

# Private Sector Housing

## Enforcement Policy

August 2018



Serving People **Improving Lives**

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## 1. Introduction

The Council is the “Local Housing Authority” for the Borough of Gedling and has a statutory duty to enforce the provisions of the Housing Act 2004, associated regulations, and other housing legislation within the district.

Gedling Borough Council’s corporate purpose is ‘Serving People, Improving Lives’ and each year the Council Plan outlines the Council’s corporate priorities. The following corporate priorities directly and indirectly relate to Private Sector housing:

- Reduce antisocial behaviour, crime and fear of crime
- Reduce hardship and provide support to the most vulnerable
- Improve health and wellbeing
- Provide more homes
- Provide an attractive and sustainable environment that local people can enjoy and appreciate.

Housing is accepted as wider determinant of health and improving housing conditions can tackle health inequalities and deliver a number of the above corporate priorities.

Although private housing is an asset to its owner and as such they are responsible for its repair and maintenance, the Council has identified the need for a documented enforcement policy which clearly sets out our approach to raising the standard of private sector accommodation by enforcement where required.

In March 2018 the Council designated the Netherfield ward for selective licensing following a 12 week public consultation. The scheme is the council’s first selective licensing scheme and will come into effect from 1<sup>st</sup> October 2018 at the same time mandatory HMO licensing will be extended to cover HMOs with 5 occupants regardless of the number of floors (previously only those with 3 or more floors were subject to licensing).

The policy will cover the following issues:

- Policy Statement
- Equalities Statement
- The approach we will adopt
- Implementing the policy
- Specific enforcement policies
- Housing licensing
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Civil penalties
- Rent repayment orders
- Complaints about our service
- Monitoring and Review
- Website

The policy does not deal with the provision of housing grants as this does not relate primarily to enforcement.

## **2. Policy statement**

The Council will endeavour to make effective arrangements to enforce the appropriate sections of the Housing Act 2004 and other relevant legislation, with the aim of protecting the health, safety and welfare of private sector residents, and anyone who may be affected by the condition of their accommodation.

Whilst this policy is aimed primarily at the private sector, the policy will also apply to social housing tenants where complaints are received about the conditions of accommodation provided by a registered social landlord.

## **3. Equalities statement**

This policy will be administered in accordance with the Council's adopted Equality Improvement Plan, "Towards an even fairer Gedling" which has the following objectives:

- To build and promote good relations between and within all communities in Gedling.
- To ensure the Council meets its legal obligations to achieve equality of opportunity in the areas of race, gender, disability, sexual orientation, religion or belief and age.
- To make it easier for customers to access Council services and to tailor services to meet local needs more effectively

## **4. The approach we will adopt**

The Council will aim to ensure that a balanced and consistent approach is adopted by all enforcement officers in carrying out their duties.

Gedling Borough Council will, when dealing with private sector housing in its area (including Houses in Multiple Occupation (HMOs), owner-occupied and privately rented houses) aim to:

- Reduce the number of dwellings with category one hazards as defined in the Housing Health and Safety Rating System.
- Ensure satisfactory standards of repair, safety and the provision of adequate amenities.
- Ensure satisfactory means of escape from fire and other fire precautions in all premises.
- Reduce the number of empty properties that have been empty for more than 6 months.
- Ensure empty dwellings are secured against unauthorised access and do not present a risk to public health.

- Ensure satisfactory management and compliance within licensable HMO's and dwellings subject to selective licensing.
- Ensure private sector accommodation is not overcrowded.
- Deal appropriately with filthy and verminous premises.
- Ensure premises are not prejudicial to health or a nuisance.
- Liaise with other Local Housing Authorities in the county, the County Council, Fire and Rescue Service, and other relevant agencies, through meetings and working groups with the aim of achieving a consistent approach.
- Ensure all authorised officers carrying out enforcement duties are appropriately trained.
- Make consistent enforcement decisions in accordance with this policy, and the Public Protection Service enforcement policy outlined in appendix A.

## **5. Implementing the policy**

### i) HOW THE COUNCIL WILL CARRY OUT IT'S DUTIES

#### **a) Pro-Active Inspections**

Known HMOs and properties subject to selective licensing will be inspected on a proactive basis. The Council will also actively seek to identify HMOs, properties subject to selective licensing and empty homes. The Council will seek to licence all relevant HMOs and dwellings in accordance with the requirements of the Housing Act 2004.

#### **b) Reactive Inspections**

Reactive inspections will be carried out following the receipt of a request for service, or when information comes to light highlighting a potential requirement for intervention. It is the Council's aim to action requests for service within three working days and implement appropriate enforcement procedures.

An inspection of an HMO or dwelling subject to selective licensing will be inspected where an application for licensing has been received prior to the application being approved or refused.

#### **c) Education**

The Council will offer advice to Landlords and housing agents of their duties, and changes in legislation where they interact with the Council. The council supports local landlord forums in partnership with south Nottinghamshire Council's Broxtowe and Rushcliffe. In recent years landlord associations EMPO and NLA have assisted with organisation and delivery of the forums.

The Council also contributes to the provision of the Greater Nottingham Landlords Electronic Newsletter which provides regular up-to-date information for landlords and agents, and the Council directs landlords to use this site.

The Council also encourages landlords to seek accreditation via DASH Services (Decent and Safe Homes Accreditation Service) or other similar accreditation schemes.

#### **d) Enforcement**

The policies outlined in section 6 will be used as the basis for enforcement. To ensure an effective, transparent and consistent approach, authorised officers will follow the Public Protection Service enforcement policy reproduced in appendix A which has been formally adopted by the Council and is drafted in accordance with the requirements of the Regulators Code. Certain regulatory functions undertaken by the Public Protection Section are subject to the provisions of the Legislative and Regulatory Reform Act 2006. These include Parts 2 to 5 of the Housing Act 2004 and the Environmental Protection Act 1990.

#### ii) WHO WILL IMPLEMENT THE POLICY

Responsibility for implementation of the policy rests with the Public Protection Service Manager. Day to day activities are carried out by authorised officers in the Public Protection Section. The Food Health and Housing Manager is responsible for the planning, organisation and monitoring of all aspects of the policy. Inspections, complaints investigation and education will be carried out by officers authorised in writing.

## **6. Specific Enforcement policies**

### **6.1 Authority to Investigate or Enforce**

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Gedling Borough Council has in relation to regulating housing standards in its capacity as the Local Housing Authority. Powers are also contained in the Housing Act 1985, as amended, and other legislation, such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, the Public Health Acts 1936 and 1961, the Mobile Home Act 2013 and the Housing and Planning Act 2016. This is not a complete list of the powers available.

### **6.2 Authorisation of Officers**

Only Officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Scheme of Delegation sets out the delegated powers given to Officers.

Officers who undertake criminal investigations will be conversant with the provisions of all relevant criminal investigation law.

Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. In order to prevent any implication that the officer has taken sides, officers will usually only attend in response to a witness summons.

### **6.3 Powers of Entry and Power to Require Information**

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

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- The Officer has given at least 24 hours' Notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No Notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to selective licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

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

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

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

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

### **6.4 Choice of Appropriate Enforcement Action**

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally and within a reasonable amount of time.

Where this approach fails, the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

A statement of reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action.

## 6.5 Enforcement Action

In accordance with this Enforcement Policy, the decision to use enforcement action will depend on the severity of the non-compliance. Factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- The culpability of the responsible party
- Evidence that suggests that there was premeditation in the commission of an offence
- Whether the alleged offence involves a failure to comply in full or in part with the requirements of a statutory Notice or order
- Whether there is a history of previous warnings or the commission of similar offences
- Aggravated circumstances such as aggressive or violent behaviour

Enforcement action will be consistent with the Council's Public Protection Service Enforcement Policy and the Service will adopt a coordinated approach with other Council services and other relevant agencies, in particular with preventing and dealing with homelessness.

## 6.6 Power to Charge for Enforcement Action

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action. The Council will charge under the following:

<b>Housing Act 2004</b>	
<b>Section</b>	<b>Type of Notice</b>
Section 11 and 12	Improvement Notices
Section 20 and 21	Prohibition Notice
Section 28 and 29	Hazard Awareness Notice
Section 40	Emergency Remedial Action
Section 43	Emergency Prohibition Order
Section 265 HA 1985	Demolition Order

## 6.7 Charges for Notices & Orders

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action. The Housing Act 2004 notice

charges are set at £350 plus the cost of the works required in the case of Emergency Remedial Action or carrying out Work in Default.

When the charge demand becomes operative, the sum recoverable will be a local land charge.

## **6.8 Failure to Comply with Notices**

If a Notice is complied with, no further action will be taken. However, if the Notice is not complied with, the Council will consider the following options:

- Whether a simple caution is appropriate;
- Prosecution;
- Carrying out the works in default;
- Carrying out the works in default and prosecution;
- Civil Penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

The Council will take action to recover its costs in connection with works in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

## **6.9 Revocation and Variation of Notices**

The Council must revoke an Improvement Notice once the Notice has been complied with.

If part of the work required within the Notice is carried out, then the Notice can be varied.

## **6.10 Review of Enforcement Action**

If there is a change in the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action should be reviewed by the investigating officer, in consultation with his or her line manager, to ensure that it is still appropriate and proportionate to the risk posed from the identified hazard(s).

## **6.11 Recovery of Debts**

Where charges for enforcement action are levied, they will be registered as a local land charge against the owner's property. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). This includes smaller debts where the cost of recovery is greater than the debt owed. To recover debts the Council will use some of the following means;

- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs
- Use tracing services to track down debtors and secure judgments to recover debts

## **6.12 Improvement Notices**

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will:

- Require works that will either remove the hazard entirely or
- Will reduce its effect so that it ceases to be a Category 1 hazard,

The Council will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than removed, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will:

- Require works it considers sufficient either to remove the hazard or
- Reduce it to an appropriate degree

The Council will take whichever of these two options it considers appropriate having considered the circumstances of the case.

## **6.13 Suspended Improvement Notice**

The Council has the power to suspend an Improvement Notice once served and will consider this course of action where it is reasonable in the circumstances, to do so. The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken

- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided
- Personal circumstances of occupants; for example, temporary ill health, which suggests that works ought to be deferred

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- The level of risk presented by the hazard(s)
- The turnover of tenants at the property
- The response or otherwise of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

## **6.14 Prohibition Orders**

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). Examples include:

- A dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided
- In an HMO, to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if the means-of-escape is unsatisfactory
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular in relation to the number of bedrooms
- In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (Section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants

## **6.15 Suspended Prohibition Order**

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable in the circumstances to do so.

Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

## **6.16 Hazard Awareness Notice**

Hazard Awareness Notices may be served to notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the long-standing nature of the occupancy). It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the desirability of remedial action
- To notify a landlord about a hazard as part of a measured enforcement response

## **6.17 Emergency Remedial & Prohibition Action**

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by Sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that
- Immediate action is necessary

If these conditions are met, the Council intends will take appropriate emergency action. Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises which lack a safe means of escape in the event of fire because there is no independent access
- Risk of electrocution, fire, gassing, explosion or collapse

## **6.18 Demolition Orders**

The Housing Act 2004 provides the Council with the power to make Demolition Orders. Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance and will consider all the circumstances of the case.

## 6.19 Clearance Areas

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

## 6.20 Simple Cautions

Officers may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple cautions can only be issued where:

- There is evidence an offender is guilty
- The offender is eighteen years of age or over
- The offender admits they have committed the crime
- The offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead

Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

## 6.21 Works in Default

Works in Default will be considered if **all** other methods to try to remedy the necessary works have been unsuccessful.

In determining if work in default is appropriate, Officers will report to the Public Protection Service Manager who will consider approval based on the following information;

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned
- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties
- The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

In the case of Officer time, the Council will calculate costs as follows:

- The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database

- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.

The expenses incurred are to be recovered from the person(s) on whom the Notice or Order is/are served ("the relevant person"). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

## **7. Housing Licensing**

The Council undertakes mandatory HMO licensing under the Housing Act 2004 which will be extended from 1<sup>st</sup> October 2018 to cover all HMOs with 5 or more occupants regardless of the number of floors. The Council has also designated the Netherfield ward for selective licensing which is due to come into operation from 1<sup>st</sup> October 2018.

### **7.1 Licence applications**

The responsible person should ensure they apply in good time and do not delay their application; doing so may lead to investigations into the operation of an unlicensed property. The responsible person is the person having control of or managing the property that is required to be licenced.

We aim to determine if a licence application is duly made within 10 working days. Where an application is missing information that is required for the application to be considered duly made, a single opportunity will be offered to supply the missing information. Where this information is still not supplied, the application will be returned to the applicant.

An application will only be considered to be duly made once all the necessary sections have been properly completed and all the necessary information and documentation has been provided.

Failing to submit a duly made application may lead to further investigations and potentially enforcement action for operating an unlicensed property.

The content of the duly made application will be reviewed and where there are any questions or concerns about the suitability of the property or the management arrangements, further investigations will be undertaken. This may include, but is not limited to, an inspection of the property prior to the licence being determined.

The council will aim to determine (grant or refuse) any applications within 12 months of a duly made application.

### **7.2 Determining the licence**

The Council will grant a licence where it is satisfied that the statutory requirements of the relevant Part of the Housing Act 2004 have been met. It is expected the majority of

licences will be issued based on the application and supporting documents, so it is important that this information is correct. The licence will usually be granted for the duration of the scheme.

Where the Council has concerns and is not fully satisfied that the licence holder, manager or any other relevant person meet the necessary provisions within the legislation, the Council may choose to:

- Propose to grant a licence for a shorter term.
- Propose to refuse the licence.
- Carry out an initial inspection. The inspecting officer will carry out a thorough inspection of the property and will not be limited to only assessing it against any relevant licensing requirements. Other aspects of the inspection will include, but are not limited to, assessing hazards under Part 1 of the Housing Act 2004 and breaches of the HMO Management Regulations under section 234 of the Housing Act 2004.

Licences may be considered for refusal or issued for a shorter term in the following applicable circumstances:

<b>Not fit and Proper</b>	The applicant is not deemed fit and proper, based on information contained within the application or otherwise known about the applicant.
<b>Enforcement &amp; Prosecutions</b>	Proposed licence holder or manager has been prosecuted, accepted a simple caution or had a civil penalty imposed on them, in the past 5 years for a housing related offence.
<b>Non-compliant Notices</b>	Proposed licence holder or manager has failed to comply with a relevant notice in the past 3 years. This includes notices which may have been served under the Housing Act 2004, Building Act 1984, Environmental Protection Act 1990, Prevention of Damage by Pests Act 1949 and other relevant legal notices.
<b>Absent or 'unsatisfactory' certificates where required</b>	No or unsatisfactory gas or electric certificates supplied. No Energy Performance Certificate supplied.
<b>Refused licences</b>	Applications for Licences have been refused in the last 2 years.
<b>No Plans</b>	Absent or inadequate floor plans (e.g. insufficient information provided on the plans such no measurements, no kitchen / bathroom facilities information, smoke alarms not labelled, rooms not labelled etc.)

<b>Non-compliance previous licence conditions</b>	Failed to comply with previous licence conditions.
<b>Licence revoked</b>	Previous licences revoked, within last 2 years, due to non-compliance with conditions or because one or more of the persons involved was no longer fit and proper.
<b>Other significant issue</b>	Any other significant issue identified and evidenced that is of such concern that it would not be appropriate to issue a licence to a proposed licence holder (within legislative requirements). These people, companies etc. will be reviewed on a regular basis. It may include the following: <ul style="list-style-type: none"> <li>• Not fit and proper (identified from another source)</li> <li>• Evidence of associates not being fit and proper</li> <li>• Person / company under investigation for contraventions under relevant legislation.</li> <li>• Consistent / repetitive interventions by the Council or other</li> </ul>

### **7.3 During the term of the licence**

It is expected that licence holders will ensure properties are well managed, safe and comply with all relevant conditions. The licence fee covers an inspection of a proportion of licensed properties to check on compliance during the scheme. The number checked will partly be dependent on the application content and the outcome of any initial inspection..

Where the Council is made aware of: any issues related to the property, licence holder or manager; any potential breaches of licence conditions; or any other issues that may arise, the Council may investigate to determine what appropriate action, if any, should be taken.

The Council will notify the tenant when a licence is issued and during the term of the licence to ask them to contact the Council if there are any problems at the property. The Council may also develop further opportunities for tenant engagement.

### **7.4 Querying a licence decision**

The licensing process includes a 14 day period of time for relevant persons to make representations to the Council against any of the following:

- proposed licence conditions;
- a proposal to refuse to grant a licence;

- a proposal to revoke a licence, or;
- a proposal to vary a licence.

Where representations are made to the Council, the content of those representations, as well as the basis for the original decision, will be reviewed by an appropriate officer other than the officer who made the original decision. Any representations will be considered on a case by case basis but further guidance on what may be appropriate to include in representations is shown below and organised by decision type.

#### **Proposed Refusal – Proposed licence holder or manager are not fit & proper**

The relevant person(s) will need to provide evidence showing that they or their associates are fit and proper person(s). A standalone policy outlining the council's approach to fit and proper policy has been produced and will be separately adopted. A copy is reproduced in Appendix B to be read in conjunction with this policy.

#### **Proposed Refusal - The application is unsatisfactory**

The relevant person(s) will need to provide the missing information or documentation and outline how they will improve the way they manage their properties and/or respond to requests for information from the Council. Any information or documentation that is provided should be given promptly and must be of an acceptable standard and quality to enable the Council to make a final decision without any further information.

#### **Proposed Refusal - Not the most appropriate person to hold the licence**

The proposed licence holder will need to demonstrate that they are in receipt of the rack rent and can exercise sufficient control over the property. Where multiple persons meet this description, the proposed licence holder will need to demonstrate why they are the most appropriate person, of those available, to hold the licence.

#### **Proposed Refusal - Unsatisfactory management arrangements**

The following factors may be considered:

- Are the proposed licence holder or manager accredited or active members of a landlord organisation or in the process of becoming so?
- Have the proposed licence holder or manager completed relevant training or are they willing to attend such training?
- Have there been any further contraventions over period of the licence?
- Is there evidence of improved management at the property?
- Have certificates been provided promptly (within 7 days of request)?
- Have supporting documents been provided promptly (within 7 days of request)?
- Have the relevant Council arrangements been complied with (e.g. planning permission, HMO amenity guidance)?
- Have the proposed licence holder and manager met all legal requirements and not just those under the Housing Act 2004 (e.g. redress scheme, deposit protection, EPC, right to rent)?
- Does the licence holder have detailed written policy plans for dealing with complaints, anti-social behaviour and repairs and maintenance?

- Does the licence holder or manager have written records of their past inspections, including notes of any issues found and the action taken to address them, and details of their planned inspection program?
- Has the licence holder or manager provided the tenants with the necessary information packs?

### 7.5 Unlicensed properties

It is expected that landlords will apply to licence those properties which require a licence. Where applications are not made, the Council will carry out investigations into those properties which it believes should be licensed but are not. Failing to licence a property is an offence and can lead to prosecutions, civil penalties and other substantive enforcement actions. It may also affect any decision regarding existing or future licences.

## 8. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Where the Council has reasonable grounds to believe that the requirements of these Regulations have not been met by a landlord, there is a duty on the Council to serve a 'remedial notice'. Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action, with the occupiers consent and a power to require the landlord to pay a penalty charge. Penalty charges for non-compliance are currently as follows:

First offence	£1,000	Reduced to £750 if paid within 14 days
Any additional offences	£5,000	Reduced to £2,500 if paid within 14 days

In determining the level of the fixed penalty notice the Council has considered the likely costs it will incur and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for additional offences reflects the seriousness of the offence and is designed to deter repeat offending.

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

In doing so the reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of penalty charge that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the penalty charge notice the reviewing officer will inform the landlord by service of notice of their decision. The 25% reduction for a first offence will apply to any revised charge set should payment be within 14 days of service of the revised notice.

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

The Council has separately authorised its approach to these provisions, and summary of which is included in this chapter. Where the Council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the 2014 Order it may by notice require that person to pay a 'monetary penalty'.

The Council will follow the procedure for issuing a monetary penalty as set out in the 2014 Order. This includes serving notice that it intends to issue a monetary penalty for specified reasons. It will also outline how the person notified can submit any representations and what the appeal process is.

The standard penalty charge for breach of duty under article 3 or 5 is set as follows:

Breach of duty under article 3 or 5	£5,000	Reduced to £2,500 if paid within 14 days for first offence only
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In determining the level of the monetary penalty the Council has considered the likely costs it will incur and the amount required sufficient to provide a deterrent to non-compliance. If written representations are received within 28 days of the service of the notice of intent, a senior officer not directly involved in the service of the original notice, usually the Service Manager Public Protection will carry out a review.

When considering any formal review of a notice of intent, the reviewing officer will consider the representations and decide whether to serve the final notice. The final notice shall state the reasons for imposing the monetary penalty, the amount to be paid, how to pay and by when. The notice shall include information about rights of appeal and the consequences of non-payment which would normally be prosecution.

The 50% discount will apply to any revised charge set should payment be within 14 days of service of the revised notice. The reviewing officer will refer to this policy in considering any request for a review.

## 10. Civil Penalties

The Council has separately authorised its approach to these provisions, and summary of which is included in this chapter. The Housing & Planning Act 2016 introduces a range of measures to crack down on rogue landlords including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution for certain specified offences. This power came in to force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

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

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

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

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

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

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. In order to achieve a conviction in the magistrates' court, the Private Sector Housing Enforcement Team must be able to demonstrate beyond reasonable doubt that the offence has been committed.

A separate Private Sector Housing Civil Penalties Policy has been produced to outline the councils approach to these provisions. The Civil Penalties Policy is directly linked to this policy but has not been reproduced in an appendix to this policy due its size. The Private Sector Housing Civil Penalties Policy should be read in conjunction with the Private Sector Housing Enforcement Policy.

## **11. Rent Repayment Orders**

The Housing Act 2004 provides power to apply Rent Repayment Orders (RROs) in regard to offences related to HMOs as outlined at section 73 and 74 of Housing Act 2004, the relevant offence is:

- If the person having control of or managing a HMO which is required to be licenced but is not so licensed.

In addition to the above power the Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6<sup>th</sup> April 2017;

- Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under Section 32 of the housing Act 2004
- Breach of a banning order made under Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property under Section 1 of the Protection from Eviction Act 1977

The maximum amount of rent that can be recovered is capped at 12 months. A criminal standard of proof is required. The Council must apply to the First Tier Property Tribunal for an RRO.

Gedling Borough Council will consider application for RROs in all cases where a successful prosecution has been achieved and the tenants are in receipt of Housing Benefit. Where a claim by the Council is successful the previous 12 months' rent in Housing Benefit is returned to the Council by the landlord. Where the tenants are not in receipt of Housing Benefit the tenant are entitled to make their own claim for a RRO.

## **12. Complaints about our service**

Any person feeling dissatisfied with the way they have been treated by the Council, or the way this policy has been implemented, can access the Council's official complaints system and should initially complain in writing to:

Food, Health and Housing Manager,  
Gedling Borough Council,  
Civic Centre,  
Arnot Hill Park,  
Arnold,  
NOTTINGHAM,  
NG5 6LU

Or log on to [www.gedling.gov.uk](http://www.gedling.gov.uk)

It is our aim to respond to complaints within ten working days. If having received a response, a person remains dissatisfied and the matter has not been resolved they have a right to report their case to the Local Government Ombudsman who can be contacted by telephoning 0300 061 0614 or 0845 602 1983, or via the website [www.lgo.org.uk](http://www.lgo.org.uk)

## **13. Review**

It is intended that this document will be subject to a periodic review to accommodate changes in legislation, local needs and the views of service users. This policy will be formally reviewed no longer than 3 years from its formal adoption by the council.

## **14. Website**

Further information on services provided by Gedling Borough Council can be found on the website at [www.gedling.gov.uk](http://www.gedling.gov.uk)

## Public Protection Enforcement Policy

### INTRODUCTION

This document sets out what businesses, residents, and our community can expect from the Public Protection Service's enforcement approach and procedures.

The primary function of the enforcement work is to protect the public and the environment. At the same time equitable and consistent enforcement maintains a level playing field for local business, as well as our service users.

**1. We will carry out our activities in a way that supports those we regulate to comply and grow.**

We will avoid imposing unnecessary regulatory burdens through our regulatory activities and will assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. We will choose proportionate approaches to those we regulate, based on relevant factors including, for example, business size and capacity.

Our service will support or enable economic growth for compliant businesses and other regulated entities by:

- Understanding and minimising negative economic impacts of our regulatory activities;
- Minimising the costs for compliance for those we regulate;
- Improving confidence in compliance for those we regulate; and
- Encouraging and promoting compliance.

We will ensure our officers have the necessary knowledge and skills to support those we regulated including having an understanding of those we regulate that enables us to choose proportionate and effective approaches.

**2. We will provide simple and straightforward ways to engage with those we regulate and hear their views**

We engage with those we regulate to contribute to the development of our policies and service standards. Before changing policies, practices or service standards, we consider the impact on businesses and engage with business representatives.

When responding to non-compliance we identify, we will explain and offer advice on what actions are required and the reasons for these. We will provide an opportunity

for dialogue in relation to our advice, requirements or decisions, with the view to ensuring we are acting in a proportionate and consistent way.

The above paragraph does not apply where we demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

We will provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this policy. Where possible individual officers of the Council who took the decision or action against which the appeal is being made should not be involved in considering the appeal. The route to appeal is publicised to those who are regulated.

We will provide a timely explanation in writing or any right to representation or right to appeal. This explanation will be in plain language and include practical information on the process involved.

We make available our complaints and compliments procedure allowing customers to provide feedback or complaints about our service.

We have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including for example, through customer satisfaction surveys.

### **3. We will base our regulatory activities on risk**

We will take an evidence based approach to determining the priority risks in our service area, and allocate resources where they are most effective in addressing those priority risks.

We will consider risk at every stage of our decision making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

When assessing risk we will recognise the compliance record of those we regulate including using earned recognition approaches and considering all available and relevant data on compliance, including evidence of relevant external verification.

We will review the effectiveness of our chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly. We will have effective arrangements in place to promote consistency of our officers.

### **4. We will share information about compliance and risk**

When the law allows and in compliance with the General Data Protection Regulation and Data Protection Act 2018 (where appropriate) we will agree secure mechanisms to share information with other regulators about businesses and other bodies to help target resources and activities and minimise duplication.

### **5. We will ensure clear information, guidance and advice is available to help those we regulate meet their responsibilities and comply**

We will provide advice and guidance that is focussed on assisting those we regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements will be distinguished from suggested good practice and the impact of the advice or guidance will be considered so that it does not impose unnecessary burdens itself.

We will publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language.

We will aim to have in place mechanisms to consult those we regulate in relation to the guidance to ensure it meets their needs.

We aim to create an environment in which those we regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.

In responding to requests for advice our primary concern should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.

We will work collaboratively with our partners to assist those regulated by more than one regulator. We will consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.

## **6. Application of enforcement policy**

All Public Protection officers will refer to this policy when making enforcement decisions. This will be read in conjunction with approved guidance on enforcement action.

Enforcement options include:

- Written and verbal advice
- Reference to another enforcement agency
- Written warning
- Statutory notice
- Fixed penalty notice
- Prohibition
- Works in default
- Simple caution
- Suspension or revocation of licence.
- Prosecution

In some circumstances matters may be referred from or to another agency for enforcement action.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the Team Manager before final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

In cases of emergency or where exceptional conditions prevail, the Service Manager – Public Protection may suspend all or part of this policy where necessary to achieve effective running of the service and/or where there is a risk or injury or to health of employees or members of the public.

## **7. Deciding whether to prosecute**

Before deciding what action will be taken against a business or an individual, consideration will be given to a number of factors including this policy, Central Government guidance and the Code for Crown Prosecutors. These factors, which are not listed in order of significance, will include the following:

- The seriousness of the alleged offence;
- Whether it is in the public interest to prosecute;
- The history of the party concerned;
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers;
- Whether any other action (including simple caution) would be more appropriate or effective.

## **8. We will ensure that our approach to regulatory activities is transparent**

This policy sets out our approach to enforcement and what those we regulate should expect from us. We will provide accessible information and advice on legislation that we enforce. We will be open about how we set about our work, consulting local business and other interested parties.

We can be contacted at:

Public Protection Service  
Gedling Borough Council,  
Civic Centre  
Arnot Hill Park  
Arnold  
Nottingham  
NG5 6LU

Tel: 0115 9013972

Email: [environmentalhealth@gedling.gov.uk](mailto:environmentalhealth@gedling.gov.uk)

Website: [www.gedling.gov.uk](http://www.gedling.gov.uk)

### **1. Why is there a test**

1.1 Under the Housing Act 2004, if the Council is to issue a selective licence, an additional HMO licence or a mandatory HMO licence it must be satisfied that the proposed licence holder is a fit and proper person and the most appropriate person to hold the licence. It must also be satisfied that the proposed manager of the house is a fit and proper person to be the manager of the house. If not, the licence must be refused unless other arrangements can be agreed.

1.2. The licence may be revoked where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder and where the Council no longer considers that the management of the house is being carried out by persons who are not in each case fit and proper persons to be involved in its management.

1.3. These requirements are to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular residential property, and as such they do not pose a risk to the welfare of safety of persons occupying the property.

### **2. What properties does this policy affect?**

2.1 This policy affects any property that requires a licence by the Council under the licensing of HMOs (Part 2 of the Housing Act 2004) and the licensing of other residential accommodation (Part 3) known as Selective Licensing..

### **3. What is meant by ‘involved in the management’?**

3.1 This means the Council must consider licence holders, managers and others involved in the management of the property. This will not extend to, for example, all members of staff at a managing agent who have limited access to a property, but it will be necessary to find out how repairs to the property are carried out. It is a licence condition for licence holders and managers to ensure their staff are fit and proper. Licence holders and anyone else who is involved in the management of a licensable property are in a position of trust. The nature of their role means they will enter the property on occasion.

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

#### **4. What will the Council look at?**

4.1. The Council will consider a person 'fit and proper' if it is satisfied that;

- They do not have any unspent convictions that may be relevant to their role as either licence holder or manager and, in particular, any conviction involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
- They have not been found by a court or tribunal to have 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.
- They do not have any unspent conviction in relation to any housing, public health, environmental health or landlord and tenant law; including any civil proceedings in which judgment was made against them.
- They have not been in control of a property, which has been subject to a control order under section 379 of the Housing Act 1985 in the last 5 years.
- They have not had a licence refused, been convicted of breaching the conditions of a licence under Parts 2 or 3 of the Act; or have acted otherwise than in accordance with a Code of Practice approved under section 233 of the Act that concerns a property in their ownership (whether or not in the Council's district).
- They do not own or have not previously owned property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004.
- They have not been served with a Banning Order in accordance with part 2, chapter 2 of the Housing and Planning Act 2016.
- In addition, the Council may also take in to account whether any person associated or formerly associated with the applicant or manager has done any of these things, if it considers this information relevant.

#### **5. How will the Council make their decision?**

5.1. Where a person has relevant unspent convictions and or has contravened provisions of relevant legislation or codes of practice then the Council may decide that that person is not fit and proper. Each case must be considered on its own merits. Evidence of any specified misconduct does not necessarily lead to the conclusion that the person is not fit and proper. The Council will adopt a common sense approach, exercising its discretion reasonably and proportionately, taking into account relevant factors and disregarding irrelevant factors.

5.2. Where there is evidence of specified misconduct then the Council, when deciding whether that misconduct means that the person is not fit and proper, will take into account the following factors:

- the relevance of the conviction/contravention in relation to the person's character and integrity to manage an licensable property
- the severity of the conviction/contravention in terms of impact, upon residents and the wider community
- when the conviction/contravention took place
- any mitigating circumstances
- any other relevant factors

5.3. This list of factors is not intended to be exhaustive and the Council will take into account any other relevant factors in so far as they are relevant to the fitness of the relevant person. In other words, the misconduct has to be relevant to the person's fitness to hold a licence and/or manage the particular residential property.

5.4. The Council would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be fit and proper person. In contrast, evidence of minor contraventions of housing or landlord and tenant law need not result in the Council deciding that a person is not fit and proper.

5.5. If an offence is isolated and/or there are mitigating circumstances this may not result in the Council deciding that the person is not fit and proper. Multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim of any offence is vulnerable.

## **6. Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager**

6.1. If there is evidence that a person associated, or formerly associated, with the person proposed to be the licence holder or manager of the property has committed any wrongdoings, that evidence may be taken into account in determining the fitness of the proposed licence holder, manager or other persons involved in the management of a property (even if that person has himself or herself an unblemished record). It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who would not be a fit and proper person. It would also not be appropriate if someone's ability to manage a property satisfactorily would be unduly influenced by an associate who was not or would not be considered fit and proper.

6.2. Examples:

6.2.1. A husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. There is evidence that the husband has committed wrongdoings and those wrongdoings are relevant to the management of the property and his fitness to be a manager or licence holder. Since the husband is joint owner

and an associate of the wife it would be reasonable to assess whether the husband is fit and proper given that he is an associate of the proposed licence holder. If the husband is found not to be fit and proper, then the Council may refuse to grant the wife a licence.

6.2.2. The director of company, A, has been prosecuted previously and convicted a number of times for failing to manage a property. A then starts to work for another managing agent, B, as an, employee. Depending on A's duties B may need to satisfy the Council that he or she is fit and proper if employee A is involved in the management of a property. If A is required to satisfy the fit and proper test and fails it, B, i.e. the employer, could be found not to be fit and proper to manage or be a licence holder by association.

6.3. A decision that someone is not fit and proper or a refusal to grant a licence in these circumstances will normally only be made if:

- there is actual evidence of relevant misconduct by the associated person and
- the associate's fitness is directly relevant to the applicant or proposed licence holder's fitness to manage the property or hold the licence.

## **7. Duration**

7.1 If someone is found not to be fit and proper this will normally remain the case for 5 years. If a subsequent licence application is submitted within that period the Council will reconsider a person's fit and proper status on the merits of that application. The applicant will be expected to provide evidence which demonstrates why she or he is a fit and proper person.

## **8. Offences / evidence of contraventions**

8.1. The following examples give a general guide to the action which might be taken where convictions are disclosed or where there is evidence of contraventions proved to the satisfaction of the Council.

*8.2. Have they contravened housing law or landlord and tenant law?*

8.2.1. Careful consideration should be given to an application where a person making a fit and proper person declaration has contravened housing law or landlord and tenant law, for example evidence of poor management, previous history, prosecutions, simple cautions. In particular, consideration should be given to contraventions under:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976

- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

8.2.2. Contravention of one of the above Acts could result in informal action where a person is asked to complete works, formal action where a legal notice is served, remedial action or work in default, or a prosecution. The nature of the contravention, its relevance to the management of a house and the potential harm caused must all be considered. It may also be relevant to consider the circumstances of the contravention, the number of contraventions and evidence to show good character since the date of the contravention. Each case will be considered on its own merit.

### *8.3. Have they committed any offences involving fraud?*

8.3.1. Licence holders and anyone else who is involved in the management of a licensable property are in a position of trust. The nature of their role means they will enter the property on occasion and will be engaged in financial dealings taking personal data from their tenants, so there may be opportunities for fraud.

8.3.2. In particular a person will normally be found not to be fit and proper where the person has a conviction for an offence in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as the company director

### *8.4. Have they committed any offences involving violence?*

8.4.1. A person will not normally be considered to be fit and proper where the person making a fit and proper person declaration has a conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm

- Robbery
- Racially aggravated criminal damage
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

#### *8.5. Have they committed any offences involving drugs?*

8.5.1. Careful consideration should be given to an application where a person making a fit and proper person declaration has committed a drug related offence. Consideration should be given to the nature of the offence and what bearing it could have on the management of a licensable property. The nature, quantity and class of drugs will be taken into account.

#### *8.6. Have they committed any offences involving sexual offences?*

8.6.1. As licence holders, managers and anyone else who is involved in the management of a licensable property will on occasion visit tenants in their homes, convictions for sexual offences will be treated particularly seriously.

8.6.2. A person will not normally be considered fit and proper where the person making a fit and proper person declaration has a current conviction for an offence contained in schedule 3 of the Sexual Offences Act 2003.

#### *8.7. Have they practiced unlawful discrimination?*

8.7.1. Careful consideration should be given to an application where a person making a fit and proper person declaration has practiced unlawful discrimination. Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

### **9. Private Sector Housing Enforcement Policy**

9.1. This policy forms an appendix to the Private Housing Enforcement Policy, which promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens.

### **10. Data sharing**

10.1 Information used and ascertained for the purpose of deciding whether a proposed licence holder or manager is fit and proper is shared with other statutory bodies on the basis of preventing and detecting crime and disorder, particularly other local authorities and the police. Property licence applicants agree to this when they sign the property licence application form.