or persons specified in the licence as the maximum number authorised to occupy the house.

A revocation made with the agreement of the licence holder takes effect at the time when it is made, otherwise, a revocation does not come into force until the period for appealing against the decision to revoke the licence expires or when decision to revoke is confirmed on appeal.

Renewal

Applicants must apply for a new licence if a previous licence has already expired. If the current licence is still valid, the licence holder can apply for a renewal.

The renewal application requires less information compared to the new application form as required by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012. The first component of a renewal application fee will therefore be less than a new application to reflect the cost to the Council of processing this application.

If the landlord fails to apply for a renewal before the licence expires, they may be committing the offence of failing to obtain a mandatory licence.

Appeals

The landlord can appeal to the First-tier Tribunal if we decide to:

• Refuse their licence
• Grant a licence with additional conditions
• Revoke their licence
• Vary their licence, or
• Refuse to vary their licence.
SECTION 5. LEGAL AND REGULATORY FRAMEWORK

- Housing Act 2004
- The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018
- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006
- Houses in Multiple Occupation and residential property licensing reform: Non-statutory guidance for Local Housing Authorities

SECTION 6. EQUALITY AND DIVERSITY

The council recognises diversity and equality of access as important issues in delivering its housing services. Central Bedfordshire is made up of individuals and groups with a variety of needs, all of whom should be treated with respect and dignity. Private sector landlords can help to ensure that the needs of these different groups are met by making sure that the process of letting properties does not discriminate against certain racial groups; that there is no discrimination between tenants; and ensuring that racial harassment by tenants is not tolerated.

SECTION 7. MONITORING AND REPORTING ARRANGEMENTS

The performance of the HMO licensing function will be reported every six months to the Head of Housing Solutions.

SECTION 8. TRAINING

We ensure that all members of staff are competent in the delivery of this policy through induction, in-house training and workshops.

SECTION 9. RESPONSIBILITIES

The Private Sector Housing Manager (or equivalent) is responsible for implementation, monitoring and review of this policy.

The Private Sector Housing Manager, Housing Assistance Team Manager and Private Sector Housing officers have delegated authority to operate the HMO licensing scheme, this includes taking enforcement action where appropriate in accordance with Part 2 of the Housing Act 2004 orders and regulations.
The decision to approve updates to this policy with minor amendments or in light of amendments to existing legislation such as HHSRS and HMO definitions can be delegated to the Director of Social Care, Health and Housing.

**SECTION 10. EVALUATION AND REVIEW**

This policy will be reviewed every three years, unless changes to legislation and regulations require an earlier review.
Appendix A

Fit and proper person test

Under the provisions of *The Management of Houses in Multiple Occupation (England) Regulations 2006*, any person managing an HMO of any size has a duty of care in respect of providing information to occupiers, taking safety measures, maintaining water supply and drainage, maintaining gas and electricity supplies, maintaining common parts and living accommodation and providing waste disposal facilities. In addition to these requirements, any person applying for an HMO licence must be able to prove to us that they are a fit and proper person.

Before issuing an HMO licence, the Housing Act 2004 states that we must be satisfied that the proposed licence holder and manager of the property are a fit and proper person. If not, the licence must be refused unless other satisfactory arrangements can be agreed.

A licence may be revoked where we no longer consider the licence holder to be a fit and proper person and/or that the management of the house is no longer being carried out by persons who are in each case fit and proper to be involved in its management.

What is meant by “involved in the management”? A person involved in the management, is a person who is able to comply with any licence conditions and deal with the day-to-day issues that arise within an HMO as well as being able to deal with longer term management issues. Typically, but not exclusively, these will include such matters as:

- Emergency repairs and other issues
- Routine repairs and maintenance of the property and its grounds
- Cyclical maintenance
- The management and the provision of services to the building and its grounds
- The management of tenancies or occupants, including dealing with rent matters and tenants’ enquiries
- The management of the behaviour of tenants, occupants and their visitors to the property
- Neighbourhood issues (including disputes)
- Engagement with the local authority, Police and other agencies, where appropriate.

The licence holder and the manager can be two different people. Where this is the case, a decision will be made for each of them about whether they are a fit and proper person.

Factors considered in the fit and proper test

The fit and proper person test is designed to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

The question of the person’s fitness will be in relation to the management of the property to which the application relates.

A person must not be considered a fit and proper person if a banning order (section 16 of the Housing and Planning Act 2016) is in force against the person.
We will not consider a person fit and proper if they have a current entry on the Rogue Landlords Database. Only in exceptional circumstances, where there are sufficient mitigating factors, would we deem a ‘rogue landlord’ fit and proper.

When considering whether a person is ‘fit and proper’ we must have regard to evidence of the following ‘wrong doings’:

- committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
- practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
- contravened any provision of the law relating to housing or of landlord and tenant law; or
- acted otherwise than in accordance with any applicable code of practice approved under section 233.

We will also consider evidence of the following:

- had a licence revoked or refused or been convicted of breaching the conditions of a licence under parts 2 or 3 of the Housing Act 2004.
- owns or manages or has owned or managed an HMO or house which has been the subject of a control order under section 379 of the Housing Act 1985 in the five years preceding the date of the application;
- owns or has previously owned a property that has been the subject of an interim or final management order whilst in their ownership, or a special interim management order under the Housing Act 2004.
- owns or has previously owned a property for which we have taken action against as described in section 5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order, Hazard Awareness Notice, Demolition Order or Emergency Remedial Action.
- unspent criminal convictions,
- provision of false or misleading information in the licence application (without reasonable excuse).
- the manager is not a member of a government approved redress scheme.

Making a decision

In deciding whether the above factors are relevant to the determination of a person’s fitness we will consider the following factors:

- the relevance of the wrong doing(s)or factor in relation to the person’s character and integrity to manage residential properties and in particular the type of property to which the licence relates.
- the seriousness of the wrong doing(s) in terms of impact, or potential impact, upon the residents and the wider community, including if more than one wrong doing has been carried out the cumulative impact.
- the length of time since any wrong doing.
- and any mitigating circumstances.
We will consider people associated or formerly associated with the proposed licence holder or manager, if there is actual evidence of an associated person’s wrong doing that is directly relevant to the applicant’s management of the property.

Each case will be decided on its own merits and evidence of the above factors will not necessarily lead to a conclusion that a person is not a fit and proper person. The exception will be where the licence holder is subject to a banning order. We will act reasonably, proportionately and consistently in our approach to making a decision.

If the licence holder or manager is found to not be fit and proper, we will notify them in writing and we will clearly explain the reason(s) for the decision.

**Duration**

If we determine that someone is not a fit and proper person, this will usually remain the case for a period of five years. However, we may consider it appropriate (in the event of lesser offences) to apply a condition to the licence to allow the licence to operate for a reduced term, e.g. 12 months. The conduct of the licence holder can then be monitored, and this taken into consideration in subsequent licensing applications. We will, in doing so, have regard to this policy and the applicant will need to provide sufficient evidence that they are now a fit and proper person.

**Failing the fit and proper test during the licence period**

Should we become aware that a licence holder or manager of an HMO commits an offence or breach which would result in the failure of the fit and proper test during the duration of the licence, we may revoke the licence. We will consider all evidence available and make decisions in accordance with this policy.

Should the licence holder be subject to a banning order under section 16 of the Housing and Planning Act 2016 during the duration of an existing licence, the licence holder will fail the fit and proper test and we must revoke the licence.
## Appendix 4

### Rent Repayment Order Policy

<table>
<thead>
<tr>
<th>Directorate</th>
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SECTION 1. INTRODUCTION

The majority of private rented sector landlords provide decent and well managed accommodation, but there are a small number of rogue landlords and property agents who knowingly flout their legal obligations and rent out accommodation which is substandard, frequently to vulnerable tenants.

The Housing and Planning Act 2016 introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include extending rent repayment orders (RRO) to cover a much wider range of offences.

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. The rent is repaid to either the tenant or the local housing authority, depending on whether the tenant paid their rent themselves or if rent was paid through Housing Benefit or through the housing element of Universal Credit. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent would be repaid on an equivalent basis.

SECTION 2. PURPOSE

We have a mandatory duty to consider making an application for an RRO when we become aware that a landlord has been convicted of a relevant offence and we have discretionary powers in other relevant circumstances.

The RRO statutory guidance states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to apply for a rent repayment order and should decide each case independently.

This policy sets out our approach to RROs.

SECTION 3. SCOPE, DEFINITIONS AND RELATED POLICIES

This policy sets when and how much rent we will seek to recover through an application for an RRO. An RRO can only be sought in relation to certain offences and only applies to offences committed by private sector landlords that are entitled to keep the rent.

Definitions

Rent repayment order - an order made by the First-tier Tribunal requiring a private sector landlord to repay a specified amount of rent.

Landlords – also include property agents, letting agents and managing agents that are entitled to keep the rent.
Related policies
- Central Bedfordshire Council’s Housing Enforcement Policy
- Financial Penalty Policy
- Banning Order Policy

SECTION 4. POLICY DETAILS

Relevant Rent Repayment Order offences
We can consider applying for a Rent Repayment Order (RRO) when a landlord has committed any of the following offences in the Central Bedfordshire area:

<table>
<thead>
<tr>
<th>General description of offence</th>
<th>Act</th>
<th>Section</th>
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<tr>
<td>Violence for securing entry</td>
<td>Criminal Law Act 1977</td>
<td>section 6(1)</td>
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<td>Eviction or harassment of occupiers</td>
<td>Protection from Eviction Act 1977</td>
<td>section 1(2), (3) or (3A)</td>
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<td>Failure to comply with improvement notice*</td>
<td>Housing Act 2004</td>
<td>section 30(1)</td>
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<td>Failure to comply with prohibition order etc*</td>
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<td>Control or management of unlicensed HMO</td>
<td>Housing Act 2004</td>
<td>section 72(1)</td>
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<td>Control or management of unlicensed house</td>
<td>Housing Act 2004</td>
<td>section 95(1)</td>
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<tr>
<td>Breach of banning order</td>
<td>Housing and Planning Act 2016</td>
<td>section 21</td>
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*Only if the improvement notice or prohibition order was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

We must give notice that we intend to apply for an RRO within 12 months of landlord committing the offence. However, we should apply for an RRO as soon as possible as the amount we can claim decreases over time.

When we will consider applying for a RRO

In deciding whether to apply for a rent repayment order, we must have regard to the statutory guidance (Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities).

Where we have secured a prosecution for a relevant offence, we have a statutory duty to consider applying for an RRO.
We have the discretionary power to apply for an RRO when a relevant offence has been committed, whether or not the person responsible has been convicted. Before proceeding with an application for an RRO, we need to be confident that we have a criminal standard of proof to satisfy the First-tier Tribunal beyond reasonable doubt that the landlord has committed the offence. The requirements for a criminal standard of proof are set out in the council’s Policy to Housing Enforcement Policy.

The decision to apply for a RRO will be made on a case by case basis and based on the following factors:

- the likelihood of an order being granted,
- the seriousness of the offence,
- the harm, or potential harm to tenants,
- the impact on the wider community,
- previous offences and convictions for similar offences,
- the resources likely to be available to us during the anticipated period of the application process,
- how the rent was initially paid, by the tenant or by Housing Benefit or through the housing element of Universal Credit.

If rent was paid through Housing Benefit or through the housing element of Universal Credit, the rent would be repaid to the council. If the tenant paid the rent themselves, they would be repaid. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent would be repaid on an equivalent basis.

The council does not have a statutory obligation to support an application by a tenant for an RRO. Where a tenant requests support, we will consider providing this support on a case by case basis, taking into account the likelihood of success, the financial implications to the council and the financial implications to the tenant. Support and assistance with a RRO will be subject to a fee. The fees will be published in the Social Care, Health and Housing Fees and Charges schedule and will be reviewed annually.

**Factors to consider when deciding how much rent we will seek to recover**

Rent repayment orders are intended to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

The maximum amount of rent that can be recovered is capped at 12 months.

Where the landlord is convicted of a relevant offence, the First-tier Tribunal must order that the maximum 12 months of rent be repaid.

Where the landlord has not been convicted of a relevant offence, we will consider on a case by case basis the following factors when deciding how much rent we will seek to recover:

- Punishment of the offender – consider the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
- Deter the offender from repeating the offence - the level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
• Dissuade others from committing similar offences - the fact someone has received a rent repayment order will be in the public domain.
• Remove any financial benefit the offender may have obtained as a result of committing the offence – the landlord should lose much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

However, having concluded that an application for an RRO is appropriate, and subject to any mitigating or aggravating factors, we are most likely to conclude that we should apply to recover the maximum possible amount.

We will apply for costs to cover the expense incurred in seeking an RRO from the First-tier Tribunal only where a person has acted unreasonably in bringing, defending or conducting proceedings.

Other housing enforcement options to use in conjunction with an RRO
We can prosecute a landlord and seek a rent repayment order against them for the same offence.

We may impose a civil penalty and apply for an RRO for the following offences under the Housing Act 2004:
• failure to comply with an improvement notice (section 30)
• offences in relation to licensing of HMO (section 72(1))
• offences in relation to licensing of houses under part 3 of the act (section 95(1))

Further details on our approach to civil penalties are set out in our Financial Penalty Policy.

Notice of intended proceedings
Before applying for an RRO we must give the landlord a notice of intended proceedings to inform the landlord that we are proposing to apply for an RRO, explain why and the amount that we seek to recover. We will invite the landlord to make representations during a 28 day notice period before applying for an RRO.

Appeals
A landlord may appeal against a decision of the First-tier Tribunal to the Upper Tribunal.

Publicity
When the Council has successfully made an RRO, we will publicise who it was made against, the reasons and the amount, taking into account our responsibilities under the Data Protection Act 2018. Publicity will be sought through the Council’s Communications Team.

Refusal to pay a Rent Repayment Order
Where the landlord fails to pay an RRO, that we have sought, we will consider referring the case to the county court for an Order of that Court. If necessary, we will use county court bailiffs to enforce the order and recover the debt.

Income from Rent Repayment Orders
Income received from rent repayment orders will be retained by the Council and only used to carry out our enforcement functions in relation to the private rented sector as

SECTION 5. LEGAL AND REGULATORY FRAMEWORK

Housing Act 2004
Housing and Planning Act 2016
The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017
Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities

SECTION 6. EQUALITY AND DIVERSITY

The Council has a duty under the Equality Act 2010 to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The duty covers age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

SECTION 7. MONITORING AND REPORTING ARRANGEMENTS

The use of RRO and monies received will be monitored by the Private Sector Housing Manager (or equivalent).

SECTION 8. TRAINING

Training to effectively implement this policy is available within teams to ensure consistency in approach.

SECTION 9. RESPONSIBILITIES

This section should outline the officers responsible for implementing, monitoring and reviewing the policy.
The Private Sector Housing Manager (or equivalent) is responsible for the monitoring, implementation and review of the policy.

The authority to apply for a rent repayment order is delegated to Housing Solutions Managers, to ensure that there is consistency of approach. The Manager should scrutinise the evidence presented by the officer before agreeing to apply for an RRO.

The decision to approve updates to this policy with minor amendments or in light of amendments to existing legislation can be delegated to the Director of Social Care, Health and Housing.

## SECTION 10. EVALUATION AND REVIEW

This policy will be reviewed every three years.
Appendix 5

Database of Rogue Landlords and Property Agents Policy

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SECTION 1. INTRODUCTION

The majority of private rented sector landlords provide decent and well managed accommodation, but there are a small number of rogue landlords and property agents who knowingly flout their legal obligations and rent out accommodation which is substandard, frequently to vulnerable tenants.

The Housing and Planning Act 2016 introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include establishing and operating a database of rogue landlords and property agents.

The database was a new tool introduced in 2018 for local housing authorities to keep track of rogue landlords and property agents and help target enforcement activities.

Central Bedfordshire Council as a local housing authority are able to add entries and vary or remove entries we have made on the database and we are able to view entries made by other local housing authorities.

SECTION 2. PURPOSE

As a local housing authority, we are responsible for maintaining our content on the database. We must make an entry on the database for a person or organisation who has received a banning order and we have the discretion to make entries for a person in other specific circumstances relating to banning order offences. We are also responsible for varying and removing our entries where necessary.

This policy sets out our approach to maintaining the content of the database, what criteria will be used to make decisions on adding entries and our commitment to working in partnership with other local housing authorities to raise awareness of landlords on the database. When deciding whether to make an entry in the database under section 30 of the Act and the duration of the record, we must have regard to the criteria in the statutory guidance. This policy follows the requirements set out in the legislation, regulations and statutory guidance.

The database is a tool to deter offenders from committing other offences and to deter others from offending. The more comprehensive the information on the database, the more effective it will be in improving housing standards in our and other local authority areas. We will therefore pursue opportunities to add rogue landlords to the database where appropriate in a fair and consistent way, having regard to the criteria set out in this policy.

SECTION 3. SCOPE, DEFINITIONS AND RELATED POLICIES

The rogue landlords and letting agents database is operated by the Secretary of State for Housing, Communities and Local Government but Central Bedfordshire
Council and all other local housing authorities in England are responsible for maintaining the content of the database for their local authority areas.

We may make an entry on to the database for landlords and lettings agents that have committed a relevant offence within the Central Bedfordshire area on or after 6 April 2018.

**Definitions**

Residential landlord - a landlord of housing.

Property agent - a letting agent or property manager.

Banning order - an order by the First-tier 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.

Banning order offence - an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. A list of banning order offences are set out in the Council’s Banning Order Policy.


**Relevant policies:**

- Policy to Regulate Private Sector Housing Standards
- Banning Order Policy
- Information Sharing Policy

### SECTION 4. POLICY DETAILS

**4.1 Mandatory (section 29) entry on the database**

Under section 29 of the Housing and Planning Act 2016, we have a duty to include a person with banning order on the database. We will therefore make an entry on the database for a person or organisation who has received a banning order in the Central Bedfordshire area.

**4.2 Duration of mandatory (section 29) database entry**

A mandatory entry must be maintained for the period for which the banning order has effect and must then be removed.

**4.3 Discretionary (section 30) entry on the database**

Under section 30 of the Housing and Planning Act 2016, we have the power to make an entry on the database in respect of a person if:

a) the person has been convicted of a banning order offence, and the offence was committed at a time when the person was a residential landlord or a property agent; and/or
b) the person has, within a period of 12 months, received two or more financial penalties in respect of a banning order offence when the person was a residential landlord or a property agent.

When deciding whether to make a section 30 entry on the database, we approach this on a case by case basis and will have regard to the following criteria as set out in the statutory guidance:

a) **Severity of the offence**
   The more serious the offence, the stronger the justification for including the offender on the database.

b) **Mitigating factors**
   In cases where a less serious offence has been committed and/or there are mitigating factors, we may decide not to make an entry on the database.

c) **Culpability and serial offending**
   The justification for making an entry on the database will be stronger where there is a clear history of knowingly committing banning order offences and/or non-compliance.

d) **Deter the offender from repeating the offence**
   Entering the details of an offender on the database can be an effective way of showing the offender that we are proactive in recording the details of rogue landlord and property agents and showing the offender that they will be unable to move from one local housing authority area to another and repeat the same offences as the information will be available to other local housing authorities. There will be a stronger justification for recording a person’s details on the database where we feel this would be particularly effective in deterring an offender from repeating the offence in our area or other areas.

e) **Deter others from committing similar offences**
   Some landlords and property agents will be deterred from committing banning order offences in the first place, if they know that they may be included on the database. There will be a stronger justification for recording a person’s details on the database where we feel this would be particularly effective in deterring others from offending.

4.4 **Duration of discretionary (section 30) database entry**

Section 31 of the Act requires that a discretionary (section 30) database entry remains on the database for a period of at least two years, beginning with the day on which the entry is made.

We will have regard to this and the following criteria when deciding how long the entry will remain on the database:

a) **Severity of offence**
   The severity of the offence and related factors, such as whether there have been several offences over a period of time, should be considered. Where an offence is particularly serious and/or there have been several previous
offences and/or the offence(s) have been committed over a period of time, then the decision notice will specify a longer period of time. Where one or more of those factors are absent, we may consider it appropriate to specify a shorter period.

b) Mitigating factors
These could include a genuine one-off mistake, personal issues such as ill-health or a recent bereavement. Where this is the case, we may decide to specify a shorter period of time in the decision notice.

c) Culpability and serial offending
We will consider a longer time period where the landlord has a track record of serial offending or where the offender knew, or ought to have known, that they were in breach of their responsibilities.

d) Deter the offender from repeating the offence
The data should be retained on the database for a reasonable period of time so that it is a genuine deterrent to further offences.

4.5 Decision to add a discretionary (section 30) entry to the database

A private sector housing officer will consider whether to recommend that an entry should be made on to the database and its duration using the criteria set out in 4.3 and 4.4 above. The Private Sector Housing Manager will consider the recommendation and its reasoning before deciding on whether to approve that the private sector housing officer proceeds with issuing the decision notice.

We will issue the person with a decision notice to alert them of our intention to add their information to the database and the reason for the entry. This decision notice will specify the period for which the entry will be maintained.

A decision notice must be given within six months after the person was convicted of the banning order offence to which the notice relates or received the second of the financial penalties to which the notice relates.

4.6 Making an entry on the database

We will make an entry on the database once the 21-day notice period has passed and no appeal has been made. Where an appeal has been made the entry will be made once the appeal has been determined or withdrawn and there is no possibility of further appeal.

Regulation 3 of The Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018 specifies what information must be included in the database.

We will take reasonable steps to keep information in the database up-to-date.

4.7 Power to require information

We have the power (section 35 of the Act) to require a person to:
• provide specified information to enable us to decide whether to make an entry in the database in respect of that person,
• provide any information needed to complete the person’s or proposed entry or keep it up-to-date.

It is an offence for the person to fail to comply with the requirement to provide this information, unless the person has a reasonable excuse.

It is an offence for the person to knowingly or recklessly provide information that is false or misleading.

A person who commits an offence by failing to provide the required information is liable on summary conviction to a fine.

4.8 Removal or variation of a database entry

Where the First-tier Tribunal varies the duration of a banning order that is in place, we will update the duration of the mandatory (section 29) database entry so that it corresponds with the duration of the banning order. If the banning order has been revoked, we will remove the database entry that this relates to.

We must remove the discretionary (section 30) entry if the entry was made on the basis of one or more convictions, all of which are overturned on appeal. Under section 36 of the Act, we have the power to remove the entry or reduce the duration of a discretionary (section 30) database entry in the following situations:

• If the entry was made on the basis of more than one conviction and some of them (but not all) have been overturned on appeal,
• If the entry was made on the basis of one or more convictions that have become spent.
• If the entry was made on the basis that the person has received two or more financial penalties and at least one year has elapsed since the entry was made.

Discretionary (section 30) database entries are required to remain on the database for at least two years. However, we can remove an entry before the end of the two-year period has expired and we can reduce duration of a database entry to less than the two-year period if the above situations apply.

If we remove or vary the duration of a database entry, we must notify the person to whom the entry relates.

All database entries will be removed promptly once the duration of the database entry has expired.

4.9 Requests to remove or vary a database entry

The person that the database entry relates to can request that we use our powers under section 36 of the Act to remove or vary the duration of the database entry. The request must be in writing and we must decide whether to comply with the request and give the person notice of our decision. We will consider the factors considered set out in 4.3 and 4.4 when deciding whether to remove or vary a database entry. If we decide not to comply with the request,
we will explain the reasons for that decision and advise the person of their right to appeal to the First-tier Tribunal.

4.10 Appeal

Under Section 32 of the Housing and Planning Act 2016, a person who has been given a discretionary (section 30) database entry decision notice may appeal to the First-tier Tribunal against our decision to make the entry in the database or against the decision as to the period for which the entry is to be maintained. The appeal must be made before the end of the notice period, unless there is a good reason for the delay.

If the appeal is successful the First-tier Tribunal may confirm, vary or cancel the decision notice.

4.11 Use of the database and the information held on it

We are only permitted to use information obtained from the database in accordance with the Terms and Conditions document issued by the Government for the database, to cover the following purposes:

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

We are therefore not currently permitted to share information obtained from the database with residents or prospective residents to inform their choice of accommodation in the private sector.

Controls are in place to limit access to the database to the relevant officers within the Council who would require it for the above purposes.

Before accessing the database or processing data from it council officers should read the Government’s Terms and Conditions relating to the use of the database and should comply with the obligations set out in that document.

No council staff should publish, disclose or divulge any of the data to any third party except as permitted by the Act and where the sharing of data is allowed, then this should be in accordance with the Council’s Information Sharing Policy to ensure that the activity is compliant with the General Data Protection Regulation.

4.12 General requirement to inform data subjects of their data being entered onto the database

The Council must inform data subjects when their data is added to the database, including: the lawful purpose for the collection of the data on the database; how and where the data is stored; the period of retention; how data from the database will be shared and the data subject’s right to request access to their data held on
the database. This requirement relates to all entries and therefore includes both mandatory section 29 entries and discretionary section 30 entries.

4.13 Loss or unauthorised release of data

The Council will report to the Secretary of State and the Information Commissioner’s Office any loss or unauthorized release of data held on the database as soon as possible and no later than 24 hours after the loss or unauthorised release is identified.

SECTION 5. LEGAL AND REGULATORY FRAMEWORK

Housing and Planning Act 2016
The Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018
Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities

SECTION 6. EQUALITY AND DIVERSITY

The council recognises diversity and equality of access as important issues in delivering its housing services. Central Bedfordshire is made up of individuals and groups with a variety of needs, all of whom should be treated with respect and dignity. Private sector landlords can help to ensure that the needs of these different groups are met by making sure that they do not discriminate against individuals because of their protected characteristics.

SECTION 7. MONITORING AND REPORTING ARRANGEMENTS

The Private Sector Manager will monitor the rogue landlords’ database to ensure that entries are made promptly, are up to date and varied and removed promptly when required.

SECTION 8. TRAINING

Training to effectively implement this policy is available within teams to ensure consistency in approach.
Officers can access the Ministry of Housing, Communities and Local Government’s Database of rogue landlords and property agents: User guidance for Local Housing Authorities\(^1\) to understand how to use the database effectively.

### SECTION 9. RESPONSIBILITIES

The Private Sector Housing Manager is responsible for implementing, monitoring and reviewing the policy.

A limited number of Private Sector Housing Officers are responsible for entering, varying and removing entries on the database and should ensure that they comply with the Government’s Terms and Conditions relating to the use of the database.

The decision to approve updates to this policy with minor amendments or in light of amendments to existing legislation can be delegated to the Director of Social Care, Health and Housing.

### SECTION 10. EVALUATION AND REVIEW

The policy will be reviewed every three years unless a review is required before this date.

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# Appendix 6

## Banning Order Policy

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<td>Jo Bellamy</td>
<td>Minor amendments and reference to support HMO and Rent Repayment Order (RRO) Policies</td>
</tr>
<tr>
<td>0.3</td>
<td>25/11/18</td>
<td>Jo Bellamy</td>
<td>RRO section reduced and reference made to detail in RRO Policy.</td>
</tr>
<tr>
<td>0.4</td>
<td>04/02/19</td>
<td>Jo Bellamy</td>
<td>Incorporating feedback from colleagues.</td>
</tr>
<tr>
<td>0.5</td>
<td>19/03/19</td>
<td>Jo Bellamy</td>
<td>Clarification of date when an RRO can be applied for in relation to breach of a banning following feedback from Ruksana Munir of LGSS.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Issue to: Jonathan Arnold</td>
</tr>
</tbody>
</table>

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SECTION 1. INTRODUCTION

The Housing and Planning Act 2016 introduced a new power for local authorities to ban landlords and property agents from renting out property in the private rented sector.

Banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard. These orders can only be sought for specified banning orders offences.

A banning order may be made by the First-tier Tribunal following an application made by a local housing authority. A banning order 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 and the Council has the power to impose financial penalties as an alternative to prosecution for breach of a banning order. There are other enforcement actions for the Council to consider following a successful application for a banning order.

SECTION 2. PURPOSE

This policy sets out the circumstances in which the Council will pursue a banning order, what action it will take following a successful application and what action it will take following a breach of a banning order.

SECTION 3. SCOPE, DEFINITIONS AND RELATED POLICIES

Scope

This policy relates to the power that the Council has to apply for a banning order in relation to a Banning Order Offences listed in Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017].

A relevant offence must have been committed on or after 6 April 2018 for a local housing authority to consider applying for a banning order.

This policy sets out the Council’s approach to imposing financial penalties as an alternative to prosecution of breach of banning orders only as set out in Housing and Planning Act 2016 Schedule 9 - Financial penalties as alternative to prosecution. A separate policy (Housing Enforcement Financial Penalty Policy) sets out the Council’s approach to financial penalties relating to offences under the Housing Act 2004.

Definitions

Banning order – A banning order is an order by the First-tier 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.

Banning order offence – A banning order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. A list of banning order offences is at Appendix A to this policy.
Letting agent – means a person who engages in letting agency work as set out in section 54 Housing and Planning Act 2016.

Property manager – means a person who engages in English property management work section 55 Housing and Planning Act 2016.

Breach of a banning order - A person who breaches a banning order commits an offence. A person guilty of an offence that breaches a banning order is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or to both. If a financial penalty has been imposed by a local housing authority in respect of the breach, the person may not be convicted of a breach of a banning order offence.

Spent conviction - A spent conviction is a conviction which, under the provisions of the Rehabilitation of Offenders Act 1974, is no longer to be regarded as a live conviction after a specified amount of time.

Related policies
Central Bedfordshire Council’s Housing Enforcement Policy
Housing Enforcement Financial Penalty Policy

SECTION 4. POLICY DETAILS

Applying for a banning order
A local housing authority has the power to apply for a banning order. The responsibility for applying for a banning order sits with the Housing Solutions Service.

The Council is required to follow a process prior to applying for a banning order as set out in section 15 of the Housing and Planning Act 2016. The Banning Order procedure sets out the Council’s approach to banning orders and is based on the legislative requirements.

Factors to consider when deciding whether to apply for a banning order

Housing Solutions will pursue a banning order for the most serious offenders, taking in to account the impact on individuals that could be affected by a banning order.

We will apply to the First-tier Tribunal for a banning order if:
1) The individual and/or corporate body was convicted of a banning order offence, and the Council are of the view that:

2) The seriousness of the banning order offence and history of previous convictions are significant, and

3) a) The effect of the order on tenants is considered to not be significant, and b) The effect on the offender is considered proportionate, and

4) A banning order would deter the offender from repeating the offence and deter others from committing similar offences.

The Council’s judgement on the above factors will be based on the advice of a technical officer/environmental health practitioner. The in consultation with a Housing Solutions manager to ensure consistency of approach.

When making a banning order application we will need to recommend how long a banning order should be for and set out our reasons based on the factors detailed below.
1) Appropriate persons for a banning order application

A private sector housing landlord, letting agent or property manager (as defined by section 54 and 55 of the Housing and Planning Act 2016) that:

a. was convicted of a banning order offence after 6th April 2018 (see Appendix A for offences), and
b. was a residential landlord or a property agent at the time the offence was committed, with the exception of an application involving a corporate body. If the Council believes a banning order offence has been committed by a corporate body with the consent or knowledge of an officer of that corporate body then we will seek separate banning orders for both the corporate body and the officer of the corporate body. Where an application is made against an officer of a body corporate, the First-tier Tribunal may make a banning order against the officer even if the person was not a residential landlord or a property agent at the time the offence was committed.

When deciding whether to apply for a banning order, and if so the suggested length of ban, we will consider the following factors, referring to the non-statutory guidance (Banning Order Offences under the Housing and Planning Act 2016):

2) Seriousness of the offence and previous convictions

a) The seriousness of the offence
   - We will consider the sentence imposed by the Court in respect of the banning order offence itself, such as whether the offender received a maximum sentence, or a conditional discharge as opposed to an absolute discharge?

b) Previous convictions/rogue landlord database
   - We will check the rogue landlord database to find out whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences.
   - Information regarding non-compliance with any redress scheme may also be taken into account.
   - A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order.
   - When pursuing a banning order, we will consider the opportunity to work with other local housing authorities where the person also committed banning order offences.

3) Effect of the order on tenants, the offender and potential offenders

We will consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors should include:

a) The harm caused to the tenant.
   - The greater the harm or the potential for harm to the tenant, the longer the ban should be.

b) Punishment of the offender.
   - The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.
   - The length of ban should be set at a high enough level to ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
4) Potential deterrent effect of the banning order

We will consider the extent to which the banning order could:

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

b) Deter others from committing similar offences.
   • The Council will be proactive in applying for banning orders where necessary to deter others from offending. The length of a banning order should also be set at a high enough level to ensure banning orders are a deterrent.

Process to prepare for a banning order application
The process that must be followed by the Council prior to applying for a banning order is set out in the Banning Order Procedure.

If we choose to apply for a banning order, after considering the factors detailed above, we will give the landlord a notice of our proposal to apply for a banning order through serving a ‘notice of intent’ within six months of the landlord being convicted of the offence.

The landlord will have 28 days to make representations, after the end of this period, a Housing Solutions officer, in consultation with a Housing Solutions manager, will decide whether to pursue a banning order on the basis of any representations received. If we wish to proceed, the Housing Solutions officer will apply to the First-tier Tribunal who have the power to make the banning order.

Power to require information
The Council has the power to require a person to provide specified information to enable the Council to decide whether to apply for a banning order against the person.

It is an offence for the person to provide false or misleading information, to be reckless as to whether it is false or misleading, or fail to comply with the request for information, unless the person has a reasonable excuse for not providing the specified information.

A person who commits an offence by not complying with the Council’s request, is liable on summary conviction to a fine.

Appeals
A landlord may appeal to the Upper Tribunal against the decision of the First-tier Tribunal to make the banning order under Section 53 of the Housing and Planning Act 2016.

A landlord may apply to the First-tier Tribunal to revoke or vary a banning order in certain circumstances.

Actions to consider following a successful application for a banning order

Publicity
Should an application for a banning order be successful the Housing Solutions officer that applied for the banning order will, via the Council’s Communications Team, publish details of these orders, including the names of individual landlords where appropriate.
In deciding the appropriateness of publicising banning orders we will consider the Ministry of Justice’s guidance that sets out the factors that Council’s should consider when deciding whether to publicise sentencing outcomes.

Database of rogue landlords and property agents

The Housing officer that applied for the banning order will make arrangements for officer that applied for the banning order will make an entry on the database for a person or organisation who has:

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

The process for making an entry in the database is set out in the Rogue Landlords and Property Agents Database Policy. This procedure is based on statutory guidance and includes criteria that the Council must have regard to when deciding to make an entry on the database and the time period of that entry.

Duty to revoke HMO licence in banning order cases

The Council must revoke a licence if a banning order is made against the HMO licence holder. If a HMO licence holder is subject to a banning order under section 16 of the Housing and Planning Act 2016 they will no longer be considered a ‘fit and proper person’. The licence holder is a person that owns an estate or interest in the house or part of it, and is a lessor or licensor of the house or part.

The Council will issue a HMO licence revocation notice that specifies when the revocation takes effect. The revocation cannot take effect until at least 7 days after the notice is served.

The HMO Licensing Policy sets out our approach to revoking a HMO licence.

Management orders following banning order

A banning order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the banning order was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

Interim and final management orders can be made in cases where a banning order has been made, which amends management order powers under the Housing Act 2014.

Actions to consider following the breach of a banning order

Breach of a banning order financial penalty

The Council may impose a financial penalty on a person if we are satisfied, beyond reasonable doubt, that the person’s conduct amounts to a breach of a banning order and that the conduct relates to an offence that took place in Central Bedfordshire.

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1 Section 30 of the Housing and Planning Act (H&PA) 2016.
2 Based on section 30 and 31 of the H&PA 2016.
3 Paragraph 24 of Schedule 5, Housing Act 2004
4 Schedule 3 of the Housing and Planning Act 2016
5 Section 21, Housing and Planning Act 2016.
Only one financial penalty may be imposed in respect of the same conduct unless the breach continues for more than six months, at which point a financial penalty may be imposed for each additional six-month period that the breach continues.

The maximum amount of a financial penalty is £30,000.

We cannot impose a financial penalty for breach of banning order if the person has been convicted of the offence or criminal proceedings for the offence are ongoing.

The person has a right to make representations and can appeal to the First-Tier Tribunal against the decision to impose the penalty or the amount of the penalty.

**Income from breach of banning order financial penalties**

Income received from breach of banning order penalties will be retained by the Council and used to meet administrative and legal costs related to our private rented sector enforcement functions.

**Management Order following breach of a banning order**

The Council can make a management order where a privately rented property is being let in breach of a banning order.

**Rent Repayment Orders**

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

The Council and tenants can apply for a Rent Repayment Order (RRO) for a breach of a banning order made under section 21 of the Housing and Planning Act 2016 as long as the breach was wholly committed on or after April 6th 2017 and the breach relates to a property in Central Bedfordshire. Where a landlord has been convicted of the breach of a banning order, we must consider applying for an RRO. Our approach to RROs is set out in the Rent Repayment Order Policy.

**SECTION 5. LEGAL AND REGULATORY FRAMEWORK**

**Legislation**


Management orders following banning order - Part 4 of the Housing Act 2004 as amended by Section 26 and Schedule 3 of the Housing and Planning Act 2016.

**Statutory instruments**

*The Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017]* list the banning order offences.

*The Housing (Management Orders and Financial Penalties) (Amounts Recovered) (England) Regulations 2018* - these Regulations set out how a local housing authority must deal with

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7 Section 26 and Schedule 3 of the Housing and Planning Act 2016
any surplus monies recovered under management orders under sections 110(5A) and 119(4B) of the Housing Act 2004 ("the 2004 Act") and any financial penalties received under section 23(8) of the Housing and Planning Act 2016 ("the 2016 Act").

Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities – guidance for managing the database.


Rent repayment orders under the Housing and Planning Act 2016: [Statutory] Guidance for Local Housing Authorities – sets out when and how local authorities can apply for a rent repayment order for breach of banning orders and other offences.

Guidance

Banning Order Offences under the Housing and Planning Act 2016: [Non-statutory] guidance for Local Housing Authorities.

SECTION 6. EQUALITY AND DIVERSITY

The Council has a duty under the Equality Act 2010 to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The duty covers age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

SECTION 7. MONITORING AND REPORTING ARRANGEMENTS

Banning Order activity will be reported to the Head of Housing Solutions every six months.

SECTION 8. TRAINING

Training to implement the policy will be delivered in-house.

SECTION 9. RESPONSIBILITIES

The Private Sector Housing Manager (or equivalent) is responsible for the monitoring, implementation and review of the policy.

The authority to apply for a banning order, rent repayment order or impose a financial penalty is delegated only to Housing Solutions Managers, not officers. This is to ensure as far as possible that there is consistency of approach. The Manager should scrutinise the evidence presented by the officer before agreeing to apply for the orders included in this policy or impose the penalty.

The decision to approve updates to this policy with minor amendments or in light of amendments to existing legislation can be delegated to the Director of Social Care, Health and Housing.
SECTION 10. EVALUATION AND REVIEW

This policy will be reviewed every three years.

Appendix A – Banning Order Offences
## Appendix A

### Banning Order Offences under Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017]

#### Relevant housing offences

<table>
<thead>
<tr>
<th>Act and Section</th>
<th>Offences</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection from Eviction Act 1977</td>
<td>Section 1(2), (3) and (3A)</td>
<td>Unlawful eviction and harassment of occupier</td>
</tr>
<tr>
<td>Criminal Law Act 1977</td>
<td>Section 6(1)</td>
<td>Violence for securing entry</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 30(1)</td>
<td>Failing to comply with an Improvement Notice</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 32(1)</td>
<td>Failing to comply with a prohibition order</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 72(1), (2) and (3)</td>
<td>Offences in relation to licensing of Houses in Multiple Occupation</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 95(1) and (2)</td>
<td>Offences in relation to licensing of houses under Part 3 of the Act</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 139(7)</td>
<td>Contravention of an overcrowding notice</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 234(3)</td>
<td>Failure to comply with management regulations in respect of Houses in Multiple Occupation</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 238(1)</td>
<td>False or misleading information</td>
</tr>
<tr>
<td>Regulatory Reform (Fire Safety) Order 2005</td>
<td>Article 32 paragraphs (1) and (2)</td>
<td>Fire safety offences</td>
</tr>
<tr>
<td>Health and Safety at Work Act 1974</td>
<td>Section 33(1)(c) where a person contravenes Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6)</td>
<td>Gas safety offences - duties on landlords</td>
</tr>
</tbody>
</table>

#### Immigration Offences

Letting to someone disqualified from renting as a result of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014 (as amended).

<table>
<thead>
<tr>
<th>Act and Section</th>
<th>Offences</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immigration Act 2014</td>
<td>Section 33A(1) and (10)</td>
<td>Residential tenancies – landlord offences</td>
</tr>
<tr>
<td>Immigration Act 2014</td>
<td>Section 33B(2) and (4)</td>
<td>Residential tenancies – agent offences</td>
</tr>
</tbody>
</table>

#### Serious Criminal Offences

These are serious criminal offences for which an offender may have received a custodial sentence upon conviction.
<table>
<thead>
<tr>
<th>Act/Section</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraud Act 2006</td>
<td>1(1)</td>
<td>Fraud</td>
</tr>
<tr>
<td>Fraud Act 2006</td>
<td>6(1)</td>
<td>Possession etc. of articles for use in frauds</td>
</tr>
<tr>
<td>Fraud Act 2006</td>
<td>7(1)</td>
<td>Making or supplying articles for use in frauds</td>
</tr>
<tr>
<td>Fraud Act 2006</td>
<td>9(1)</td>
<td>Participating in fraudulent business carried on by sole trader etc.</td>
</tr>
<tr>
<td>Fraud Act 2006</td>
<td>11(1)</td>
<td>Obtaining services dishonestly</td>
</tr>
<tr>
<td>Fraud Act 2006</td>
<td>12(2)</td>
<td>Liability of company officers for offences by company</td>
</tr>
<tr>
<td>Criminal Justice Act 2003</td>
<td>Schedule 15</td>
<td>Specified violent and sexual offences</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>8</td>
<td>Occupiers etc. of premises to be punishable for permitting certain activities to take place there</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>9</td>
<td>Prohibition of certain activities relating to opium</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>9A(1) and (3)</td>
<td>Prohibition of supply etc. of articles for administering or preparing controlled drugs</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>18(1), (2), (3) and (4)</td>
<td>Miscellaneous offences</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>19</td>
<td>Attempts etc. to commit offences</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>20</td>
<td>Assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>21</td>
<td>Offences by corporations</td>
</tr>
<tr>
<td>Law</td>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
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<td>---------------------------------------</td>
</tr>
<tr>
<td>Proceeds of Crime Act 2002</td>
<td>Section 327</td>
<td>Concealing criminal property</td>
</tr>
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<td>Proceeds of Crime Act 2002</td>
<td>Section 328</td>
<td>Arrangements</td>
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<tr>
<td>Proceeds of Crime Act 2002</td>
<td>Section 239</td>
<td>Acquisition, use and possession</td>
</tr>
<tr>
<td>Protection from Harassment Act 1997</td>
<td>Section 2</td>
<td>Offence of harassment</td>
</tr>
<tr>
<td>Protection from Harassment Act 1997</td>
<td>Section 2A</td>
<td>Offence of Stalking</td>
</tr>
<tr>
<td>Anti-social behaviour, Crime and Policing Act 2014</td>
<td>Section 2</td>
<td>Acquisition, use and possession</td>
</tr>
<tr>
<td>Protection from Harassment Act 1997</td>
<td>Section 2A</td>
<td>Offence of Stalking</td>
</tr>
<tr>
<td>Anti-social behaviour, Crime and Policing Act 2014</td>
<td>Section 30</td>
<td>Breach of criminal behaviour order</td>
</tr>
<tr>
<td>Anti-social behaviour, Crime and Policing Act 2014</td>
<td>Section 48</td>
<td>Failure to comply with Community Protection Notice</td>
</tr>
<tr>
<td>Criminal Damage Act 1971</td>
<td>Section 1(1)</td>
<td>Destroying or damaging property</td>
</tr>
<tr>
<td>Criminal Damage Act 1971</td>
<td>Section 2</td>
<td>Threats to destroy or damage property</td>
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<tr>
<td>Criminal Damage Act 1971</td>
<td>Section 3</td>
<td>Possessing anything with intent to destroy or damage property</td>
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<tr>
<td>Theft Act 1968</td>
<td>Section 7</td>
<td>Theft</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 9</td>
<td>Burglary</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 21</td>
<td>Blackmail</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 22</td>
<td>Handling stolen goods</td>
</tr>
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</table>
13. Stop Smoking Service Remodel

To update the Committee on the implementation of the Public Health Stop Smoking Service remodel, which was implemented on the 1st April 2019.
Stop Smoking Service Remodel Update

Report of: Cllr Tracey Stock, Portfolio Holder for Health,
Tracey.Stock@centralbedfordshire.gov.uk

Responsible Director(s): Muriel Scott, Director of Public Health
Muriel.Scott@centralbedfordshire.gov.uk

Purpose of this report

To update the committee on the implementation of the Public Health Stop Smoking Service remodel, which came into effect the 1st April 2019.

RECOMMENDATIONS

The Committee is asked to:

1. Consider and comment on the implementation of the Stop Smoking Service remodel.

2. Confirm whether it wishes to be informed of the outcome of the planned Stop Smoking Service evaluation.

Background

Context

1. Smoking remains the single largest cause of preventable death\(^1\) and one of the largest causes of health inequalities\(^2\) in England. As well as dying prematurely, smokers generally suffer many years in poor health.

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2. The Stop Smoking Service is delivered by Central Bedfordshire Public Health on behalf of Central Bedfordshire, Bedford Borough and Milton Keynes for residents of all 3 Authorities.

3. Following a review of national and international evidence and best practice, as well as various forms of stakeholder engagement and customer insights work, the Stop Smoking Service remodelled its service offer in April 2019.

4. Public Health is bringing this report to The Committee at an early stage in the implementation of the new Stop Smoking Service Model so that The Committee can comment on the process to date and provide input which might shape future development.

Rationale for the New Model

5. This new model was developed with the following key objectives:
   - **Improving access**: increasing choice of intervention and offering personalised access to support for residents.
   - **Having a greater focus on hard to reach groups**: acknowledging that certain cohorts of the population find it harder to quit and have higher prevalence of smoking.
   - **Delivering service efficiencies**: making sure provision is as cost effective as possible.
   - **Developing and maintaining an effective staff team**: ensuring the Stop Smoking Service can attract and retain skilled people to deliver the Service.
   - **Ensuring quality services and outcomes**: making sure that there is consistency of delivery across the 3 Authorities, whilst recognising and reflecting any differences in local need.

These objectives will support the aim of reducing smoking prevalence, continuing to support the downward trend in the rates and numbers of our population smoking.

Gaining Customer Insight

6. In order to incorporate customer views and feedback, Public Health commissioned research to gain insight, focusing on the following issues:
   - Why local smokers may not currently access Stop Smoking Services, and
   - What would be the acceptability of digitally-enabled services?

Methodology

7. The research undertook both quantitative and qualitative approaches, using face to face interviews with local residents.
8. The interviews captured a spread of locations, gender, age, amount smoked, awareness of services, disability and mental health issues.

Key findings
9. The research found that:
   - **Awareness of Services available to support quit attempts is still patchy**: Out of those who had tried to stop smoking in the past only a third used a service to support them. Evidence is clear that people are four times more likely to quit using a Stop Smoking Service so increasing awareness of and access to support is key.
   - **Participants had mixed views on the use of technology**: self-help materials and apps had the widest appeal, but there was significantly less interest in *FaceTime* and *Skype* support. (see table 1 below).
The availability of telephone support initially divided opinion; however, when the concept was explored and explained further, its popularity improved, including those who initially rejected the idea. One client said:

“It’d appeal to me much more, as you can talk to someone for the support without it being too personal. I don’t show my smoking habit to everyone so I wouldn’t want to go somewhere and make it really obvious that’s what I’m doing.”

Ideally, customers said that they wanted a mix of interaction methods; participants felt the ideal service would have different forms of support to suit the stage and type of support needed.

The New Service Model

10. The new model of delivery is based on evidence of what works elsewhere and embraced the feedback from both providers and customers. It comprises:

- **Telephone support through a ‘quit-line’**; this would be for the majority of smokers.
- **Enhanced face-to-face support for vulnerable groups**; a number of cohorts will be offered more intense support, including pregnant women, those with a mental health or certain long-term conditions, learning disabilities and under-18s.
Self-help materials and new marketing resources; these will be used to promote services and increase awareness of support available, as well as support the quit-process.

A phone app to support digital interventions and retain quality of delivery; it is anticipated that the go-live date for an externally procured app will be June 2019.

11. In addition to providing phone support for smokers wanting to quit and the enhanced face-to-face support where required, the ‘specialist service’ will provide several additional support functions and interventions relating to tobacco control, including:

- **Training and monitoring of commissioned providers**; this will support them in delivering Stop Smoking Services in a range of local settings.
- **Supporting Acute, Maternity and Mental Health settings**; this will be to identify gaps in provision and increase performance and access to Stop Smoking Services for their patients, in line with the NHS long term plan.
- **Delivering prevention activities**; for example, discouraging young people from smoking.
- **Developing comprehensive tobacco control strategies**; evidence shows the importance of a collaborative 'whole system approach' to reducing smoking prevalence.
- **Supporting use of evidence-based innovative technologies to reduce smoking**; for example, E-Cigarettes.
- **Facilitating targeted outreach work**; to support access and engagement with services in those cohorts which have the highest smoking prevalence or are under-represented in the Service, for example residents in the most deprived areas.

Options for consideration

12. Prior to the remodel 3 options were identified and investigated, to consider the benefits and risks of the potential ways forward. Those options were:

- **Option 1** - Continue with the established model of delivery.
- **Option 2** - Digitalisation of stop smoking support, wholly via a ‘quit-line’, delivered by Public Health specialists.
- **Option 3** - Digitalisation for the majority of smokers, with face-to-face support available for vulnerable groups.

13. Following on from the findings from the customer insight work, which identified the desire for a range of support to be available, **Option 3** was clearly the preferred choice. This also appeared to offer the best opportunity of achieving successful outcomes and value for money.

14. The subsequent engagement exercise, undertaken with a range of customers and stakeholders, provided positive feedback on this preferred option.
Council Priorities

15. The Stop Smoking Service remodel will support the priorities to improve wellbeing and in addition to be a more efficient and responsive Council. This is in line with corporate strategies that suggest embracing technologies and supporting residents to have greater ability for self-help.

Corporate Implications

16. N/A

Legal Implications

17. All contractual arrangements with providers, where there may be implications related to the new terms and conditions of service delivery, have met the requirements of Procurement at Central Bedfordshire Council.

Financial and Risk Implications

18. There are no financial risks identified in relation to the remodel of the Stop Smoking Service. The cost of the service will be met from within existing budgets.

19. The core staffing costs are within the existing establishment and consistent with the recent Public Health re-structure. Any supplementary staff costs required to meet further gaps in capacity, i.e. non-delivery by General Practice, are to be met from within existing budgets, on a temporary basis, to be regularly reviewed.

20. Non-staff costs, including tariffs for delivery by providers, have been reduced.

21. The service re-model has successfully delivered the efficiencies identified within the Council’s Medium-Term Financial Plan.

22. At this point in time it is not clear whether any further or future efficiencies are possible whilst maintaining an effective service.

Equalities Implications

23. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
24. An element of the Needs Assessment exercise prior to this remodel was focused on equality and whether there was any existing or potential discrimination associated with the stop smoking service. A primary consideration of the remodel was to ensure that a new service gave due attention to supporting those vulnerable groups that are known to have higher rates of smoking prevalence and subsequently suffer worse health outcomes.

25. The Needs Assessment identified that several key groups required more intensive support to quit smoking, and as a result this influenced the decision not to recommend a wholly digitalized or remote support offer.

26. In addition to the findings from our Needs Assessment, we consulted with other Authorities that have implemented similar changes to their services and were able to identify that, by offering the enhanced support for vulnerable groups, we would be able to meet their needs more effectively. For example, as a result of the work to ensure equality of access to services, we added Learning Disability as a criterion to qualify residents for face-to-face support – if they want this level of intervention.

27. All of the work done in collaboration with the Council’s Equality Officer gives reassurance that the remodel does not unfairly discriminate.

**Conclusion and next Steps**

28. A comprehensive evaluation of the new service model will follow; six months and one year after implementation.

29. The evaluation will incorporate quantitative and qualitative indicators, including:
   - Number of residents accessing services and four-week quitters.
   - Quality measures of success, including quit rate and referral conversion.
   - Number of pregnant women smoking ‘at the time of delivery’.
   - Number of mental health patients, clients with a long-term condition and under-18s accessing services for support.
   - Customer feedback, following interventions.
   - Further customer insights to monitor visibility and identify further innovative ways to quit smoking.
   - Provider feedback.

30. Preliminary feedback has been positive from a customer standpoint; choice and personalised access has increased adherence and referral conversion at this early stage. Telephone support has been popular. Some residents who qualified for enhanced support have chosen to be supported by telephone. A ‘data lag’ in reporting means that it is not yet possible to measure or quantify improvements in performance.

31. Provider sign-up to deliver services has been encouraging across the board although Central Bedfordshire does continue to have a gap in provision of Primary Care (GP Surgery and Pharmacy Level 2) stop smoking delivery. In
response referral pathways via GPs and Pharmacy have been revised and promoted to ensure that patient access and referral in community settings, where residents living in wards which have no services available in Primary Care, is maintained. Any gaps in Primary Care stop smoking provision will be identified and filled through ‘associate’ staff delivering support. The increased flexibility provided by the associate workforce is another benefit of the remodel.

Appendices

32. None

Background Papers

33. None
14. Nominations for the Joint Health Overview and Scrutiny Committee

Nominations are sought for the Joint Health Overview and Scrutiny Committee. This Committee is made up of representatives from Bedford Borough, Luton and Milton Keynes Councils to scrutinise the work of the Integrated Care System (ICS) previously known as the Sustainability and Transformation Partnership (STP) across the Bedfordshire, Milton Keynes and Luton (BLMK) footprint.
15. SCHH OSC 2019/20 Work Programme and Executive Forward Plan

The report provides Members with details of the currently drafted Committee work programme and the latest Executive Forward Plan.
Work Programme and Executive Forward Plan

Advising Officer: Paula Everitt, Scrutiny Policy Adviser
Paula.Everitt@centralbedfordshire.gov.uk

Purpose of this report

The report provides Members with details of the currently drafted Committee work programme and the latest Executive Forward Plan.

RECOMMENDATIONS

The Committee is asked to:

1. Consider and approve the work programme attached, subject to any further amendments it may wish to make.
2. Consider the Executive Forward Plan; and
3. Consider whether it wishes to suggest any further items for the work programme and/or establish any enquiries to assist it in reviewing specific items.

Overview and Scrutiny Work Programme

1. Throughout June and July 2016 residents were encouraged to propose items to be considered by the Council’s overview and scrutiny committees.

2. In addition, a workshop took place in June 2016 at which Members and partners were invited to propose additional items and to indicate the priorities that they would like to consider throughout 2016/17.

3. Throughout this process Members have been encouraged to adopt several key principles relating to ways of working that were previously agreed by the Overview and Scrutiny Co-ordination Panel, namely:-
   - Minimising duplication
   - Focusing on requested items
   - Focusing on outcomes and the 5-year plan
4. A long-list of items was presented to the OSC at their previous meeting where Members agreed those items they would like to be added to further meetings.

5. This work programme aims to provide a balance of those items on which the Executive would be grateful for a steer in addition to those items that the Overview and Scrutiny Committee (OSC) has proactively requested to receive.

6. The Committee is requested to consider the work programme and the indicated outcomes at appendix 1 and to amend or add to it as necessary.

Overview and Scrutiny Task Forces

7. In addition to consideration of the work programme, Members may also wish to consider how each item will be reviewed, i.e. by the Committee itself (over one or a number of Committee meetings) or by establishing a Member Task Force to review an item in greater depth and report back its findings.

Executive Forward Plan

8. Listed below are those items relating specifically to this Committee’s terms of reference contained in the latest version of the Executive Forward Plan that are not presently included in the Committee’s work programme. The full Executive Forward Plan can be viewed on the Council’s website at the link at the end of this report:

<table>
<thead>
<tr>
<th>Item</th>
<th>Indicative Exec Meeting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improving Care Home Provision for Older People – Consultation launch.</td>
<td>11 June 2019</td>
</tr>
<tr>
<td>Housing Enforcement Policy</td>
<td>11 June 2019</td>
</tr>
<tr>
<td>Establishing a Trading Entity for the Delivery of Social Care Services</td>
<td>20 August 2019</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Non Key Decisions</th>
<th>Indicative Exec Meeting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018/19 Q4 Performance Report for MTFP indicator set</td>
<td>11 June 2019</td>
</tr>
<tr>
<td>2019/20 Q1 Performance Report for MTFP indicator set</td>
<td>8 October 2019</td>
</tr>
<tr>
<td>2019/20 Q2 Performance Report for MTFP indicator set</td>
<td>3 December 2019</td>
</tr>
<tr>
<td>2019/20 Q3 Performance Report for MTFP indicator set</td>
<td>7 April 2020</td>
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</tbody>
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Corporate Implications
9. The work programme of the Overview and Scrutiny Committee will contribute indirectly to all 5 Council priorities. Whilst there are no direct implications arising from this report the implications of proposals will be detailed in full in each report submitted to the Committee.

**Conclusion and next Steps**

10. Members are requested to consider and agree the attached work programme, subject to any further amendment/additions they may wish to make and highlight those items within it where they may wish to establish a Task Force to assist the Committee in its work. This will allow officers to plan accordingly but will not preclude further items being added during the course of the year if Members so wish and capacity exists.

**Appendix A - OSC work programme**

**Background Papers**

Executive Forward Plan (can be viewed at any time on the Council’s website) at the following link:-

[http://centralbeds.moderngov.co.uk/mgListPlans.aspx?RPId=577&RD=0](http://centralbeds.moderngov.co.uk/mgListPlans.aspx?RPId=577&RD=0)
<table>
<thead>
<tr>
<th>Date</th>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday, 22 July 2019</td>
<td>Proposals for the Putnoe Walk-in Centre, Bedford</td>
<td>To consider the latest proposals for the Putnoe Walk-in Centre.</td>
</tr>
<tr>
<td></td>
<td>The review of school exclusions of young children.</td>
<td>To consider and comment on the findings of the school exclusions of young children review.</td>
</tr>
<tr>
<td></td>
<td>Outcomes of the Dunstable Hub Consultation undertaken by Bedfordshire Clinical Commissioning Group</td>
<td>To receive an update on the results of the Consultation.</td>
</tr>
<tr>
<td></td>
<td>Improving Care Homes Facilities, Flitwick</td>
<td>Outcome of the consultation on the care home facilities in Flitwick.</td>
</tr>
<tr>
<td></td>
<td>Phlebotomy Service update</td>
<td>To receive an update on the new Phlebotomy Service for Central Bedfordshire residents.</td>
</tr>
</tbody>
</table>