

Title: Bristol City Council Civil Penalty Notice Policy – Housing and Planning Act 2016	
Ward: All	Cabinet lead: Cllr Paul Smith
Author: Jonathan Mallinson	Job title: Private Housing Manager

Revenue Cost: £ 0	Source of Revenue Funding: <i>Private Housing Service</i>
Capital Cost: £ 0	Source of Capital Funding: <i>N/A</i>
One off <input type="checkbox"/>	Saving <input type="checkbox"/>
Ongoing <input checked="" type="checkbox"/>	Income generation <input type="checkbox"/>
Finance narrative: <i>Within existing resources on the assumption new powers generate income</i>	
Finance Officer: Paul Milliner	

Summary of issue / proposal:

To acknowledge the Councils new powers and responsibilities under the Housing and Planning Act 2016 and to approve a revised Private Housing Enforcement Policy and new Civil Penalty policy which will allow the Council to implement the new powers.

Summary of proposal & options appraisal:

Powers to serve Civil Penalty Notices (CPNs) and apply for Rent Repayment Orders (RROs) under the 2016 Act came into force on the 6th April 2017. The government's statutory guidance for Councils on the powers was published the same day the powers came into force. The Council must have regard to this guidance in relation to the use of CPNs and RROs.

The details of the powers and duties Councils now have are set out in detail in the government guidance which can be found [here \(RRO Guidance\)](#) and [here \(CPN guidance\)](#).

The level of financial penalty will reflect the extent to which the offender fell below the required standard. The financial penalty will meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it will not be cheaper to offend than to take the appropriate precautions. The average cost of serving a financial penalty notice is £1,100 and this will be added to the penalty as a deterrent to non-compliant landlords or agents.

To be able to use the new powers the Council must have its own relevant policies in place. Draft policies have been consulted on and Cabinet is asked to approve the new policies, which can be found in Appendices K and L.

An explanation of the new powers and the consultation results are in Appendices A, H and I.

If Cabinet choose not to approve the policy then the Council would not be able to use the new powers which are intended to be used to improve conditions in the Private Rented Sector.

If approved the new policy will be widely distributed and publicised to landlords and agents on our database as well as through our regular newsletters.

Recommendation(s) / steer sought:

Cabinet approve the Revised Private Housing Enforcement Policy and the new Civil Penalty Notice Policy and in accordance with the Council's constitution authorise the Director of Neighbourhoods to delegate the powers to officers. See Appendices.

City Outcome: <i>Improve health, reduce inequality</i>		
Health Outcome summary: <i>Improve health, reduce inequality</i>		
Sustainability Outcome summary: <i>Improve health, reduce inequality</i>		
Equalities Outcome summary: <i>Reduce inequality</i>		
Impact / Involvement of partners: <p>The policy changes will have a positive impact on conditions of the private rented sector in Bristol. The new powers will be a deterrent against poor quality management in the sector, levelling the playing field for compliant landlords and agents and improving the living standards for tenants. Landlord Agent and Tenant groups have been consulted on the detail of the proposed Bristol policy.</p> <p>The Private Housing Service has worked with Department of Communities and Local Government, other similar Councils and the Local Government Association to ensure the proposed CPN policy is an example of best practice.</p>		
Consultation carried out: Consultation was carried out (from 9 th June to 10 th July 2017) using the Council's consultation webpage and by contacting a number of consultees directly inviting them to comment on the proposed policies. A list of consultees contacted can be found in Appendix B. <p>The results of the consultation showed clear support for the proposed Civil Penalty Policy with 67% (N) people responding stating they agreed or strongly agreed with the policy changes. See graphical analysis in Appendix H, question 3.</p> <p>There were a significant number of text comments added from a variety of consultees, landlords, agents and tenant representatives. All the comments were reviewed and considered following the consultation process. A full list of comments is in Appendix I and a selected version of the most relevant comments to the questions and our responses to them is in Appendix J.</p> <p>The comments were mostly helpful and constructive and whilst there were differing views depending on the consultees' standpoint, there was not strong disagreement with the proposed policies.</p> <p>Some changes to the draft policy were made including adding a definition of harm, a condition to make sure any reductions in penalty are not lower than the cost of avoiding compliance. Most other comments were on how the policy should be implemented and were issues already set out either in law or statutory guidance which the Council will have regard to when making any Civil Penalty.</p>		
Legal Issues: <p><i>The proposed amendments to the Council's Private Sector Housing Enforcement Policy and the new proposed policy on financial penalties are compliant with the relevant legislative changes and statutory guidance to which the Council must have regard.</i></p> <p><i>Consultation upon the proposals has been undertaken at a formative stage, the manner in which the consultation has been carried out has enabled an intelligent response within a reasonable period of time and the product of the consultation has been conscientiously taken into account.</i></p>		
Legal Officer: <i>Lynne Harvey Solicitor Legal Services</i>		
Policy/Comms Officer: Please contact Kirsty Stilwell for any media enquiries		

DLT sign-off	SLT sign-off	Cabinet Member sign-off
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NLT 2 nd August	SLT 15 th August	17 th August
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Appendix A – Further essential background / detail on the proposal	YES
Appendix B – Details of consultation carried out - internal and external	YES
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	YES
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Exempt Information	NO
Appendix H – Consultation Analysis	YES
Appendix I – Full list of consultation comments	YES
Appendix J – Selected comments from consultation	YES
Appendix K - Bristol City Council policy on deciding on a financial penalty amount	YES
Appendix L – Bristol City Council Private Housing Service Enforcement Policy revised 2017	YES

Appendix A

Background

Following evidence being given to a government select committee in relation to Private Housing Enforcement powers we were pleased to see that recommendations for a financial penalty notice have been made into law.

We broadly welcome these new powers which will assist us to more effectively improve conditions in the Private Rented Sector. The powers will be used as a deterrent against landlords and agents that commit certain offences as using these powers will help make sure that the penalties imposed will outweigh any benefit of not complying with key legal requirements.

We believe these powers will have a positive impact on compliant landlords and agents as it will help “*level the playing field*” by making non complaint landlords and agents pay for committing certain offences.

Powers to serve Civil Penalty Notices (CPN) and to apply for Rent Repayment Orders (RROs) under the 2016 Act came into force on the 6th April 2017. The government’s statutory guidance for Councils on the powers were published the same day the powers came into force. The Council must have regard to this guidance in relation to the use of CPNs and RROs.

The details of the powers and duties Council’s now have are set out in detail in the government guidance provided in the Appendices or non these two links [CPNs](#) / [RROs](#) .

CPNs

In summary the Council can as an alternative to prosecution serve a CPN of up to £30,000 per offence on a landlord or agent where it can prove beyond reasonable doubt certain offences have been committed. Please note once the decision to make a CPN has been made an interim notice is served which the landlord or agent has an opportunity to make representations on. The council must take into account any representation made before deciding whether or not to serve the final CPN and the amount of any penalty. There is a statutory right to appeal the notice to a Tribunal (which costs £100 and requires no legal representation).

The statutory government guidance on CPNs states it expects Councils to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy.

RROs

In summary additional powers to apply to a Tribunal for RROs are now available. The council has a duty to consider making an RRO when it becomes aware of certain specified offence have been committed. The council has a power to apply for rent repayment orders where it can prove beyond reasonable doubt that certain other offences have been committed.

Tribunals can order landlords to repay up to 12 months’ rent. The Council may also assist tenants to make applications themselves.

A RRO can be applied for in addition to prosecuting a landlord or serving a CPN.

As a result of these new powers we have drafted revisions to our Private Housing Enforcement Policy 2016 (enforcement policy), the main changes to which I will set out below.

We have also drafted a new Civil Penalty Notice policy (CPN policy) which sets out how we will decide on the level of penalty in relation to the cases we consider.

Enforcement Policy revisions

Changes in relation to CPNs

Sets out that the Council has when taking formal action, new powers to serve CPNs and apply for RROs in addition to existing powers.

Added that under the 2016 Act the council can also serve a financial penalty notice of up to a maximum of £30,000 where it can prove beyond reasonable doubt offences of failing to:

- license a property or meet licence conditions or occupancy requirements
- to comply with overcrowding or improvement notices
- meet the requirements of the management regulations for houses in multiple occupation.

Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most ***appropriate and effective sanction in a particular case.***

That the council will have regard to the requirements of the statutory guidance and will publish its own separate guidance on deciding how much a CPN will be in each case.

Changes in relation to RROs

Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:

- Violence for securing entry
- Illegal eviction or harassment of occupiers
- Failure to comply with an improvement notice or prohibition order
- Failure to license a property which requires a licence
- For breach of a banning order

Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

When deciding whether or not to apply for an RRO the Council's proposed policy is to:

- Treat each case on its own merits
- Ensure that applying for an RRO would meet the enforcement objectives in the Enforcement policy
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application
- Whether it is more appropriate for the tenant to apply for the order themselves.

The council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities".

Revenue Generated from the new powers

The statutory guidance states:

“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, as specified in Regulations5.”

This is reinforced in regulation^{1 2} any excess has to be paid back into the consolidated fund.

We are anticipating that the Council will be subject to significant number of appeals to tribunals as a result in using these powers. A robust policy is important to assist us at Tribunal. Where decisions are confirmed by a first tier tribunal there is a right of appeal to an Upper Tribunal.

Once any appeal avenue is exhausted the Council can use legal powers to recover unpaid debts from these civil penalties and Private Housing plan to work closely with colleagues in Debt Recovery to do so.

We are therefore believe it is unlikely the income received will be in excess of the costs of carrying out this enforcement activity. We currently do not anticipate that there will be an additional cost pressure either.

Authorisation of officers

The Strategic Director of Neighbourhoods (SD – N) has executive powers under the Council’s constitution to carry out the functions of the Local Housing Authority (LHA). The 2016 Act powers and the amendments made to the Housing Act 2004 makes gives the power to make CPNs and to apply for RROs to the LHA. The (SD – N) therefore has the power to approve the policy changes proposed and to authorise officers in Private Housing to use these powers. An updated scheme of officer authorisations will be given to the (SD-Neighbourhoods) for approval.

¹ <http://www.legislation.gov.uk/uksi/2017/367/regulation/3/made>

² <http://www.legislation.gov.uk/uksi/2017/367/regulation/4/made>

Appendix B

Consultation

We based our guidance on principles in the Statutory Guidance and the [Sentencing Council's guidelines](#) for courts. The sentencing council guidance is used by the courts when deciding on the level fines for certain offences, the guidance is based in legal principles which have been subject to legal and parliamentary scrutiny, the aim being to provide clear guidance and better understanding of how decisions on sentences or in this case, civil penalties.

We have discussed our policy approach with the Department of Communities and Local Government (DCLG), other Councils and the Local Government Association. We believe our policy is in line with the current best practice.

We believe consulting on the banding levels for CPNs is important as we expect the way CPN decision are made will be the matter of appeals against notices served in future. Consulting tenant landlord and agent organisations will add weight to the policy.

A list of consultees is provided below.

Acorn
Association of Local Landlords (Wessex) Ltd
Association of Residential Letting Agents
Bristol Association of Lettings and Managing Agents
Bristol Student Union Lettings
Bristol Mediation Services
Considerate/ National Accreditation Scheme
Chartered Institute of Environmental Health
Citizens Advice Bureaux
National Landlord Association
National Approved Letting Scheme
Residential Landlord Association
Royal Institutions of Chartered Surveyors
SARI
Shelter
South West Landlord Association
West Country Landlords Association
Local Government Association
Unseen

Local Authorities :

Bath and North East Somerset
North Somerset
Leeds
Oxford
South Gloucestershire

How we consulted:

The consultation questionnaire was published online on the Bristol City Council website, and an email was sent to all the consultees above asking them to share the questionnaire with their members.

The consultation opened on 9th June 2017 and closed on 7th July 2017. The first question asked by the consultation questionnaire refers to Rent Repayment Orders under the Housing and Planning Act 2016. The subsequent questions, numbers 2-13, are all related to our proposed Civil Penalty Policy.

The full questionnaire can be found at the end of this appendix, and the results are in appendices H, I and J.

Introduction

The Housing and Planning Act 2016 has given councils new powers to deal with rogue landlords. These include Rent Repayment Orders (RROs) and Civil Penalty Notices (CPNs).

The government has defined a 'rogue landlord' as 'a landlord who knowingly flouts their obligations by renting out unsafe and substandard accommodation to tenants'.

The Department for Communities and Local Government has issued statutory guidance that the Council must take into account before using these powers. This can be found [here \(RRO Guidance\)](#) and [here \(CPN guidance\)](#).

We've considered this guidance and, as a result, we're going to change the way we do some things in order to use these new powers as effectively as possible. In this consultation we're interested in your views on how we plan to do this.

Rent Repayment Orders

A Rent Repayment Order (RRO) is an order made by a tribunal that a landlord must repay up to 12 months' rent to a tenant. If the tenant's rent was paid through Housing Benefit, then the rent must be paid to the Council.

The Housing and Planning Act 2016 has introduced RROs to be used when a landlord or an agent has:

- Not complied with an Improvement Notice served by the Council
- Not complied with a Prohibition Order served by the Council
- Breached a Banning Order
- Used violence to enter a property
- Carried out illegal eviction or harassment

The Council has a power to apply for RROs where there is evidence beyond reasonable doubt that these offences have been committed. The Council can also help tenants to apply for RROs.

Our Enforcement Policy (www.bristol.gov.uk/privatehousingpolicies) sets out our approach to enforcement so that landlords and agents can understand how they will be dealt with by us. We're going to change this Enforcement Policy slightly to take into account the new RRO requirements. The change will say:

'When deciding whether or not to apply for an RRO the Council's policy is to:

- Treat each case on its own merits
- Ensure that applying for an RRO would meet the enforcement objectives in this policy
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application
- Whether it is more appropriate for the tenant to apply for the order themselves.'

1. Do you agree that this is the right way for us to use the new RRO powers?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer.

Civil Penalty Notices

Civil Penalty Notices (CPNs) allow Councils to impose a financial penalty of up to £30,000 for some offences under the Housing Act 2004:

- Not complying with an improvement notice
- Not licensing complying with licensing requirements
- Not complying with an overcrowding notice
- Not managing a house in multiple occupation in accordance with the law

At the moment, Councils can consider prosecuting landlords and agents for these offences. The new rules mean Councils can choose to serve a CPN instead of taking a landlord or an agent to court.

The government says Councils should have a policy on:

- a) when we will use these powers and deciding how much a penalty will be in each case; and
- b) how we will decide on the level of financial penalty to impose in each case.

When we will use CPNs as an alternative to prosecutions

We are proposing a slight change to our Enforcement Policy to set out when we will use CPNs. The change will say:

'The decision when to prosecute, agree a simple caution or when to issue a civil penalty will be made on a case-by-case basis in line with the enforcement policy and the government's guidance.

Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.'

2. Do you agree with this change to our Enforcement Policy?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

How we will decide on the level financial penalty to impose in each case

We've worked out a range of penalties up to and including £30,000, based on the principles set out by government and other legal guidance. This means the range will fair, appropriate and reasonable for the seriousness of the offence and we will be transparent on how we came to our decision on how much a penalty will be in each case.

[Our draft policy on CPNs can be found here.](#) It's a good idea to have a look at the policy before answering these questions.

3. Do you agree that the method we introduce in our draft policy is an appropriate way to work out the level of a financial policy?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

Culpability and harm

So that we can work out how serious an offence is we're going to look at levels of 'culpability' and 'harm'. Culpability is how much someone is to blame for the offence, and harm describes what was likely to happen as a result of the offence and how serious it is.

We have divided culpability and harm into different categories:

Culpability

Very high

Where the offender intentionally breached, or flagrantly disregarded, the law or
Who has a high public profile and knew their actions were unlawful

High

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Medium

Offence committed through act or omission which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Category 3 – Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

4. Do you agree with this method of working out how serious an offence is?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

5. Do you agree with the number of **culpability** bands

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

6. Do you agree with the factors we will take into account when deciding on the level of **culpability**?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

7. Do you agree with the number of **harm** bands?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

8. Do you agree with the factors we will take into account when deciding on the level of **harm**?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

Starting points and range

When we've worked out how serious an offence is, we're going to look at the most appropriate level of a penalty. We'll use the culpability level and harm category we've decided on to choose a starting point and a penalty range. [Starting points and penalty ranges can be found in the table here.](#)

We will use the **starting points** to reach an appropriate level of civil penalty within the range on the table, and then we will consider further adjustment within the **range** for 'aggravating' and 'mitigating' factors in each case.

Some examples of aggravating factors that would increase the seriousness of the case are:

Previous convictions, having regard to:

- a) the nature of the offence to which the conviction relates and its relevance to the current offence; and
- b) the time that has elapsed since the conviction

Other aggravating factors include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements.
- Refusal of free advice or training
- Membership of an Accreditation scheme

Some examples of mitigating factors that would decrease the seriousness of the case are:

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property/
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

9. Do you agree with the starting points and the minimum and maximum financial penalty levels we've set?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

Review

Once we've decided on a financial penalty, we'll review this decision. This might mean we increase or reduce the level of the penalty.

We'll ask the following questions.

- Is the penalty fair and proportionate?
- Is it an effective punishment?
- Will it deter others from committing the same offence?
- Has it removed any financial gain that may have been made – it should not be cheaper to offend than to take the appropriate precautions.

The average cost to the Council of imposing a financial penalty is expected to be £1100. This will be included in any penalty. This amount may also be reduced or increased depending on the complexity of each case. We would take into account the difference in the time or costs incurred taken to process each case from what would normally be expected.

Please note that the Council will consider whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

10. Do you agree with how we'll review the penalty?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

Reductions in the penalty

We will consider reducing the penalty for the following reasons.

- If the financial penalty makes it difficult for the offender to comply with the law or to make restitution to victims
- If the financial penalty affects people other than the offender

We'll also consider reducing the penalty by up to one third if the offender admits that they are guilty at an early stage.

11. Do you agree with how we may reduce the penalty?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Please explain your answer

Level of penalty where there is more than one offence

Where a person has been issued with more than one financial penalty at the same time the Council will decide on the overall penalty to be imposed and will be careful there is no 'double counting'.

Where there is more than one penalty for the incident or multiple penalties for the same offence we may impose a penalty for the most serious offence and no financial penalty for all the other offences;

or

where there are two or more offences from different incidents we may impose a separate for each offence. We will consider when adding the penalties up the overall penalty is just and proportionate.

12. Do you agree with the way we will work out the overall penalty for multiple offences?

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Other (please specify)

Any other comments

13. Do you have any other comments on our policy for working out the level of a financial penalty?

14. Please let us know who you are so we can keep a record of who has completed this survey. You do not have to provide this information, and we will not share this with anyone else.

Name	<input type="text"/>
Company/Organisation	<input type="text"/>
Address	<input type="text"/>
Address 2	<input type="text"/>
City/Town	<input type="text"/>
County	<input type="text"/>
Post Code	<input type="text"/>
Email Address	<input type="text"/>

Thank you for taking the time to complete this questionnaire. If you have any further comments please email private.housing@bristol.gov.uk. This consultation closes on 30th June 2017.

Appendix C – Summary of any engagement with scrutiny

No Appendix C.

Appendix D - Risk Assessment

FIGURE 1

The risks associated with the implementation of the *(subject)* decision :

“To approve a new policy to use Civil Penalty Notices and assist with Rent Repayment Orders under the Housing and Planning Act 2016.”

No	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Proba bility		Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of mitigation).	Impact	
1	That the Council is subject to an increased number of appeals against notices served to the first tier tribunal, leading to more officer resources taken up and a risks of legal costs being awarded against the Council.	Medium	High	<p>The anticipated number of CPNs served each year is not expected to be in large numbers.</p> <p>Notices will only be served in accordance with the legal process and Statutory guidance. Notices can only be served if there is an approved policy. If approved these policies will also be followed. This will ensure transparency of the decisions made and notices will only be authorised by managers or a more senior officer.</p> <p>There is a statutory right of appeal to a first tier tribunal. Officers are familiar with this process whilst there are costs in terms of resources and legal representation required to respond to appeals the Council is unlikely to be awarded costs against it as Tribunals only do so where either party has</p>	High	Low	Tom Gilchrist Service Manager Private Housing and Adaptations.

				<p>been unreasonable for vexatious. Costs awarded are also normally limited to £500.</p> <p>The additional costs of these resources will be offset by the revenue generated by the payment of CPNs which by law has be used on enforcement in the Private Rented Sector. The penalty includes as a deterrent the cost of officer time spent making a CPN.</p>			
2	The penalties made are not paid by landlords or agents.	Medium	Low	<p>CPNs are recoverable as a County Court debt. Debt recovery services will use their full suite of powers available to them to recover any unpaid debt. Where necessary and possible this would include the enforced sale of a landlord or agents property to recover the debt.</p>	Low	Low	Kevin Smith Debt Recovery Manager

FIGURE 2

The risks associated with not implementing the *(subject)* decision:

No .	RISK Threat to achievement of the key objectives of the report	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
1	The Council would not be able to use all the powers given to it in the Housing and Planning Act 2016 deal with criminal landlords and agents operating in Bristol.	High	High	Approve the policies recommended in this report.	Low	Low	Tom Gilchrist Service Manager Private Housing and Adaptations.
2	Standards and management of properties in the Private Rented Sector are not as effectively regulated by the Council putting the	High	Medium.				

	health safety and welfare of some tenants at risk unnecessarily.						
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Appendix E



Bristol City Council Equality Impact Relevance Check

This tool will identify the equalities relevance of a proposal, and establish whether a full Equality Impact Assessment will be required. Please read the guidance prior to completing this relevance check.

What is the proposal?	
Name of proposal	Report to Cabinet asking for approval of new policy on Civil Penalty Notices and amends to Private Housing Enforcement Policy
Please outline the proposal.	To approve policies which allow the Council to use enforcement powers under the Housing and Planning Act 2016
What savings will this proposal achieve?	Improve conditions in the Private Rented Sector. Deter landlords from providing substandard housing. Assist tenants with recovery of rent.
Name of Lead Officer	Jonathan Mallinson

Could your proposal impact citizens with protected characteristics? (This includes service users and the wider community)
Please outline where there may be significant opportunities or positive impacts, and for whom.
Implementing this policy will have a positive impact for tenants whose landlords flout legal requirements and for landlords and agents who comply with the law but are undercut by rogue landlords who seek to save money by avoiding their legal responsibilities.
Please outline where there may be significant negative impacts, and for whom.
For landlords and agents who have committed relevant legal offences which result in financial penalties being levied against them. Please note as part of the procedure of taking formal legal action in a case Private Housing consider whether or not there are any equalities issues that should be considered.

Could your proposal impact staff with protected characteristics? (i.e. reduction in posts, changes to working hours or locations, changes in pay)
Please outline where there may be significant opportunities or positive impacts, and for whom.
No.
Please outline where there may be negative impacts, and for whom.

Is a full Equality Impact Assessment required?	
Does the proposal have the potential to impact on people with protected characteristics in the following ways: <ul style="list-style-type: none">• access to or participation in a service,• levels of representation in our workforce, or• reducing quality of life (i.e. health, education, standard of living) ?	
Please indicate yes or no. If the answer is yes then a full impact assessment must be carried out. If the answer is no, please provide a justification.	No. The powers will be used to improve quality of life and reduce inequality. Often the poorest and most vulnerable tenants are housed by non-compliant landlords. These powers will help the Council deal more effectively with poor conditions in the Private Rented Sector.
Service Director sign-off and date:	Equalities Officer sign-off and date: Wanda Knight 21/7/17

Appendix F - Eco Impact Checklist

Title of report: Civil Penalty Notice Policy approval Housing and Planning Act 2016 and Private Housing Enforcement Policy amend.

Report author: Jonathan Mallinson

Anticipated date of key decision Cabinet 3rd October 2017

Summary of proposals:

- 1) **Powers to serve Civil Penalty Notices (CPN) and to apply for Rent Repayment Orders (RROs) under the 2016 Act came into force on the 6th April 2017. The government's statutory guidance for Councils on the powers were published the same day the powers came into force. The Council must have regard to this guidance in relation to the use of CPNs and RROs.**
- 2) **The details of the powers and duties Council's now have are set out in detail in the government guidance provided in the Appendices or non these two links [CPNs](#) / [RROs](#) .**
- 3) **To be able to use the new powers the Council must have its own relevant policies in place. Draft policies have been consulted on and Cabinet is asked to approve the new policies.**

Will the proposal impact on...	Yes/ No	+ive or -ive	If Yes...	
			Briefly describe impact	Briefly describe Mitigation measures
Emission of Climate Changing Gases?	Yes	+ve	Indirectly as in some cases will lead to more energy efficient homes in the Private Rented Sector.	N/A
Bristol's resilience to the effects of climate change?	No			
Consumption of non-renewable resources?	Yes	+ve	As above.	
Production, recycling or disposal of waste	No			
The appearance of the city?	No			
Pollution to land, water, or air?	Yes	+ve	As above	
Wildlife and habitats?	No			

Consulted with:

Summary of impacts and Mitigation - to go into the main Cabinet/ Council Report

There are no direct environmental impacts from this proposal, but an indirect effect of the effective enforcement of minimum housing standards will be to cause landlords and agents to improve the energy efficiency of houses in the private rented sector. No mitigation measures will be necessary. The net environmental impact of the proposals will be positive, but insignificant.

Checklist completed by:

Name:	Jonathan Mallinson
Dept.:	Private Housing
Extension:	35 21807
Date:	19/7/17
Verified by Environmental Performance Team	Giles Liddell

Appendix G – Exempt Information

No exempt information.

Appendix H

Housing and Planning Act 2016 Rent Repayment Orders and Civil Penalty Notices: Bristol's Policy

Monday, July 17, 2017

78

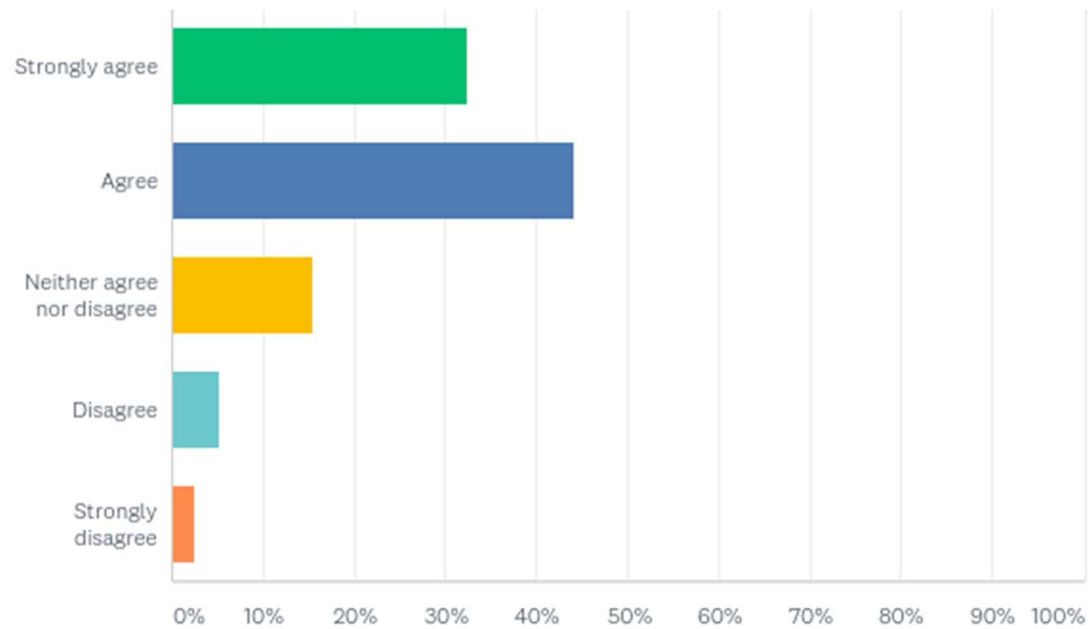
Total Responses

Date Created: Friday, May 26, 2017

Complete Responses: 48

Q1: Do you agree that this is the right way for us to use the new RRO powers?

Answered: 77 Skipped: 1



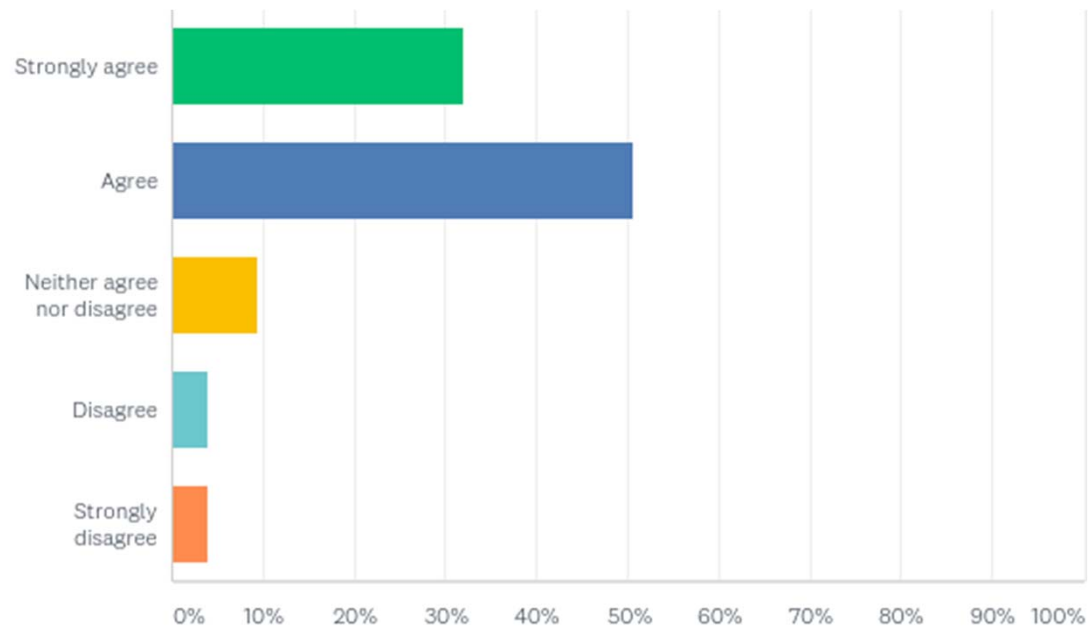
Q1: Do you agree that this is the right way for us to use the new RRO powers?

Answered: 77 Skipped: 1

Answer Choices	Responses	
Strongly agree	32.47%	25
Agree	44.16%	34
Neither agree nor disagree	15.58%	12
Disagree	5.19%	4
Strongly disagree	2.60%	2
Total		77

Q2: Do you agree with this change to our Enforcement Policy?

Answered: 75 Skipped: 3



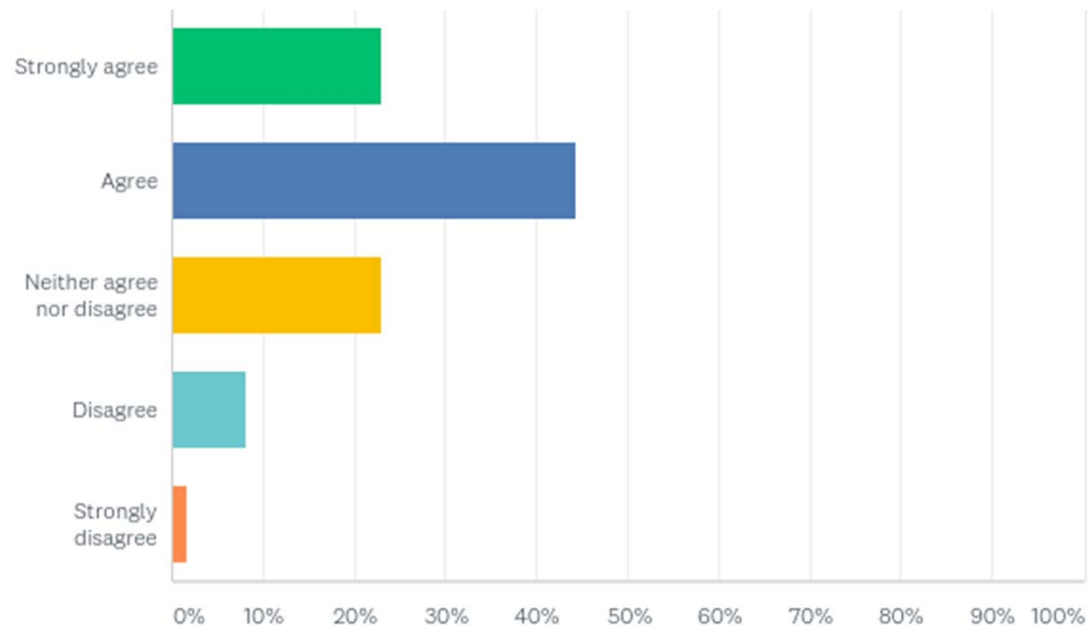
Q2: Do you agree with this change to our Enforcement Policy?

Answered: 75 Skipped: 3

Answer Choices	Responses	
Strongly agree	32.00%	24
Agree	50.67%	38
Neither agree nor disagree	9.33%	7
Disagree	4.00%	3
Strongly disagree	4.00%	3
Total		75

Q3: Do you agree that the method we introduce in our draft policy is an appropriate way to work out the level of a financial penalty?

Answered: 61 Skipped: 17



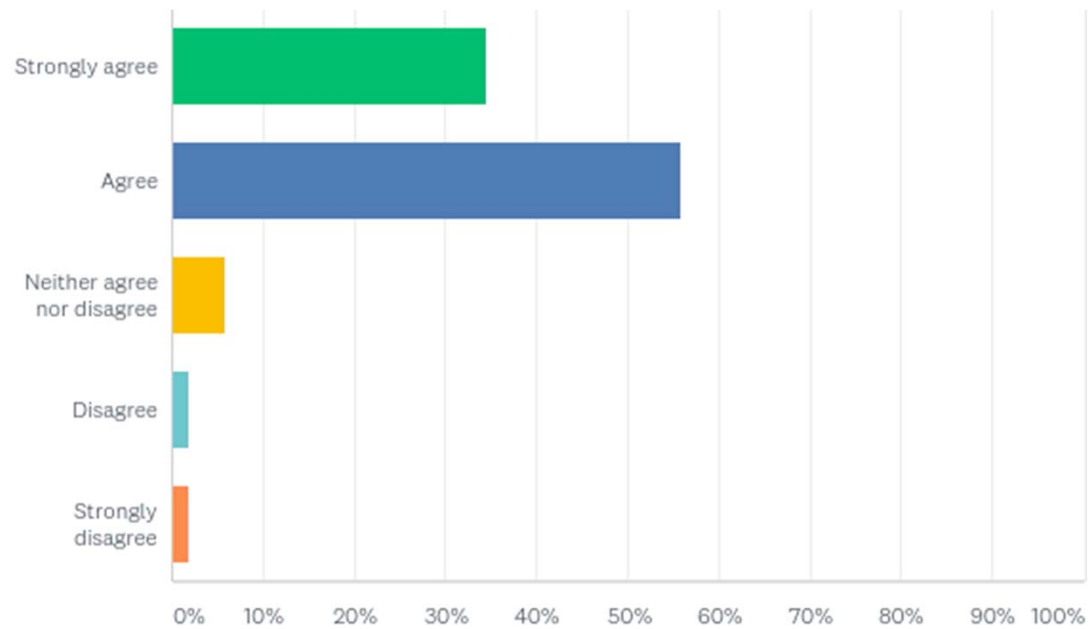
Q3: Do you agree that the method we introduce in our draft policy is an appropriate way to work out the level of a financial penalty?

Answered: 61 Skipped: 17

Answer Choices	Responses	
Strongly agree	22.95%	14
Agree	44.26%	27
Neither agree nor disagree	22.95%	14
Disagree	8.20%	5
Strongly disagree	1.64%	1
Total		61

Q4: Do you agree with this method of working out how serious an offence is?

Answered: 52 Skipped: 26



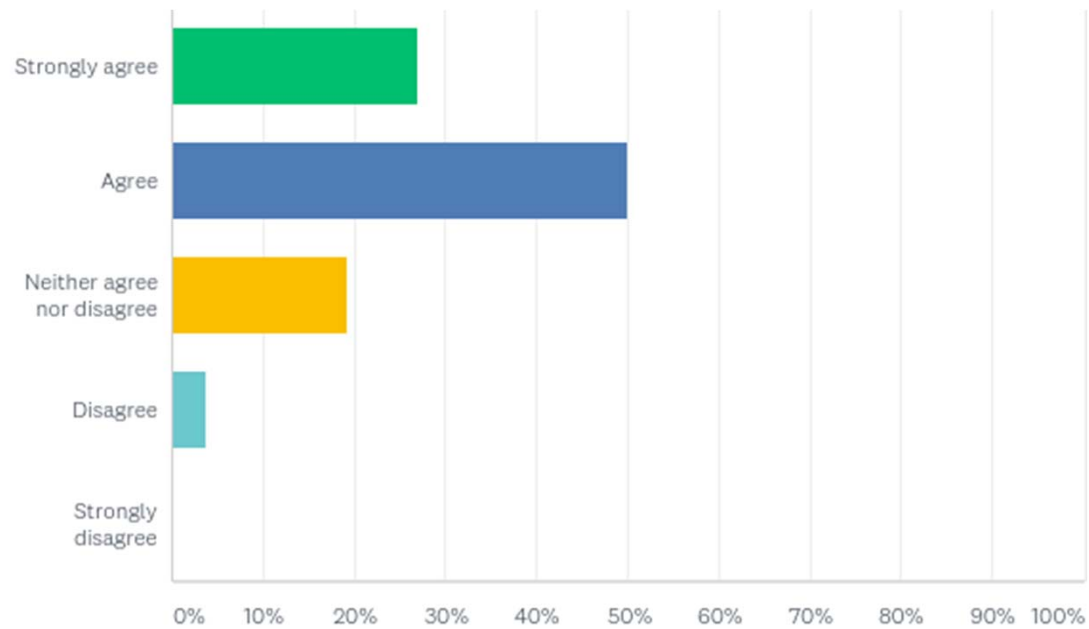
Q4: Do you agree with this method of working out how serious an offence is?

Answered: 52 Skipped: 26

Answer Choices	Responses	
Strongly agree	34.62%	18
Agree	55.77%	29
Neither agree nor disagree	5.77%	3
Disagree	1.92%	1
Strongly disagree	1.92%	1
Total		52

Q5: Do you agree with the number of culpability bands

Answered: 52 Skipped: 26



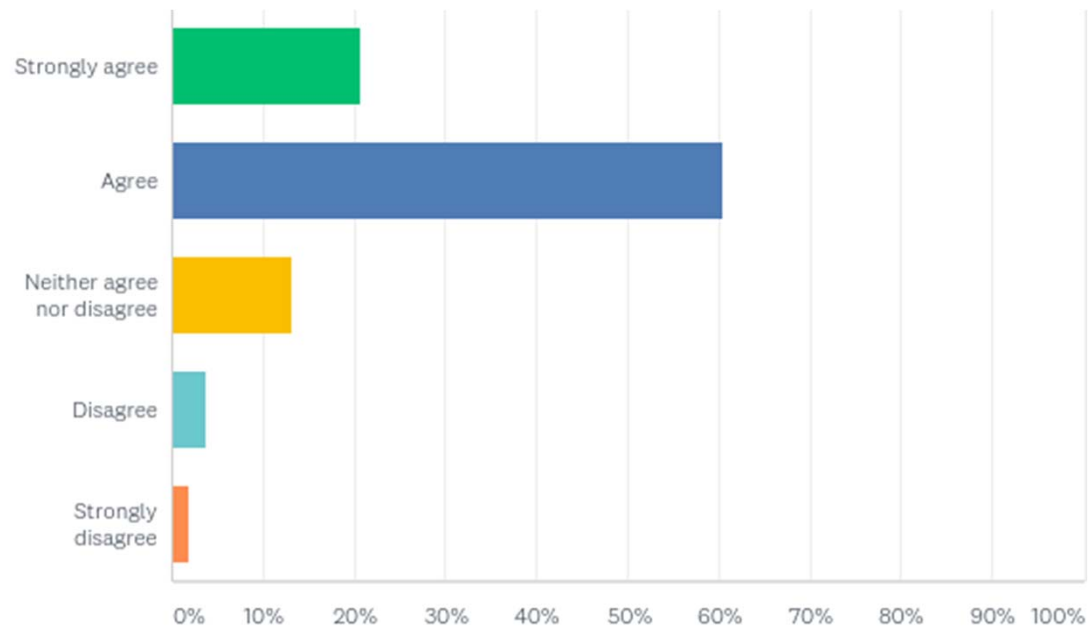
Q5: Do you agree with the number of culpability bands

Answered: 52 Skipped: 26

Answer Choices	Responses	
Strongly agree	26.92%	14
Agree	50.00%	26
Neither agree nor disagree	19.23%	10
Disagree	3.85%	2
Strongly disagree	0.00%	0
Total		52

Q6: Do you agree with the factors we will take into account when deciding on the level of culpability?

Answered: 53 Skipped: 25



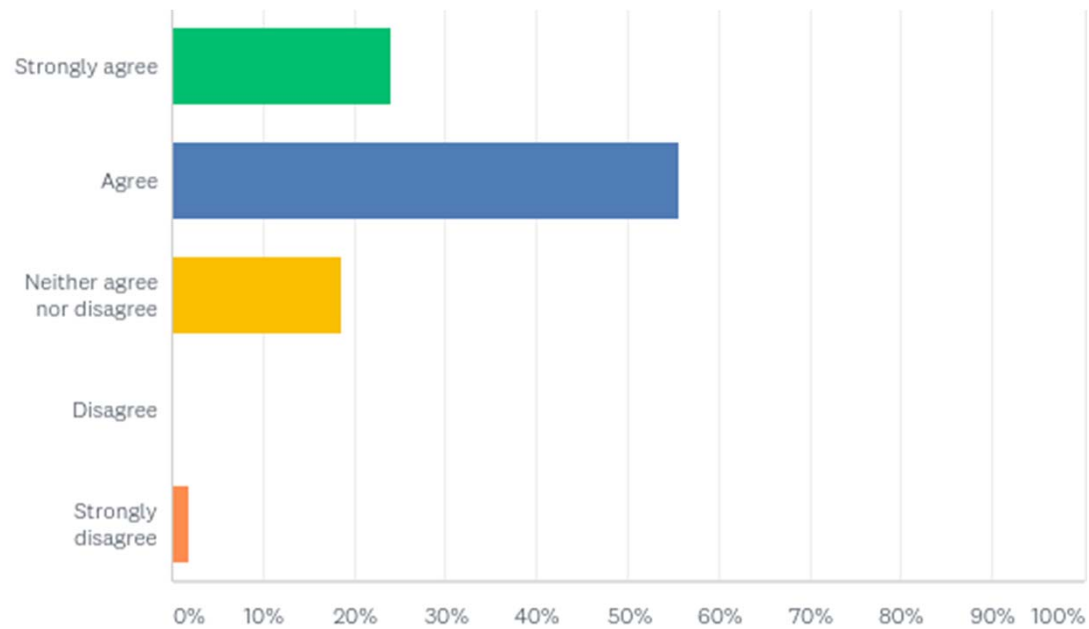
Q6: Do you agree with the factors we will take into account when deciding on the level of culpability?

Answered: 53 Skipped: 25

Answer Choices	Responses	
Strongly agree	20.75%	11
Agree	60.38%	32
Neither agree nor disagree	13.21%	7
Disagree	3.77%	2
Strongly disagree	1.89%	1
Total		53

Q7: Do you agree with the number of harm bands?

Answered: 54 Skipped: 24



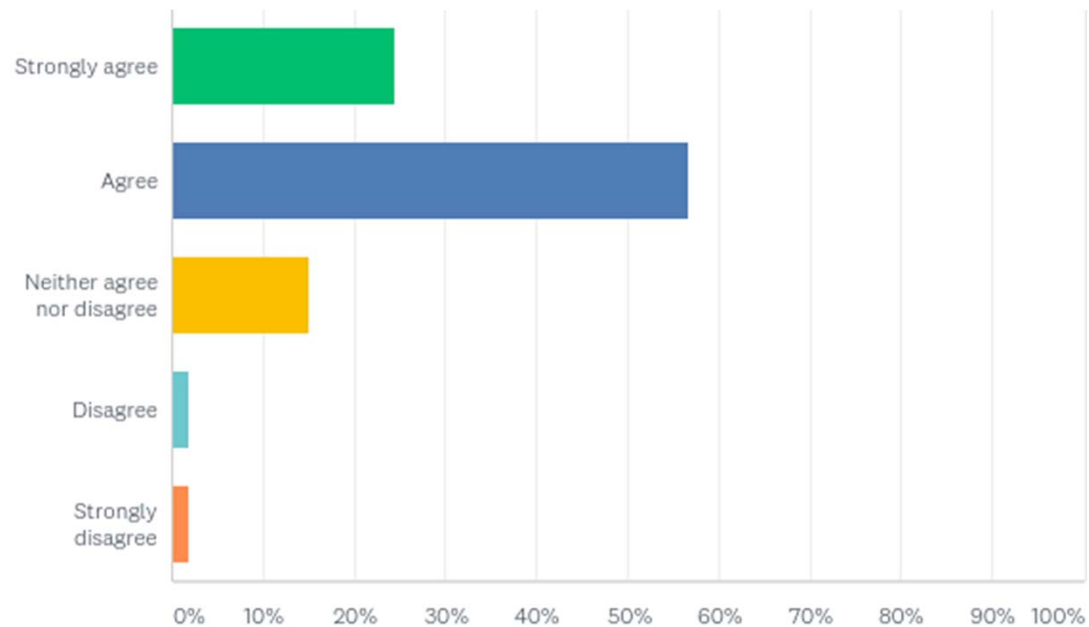
Q7: Do you agree with the number of harm bands?

Answered: 54 Skipped: 24

Answer Choices	Responses	
Strongly agree	24.07%	13
Agree	55.56%	30
Neither agree nor disagree	18.52%	10
Disagree	0.00%	0
Strongly disagree	1.85%	1
Total		54

Q8: Do you agree with the factors we will take into account when deciding on the level of harm?

Answered: 53 Skipped: 25



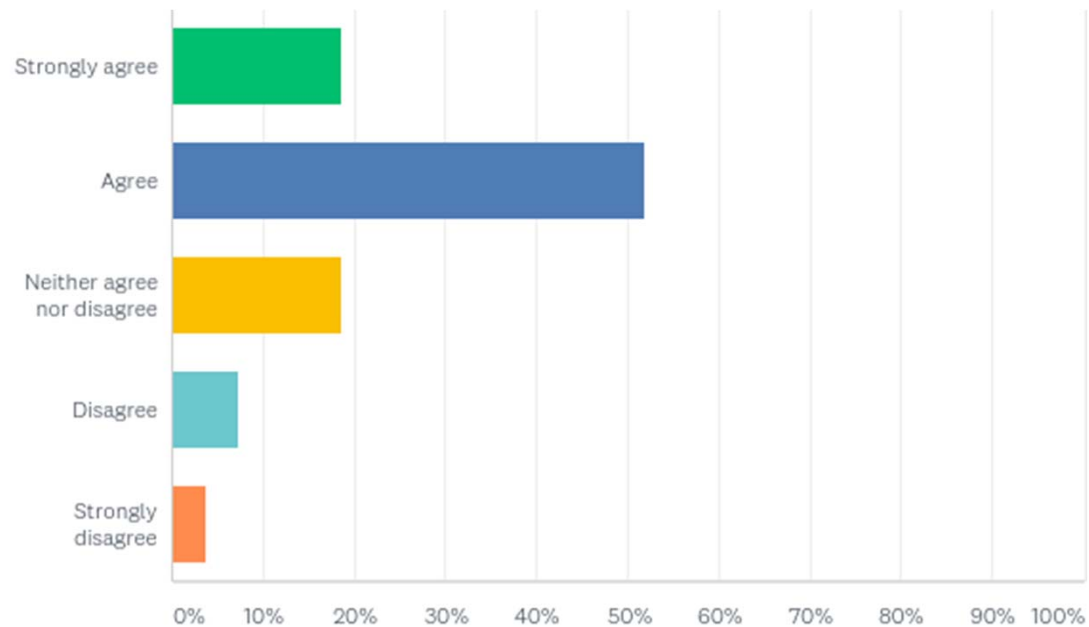
Q8: Do you agree with the factors we will take into account when deciding on the level of harm?

Answered: 53 Skipped: 25

Answer Choices	Responses	
Strongly agree	24.53%	13
Agree	56.60%	30
Neither agree nor disagree	15.09%	8
Disagree	1.89%	1
Strongly disagree	1.89%	1
Total		53

Q9: Do you agree with the starting points and the minimum and maximum financial penalty levels we've set?

Answered: 54 Skipped: 24



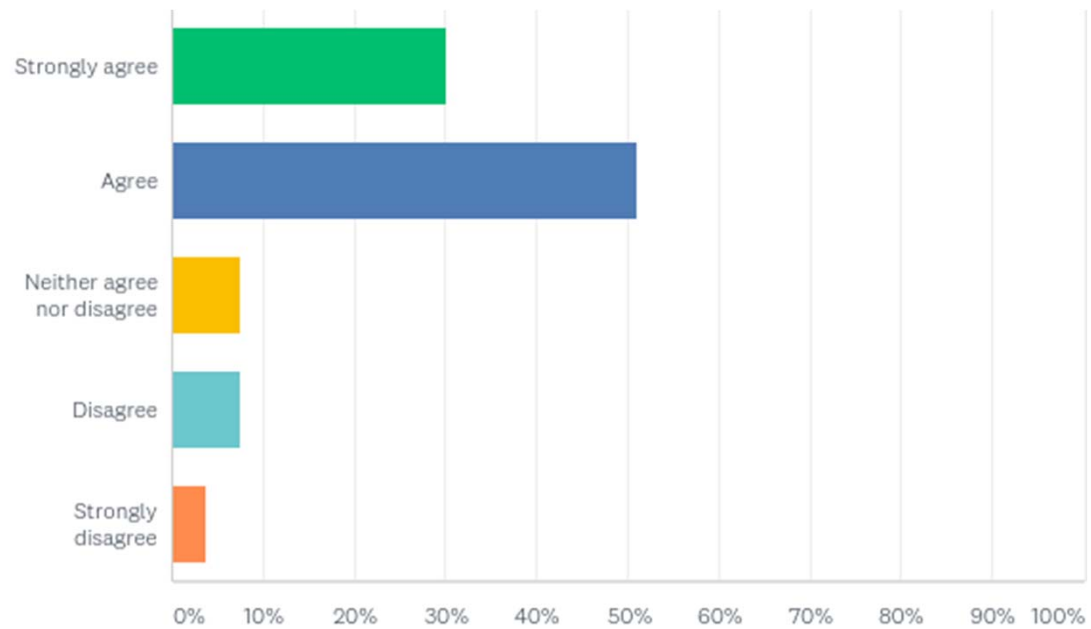
Q9: Do you agree with the starting points and the minimum and maximum financial penalty levels we've set?

Answered: 54 Skipped: 24

Answer Choices	Responses	
Strongly agree	18.52%	10
Agree	51.85%	28
Neither agree nor disagree	18.52%	10
Disagree	7.41%	4
Strongly disagree	3.70%	2
Total		54

Q10: Do you agree with how we'll review the penalty?

Answered: 53 Skipped: 25



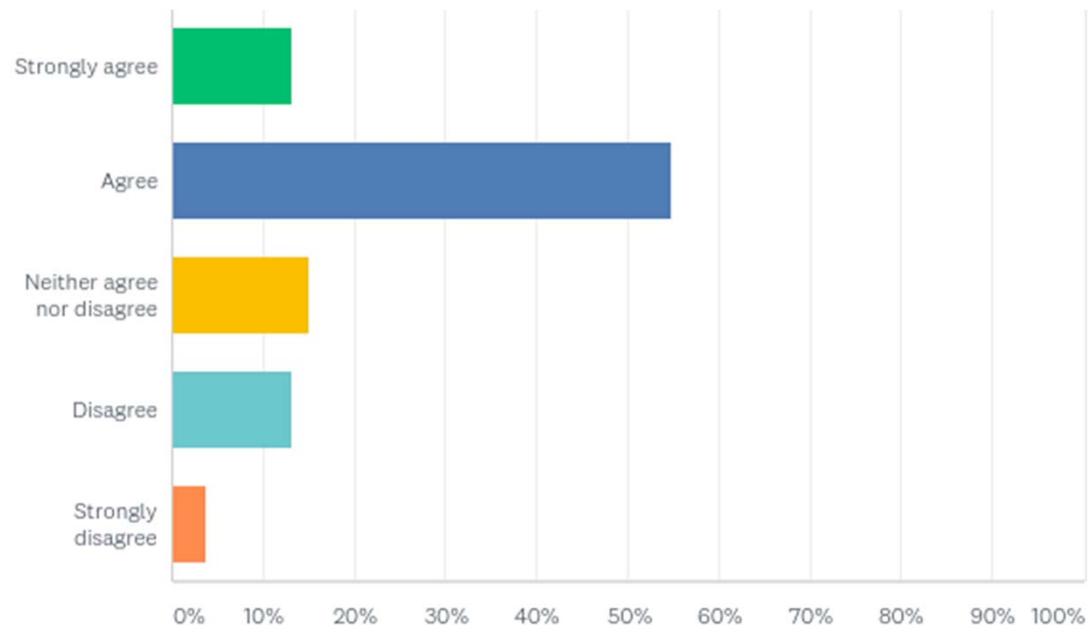
Q10: Do you agree with how we'll review the penalty?

Answered: 53 Skipped: 25

Answer Choices	Responses	
Strongly agree	30.19%	16
Agree	50.94%	27
Neither agree nor disagree	7.55%	4
Disagree	7.55%	4
Strongly disagree	3.77%	2
Total		53

Q11: Do you agree with how we may reduce the penalty?

Answered: 53 Skipped: 25



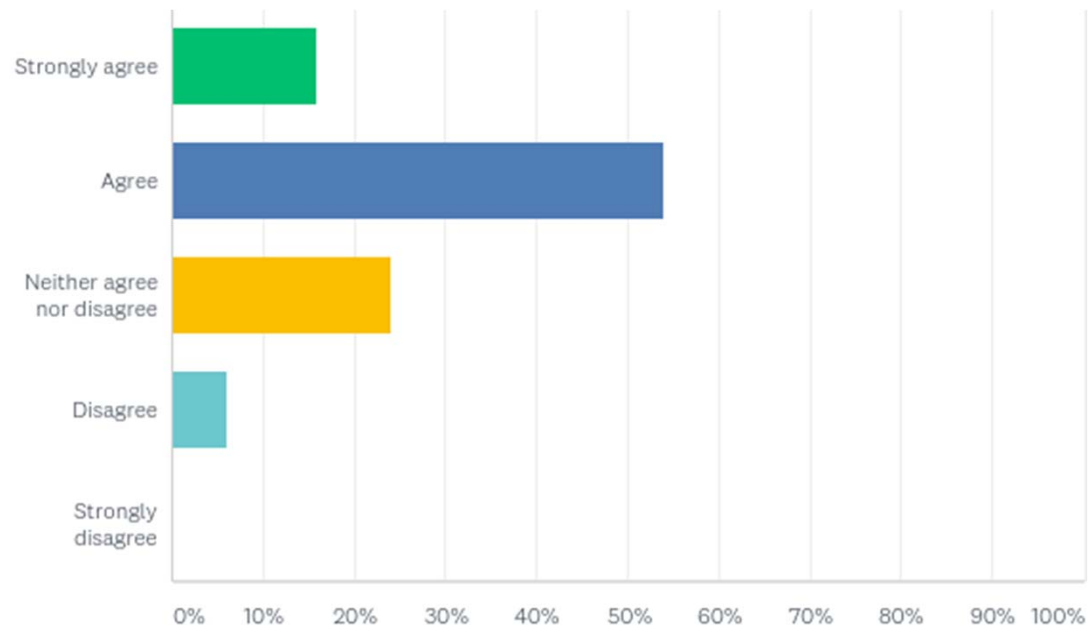
Q11: Do you agree with how we may reduce the penalty?

Answered: 53 Skipped: 25

Answer Choices	Responses	
Strongly agree	13.21%	7
Agree	54.72%	29
Neither agree nor disagree	15.09%	8
Disagree	13.21%	7
Strongly disagree	3.77%	2
Total		53

Q12: Do you agree with the way we will work out the overall penalty for multiple offences?

Answered: 50 Skipped: 28



Q12: Do you agree with the way we will work out the overall penalty for multiple offences?

Answered: 50 Skipped: 28

Answer Choices	Responses	
Strongly agree	16.00%	8
Agree	54.00%	27
Neither agree nor disagree	24.00%	12
Disagree	6.00%	3
Strongly disagree	0.00%	0
Total		50

Appendix I – Full list of comments

1. Do you agree that this is the right way for us to use the new RRO powers?

- Does the council have enough resources to carry out a successful application. Not convinced that the tenant is the right person to apply for the order
- so much would be in the detail concerning Whether it is more appropriate for the tenant to apply for the order themselves in that a person on low incomes could find themselves unable to take any action because they obviously could not afford to do so! yet under "rules" council could wiggle their way out of obligation leaving rogue landlords to do what they like regardless as is normal.
- I have lived in a property owned by a landlord who ignored council repair orders and instead evicted the tenants. He has also been known to harass tenants, steal tenants' property if they leave it in communal areas and throw away tenants property. This person owns a lot of properties and tenants are still facing the same issues.
- There are still landlords flouting the law
- Landlords have got away this bad treatment of tenants for too long
- Landlords should comply with the regulations. Good Landlords do and those who don't should be taught a lesson.
- Every case is different so there should be a scale
- As long as there is irrefutable evidence that the Landlord/Agent has done any of the reasons listed.
- We are not rogue landlords and deplore the fact that all landlords are in for demonization. We are all now treated as criminals and it is not regarded as a business.
- I do not like rogue landlords
- I haven't got enough information to either agree or disagree.
- I agree entirely with the above.
- because it is a proportionate approach between the benefit of enforcement and the cost of doing so
- Tenants need more support from BCC in dealing with bad landlords. I would hope these measures help in penalizing rogue landlords and supporting tenants.
- Too many loopholes in the policy that will enable rogue landlords to get away without penalty
- "Point 1 - treating each case on its own merits. If the landlord has a history of any of the following regarding at any of their properties (not necessarily the one in question), this should be taken into account.
 - Not complied with an Improvement Notice served by the Council
 - Not complied with a Prohibition Order served by the Council
 - Breached a Banning Order
 - Used violence to enter a property
 - Carried out illegal eviction or harassment"
- It seems fair.
- Poor landlords should not be subsidised from the public purse.
- "my concern would be that 2 of the reasons why an RRO could be used is when an agent or landlord has either Used violence to enter a property or Carried out illegal eviction or harassment. These two could have been provoked by long term violence or harassment by a

tenant and this too would need to be taken into consideration if the tenant thought they would get 12 months rent back! the other reasons are totally justified and accountable rather than encouraging possible ASB from the tenant."

- I don't know enough about how it is currently done, and what the pros and cons of this are.
- Rewarding the tenant will only encourage fraudulent allegations against the landlord. This will increase BCC administration and resource costs as they try to determine whether an allegation is factual or not. 12 months' rent seems far too high and could bankrupt a landlord.

2. Do you agree with this change to our Enforcement Policy?

- Appears to be a reasonable approach
- Civil penalties should be cheaper than court process but will those in rented accommodation know about them so that they can report rogue landlords?
- "Looks like an excuse for the council to raise money as and when it feels like it -i.e. a ' kangaroo court'. What right of appeal does the landlord have against the CPN?
- At least a prosecution means the council has to prove wrongdoing and a court is independent."
- HMO Landlords tend to be a bigger problem than most. The one I had added an illegal extra tenant then moved the person out when he was told I had the council involved (for environmental health reasons as well)
- A big stick is not always needed
- Yes not before time too, there is more to do as well
- Again, the rules are there to be kept.
- Costing a landlord money is an effective way for those who don't use letting agents to deal with the problems of the renter
- This seems to be open to corruption, with a council official able to impose a penalty indiscriminately without any independent checks & balances. There should always be an option for the landlord to refuse the Civil Penalty and have the case heard by an independent third party e.g tribunal or court.
- Perhaps the Housing Associations/ Councils should look at tenants overcrowding their properties as we see at Grenville Tower where the amount of people in the tower is unknown. Is this the Landlords' fault?
- I do not like rogue landlords and they should be punished
- It seems more reasonable than wasting court time and resources, but how will it be enforced?
- 30,000 fine might make it impossible for the landlord to resolve the issue and could result in homelessness occurring. I agree some level of financial penalty could be useful.
- How can a landlord be expected to be control tenants. If the council wants to enforce non compliance then prosecute the tenant.
- The terms most appropriate and effective are too vague and it is unclear on what grounds any decision will be made.
- In this answer a serious breach includes situations of low harm but where there is no co operation or a history of non compliance
- it is a well balanced approach taking into account the likelihood of success benefits of taking the action and cost
- I hope this means the council has to spend less money in penalizing bad landlords. It looks like the CPN will facilitate that.

- Agree that the threat of large fines could be a deterrent to bad practice however as I understand it landlords can be fined at present but are often not fined and get away with bad practice because of either/or a lack of council resources to implement the fines or what seems to be a laissez-faire attitude by some BCC staff
- Yes, this may be more appropriate to prosecution for lower level offences
- A great deterrent to others and gives some discipline to the landlord/agent but allows him to have a second chance rather than completely ruining any chance of working if they were to be prosecuted first time, however do it again and the book should fully be thrown at them.
- Slight concerns over derogation of process, and whether there are independent checks on the council for appropriate application of CPNs over prosecution.
- The standard expected of HMO's must be clear and precise. Landlords current experience different views of interpretation regarding current expectations. Guidelines in, for instance, LACORS and HHSRS are exactly that and can be applied in different ways. Contractors working for BCC do not seem to have a common approach. Good that money is going to the Council rather than Central Gov't.

3. Do you agree that the method we introduce in our draft policy is an appropriate way to work out the level of a financial policy?

- Until this is tried out it is difficult to know what impact this policy may have. I think it requires a trial period.
- Does not go far enough as rents need to be controlled. The rents charged in Bristol are very very high. We need rent controls for all tenants not just DSS tenants
- I agree that it has been thought out well, and is very appropriate.
- Again rules are rules and without financial punishment rogue Landlords will continue to rent substandard accommodation.
- Landlords cannot be responsible for irresponsible tenants. There is a case for selling properties and leaving the Councils to sort out their own problems not criminalising landlords.
- It seems reasonable to me when a rogue landlord has behaved badly
- This appears to be another way of raising revenue for any manor of minor complaints
- Agree with principles but may be time consuming for officers to implement and gives reasons that could be used for challenge
- as stated it is a fair, appropriate and reasonable approach
- I disagree only with the reduction of penalties due to the landlord self-reporting, or their age or their inability to manage the rented property due to personal commitments. These do not excuse the offences or reduce the effect on the tenant.
- Transparency is key. These penalties sound useful but should be used appropriately.
- mortgaged properties must be looked into in great detail to understand the true equity before committing to a higher fine just because you may think they could have equity. Also I don't think you should set a fine that you will knowing put them out of business, however the most serious offenses I feel they should be stripped of everything especially if harm was actually part of the outcome and they were blatantly avoiding spending the required money on the property and instead were living it up at other people's expense.
- The £1100 average cost of CPN added to the Penalty to deter is not qualified or justified. The council has costs with the existing Prosecution process, so unless this is justifying that there are

additional costs (show please), then this is setting the council as both juror and judge. I think there may be a legal challenge point here.

- My concern is the legal qualifications held by those who will judge and decide on the penalty appropriate to the deed.

4. Do you agree with this method of working out how serious an offence is?

- Depends on the type of tenant as well as landlord
- Looks like all bases covered
- It is sensible to differentiate between the categories, because sometimes we are asked to do something which is totally ridiculous and even good landlords have difficulties at times fulfilling every requirement 100%
- As previous explanation
- Would like a mention of tenants responsibilities.
- it clearly allows an assessment of culpability and harm to be undertaken, examining both aspects which together allows an appropriate score
- Agree in principle, but would like to see an actual example here to show how it works.
- common sense and fairness.
- Seems reasonable, but concerns over experience & qualifications of who will be making this analysis.

5. Do you agree with the number of culpability bands

- I agree, but these could be confusing to both landlord and tenant. Quite a complicated table.
- I suppose legally it has to be done that way
- Vary the charges to suit the problem
- We cannot be responsible for the way many tenants live in properties.
- As previous
- terminology is unclear. wording used is subjective
- it allows clear differentiation between the different levels of behaviours
- Same as above.
- I would suggest that the number of bands be reduced and 'High' and 'Very High' be merged. I don't see any reason to view those who were aware that they were offending or at risk of doing so more leniently than those who intentionally did so. It amounts to the same thing.
- common sense and fairness.
- Any more makes it unnecessarily complex.

6. Do you agree with the factors we will take into account when deciding on the level of culpability?

- Look reasonable thought out
- Same as above also you can not really be a bull in a china shop
- It is the sensible thing to do
- "I think that a landlord's overall management should be taken into account i.e a landlord that does everything by the book but makes a minor slip up should be treated differently to a landlord that flaunts the rules as much as they are able and who makes a similar minor slip up.
- i.e Landlord one's level of commitment to running a safe and fair rental business should have some sway over landlord two, who pushes everything as far as he can get away."

- We can provide good accommodation and it can be ruined causing great expense to the landlord.
- As previous
- terminology is unclear. wording used is subjective
- Agree generally although unsure of how public profile affects culpability. Would it be more appropriate to prosecute to deter others from committing similar offences?
- there are clearly cases where landlords wilfully neglect their obligations and other occasions where they do nothing about the problem or have tried their best to resolve it
- Same as above -need examples.
- definable although I feel anything that could be seen as borderline settles in the lower tier for fairness from those further up the same bracket with more obvious or serious status.
- As for 5.

7. Do you agree with the number of harm bands?

- Seem to be explained quite well and are understandable
- I think you really should have just two bands
- They look OK to me
- As previous
- harm should be categorised by impact so its right to have a number of bands, however there is no definition of harm - to health and safety, economic or emotional effects on tenants - ie through harassment and losing their home, or to how many tenants/occupiers it has affected and their vulnerability
- Need examples.
- There is nothing here that takes into account tenant behaviour - I have had tenants take down/dismantle fire alarms, this would be seen as very serious and could cause serious harm if not death, these things need to be taken into account as the tenant is not always right.
- As for 5.

8. Do you agree with the factors we will take into account when deciding on the level of harm?

- Seems to be set out in a way that can be understood by both landlord and tenant
- Landlords who only care about profit and make no effort to provide decent standards for tenants renting their properties will flout the law again and again. Hopefully the threat of financial penalties will force them to improve their conduct.
- probably a little too many factors
- I don't see what else you can do.
- Tenants should take more responsibility for themselves and the law should not expect Landlords to be responsible for them.
- As previous
- terminology is unclear. wording used is subjective
- as above - "harm" and the effects needs to be defined better
- Same as above.
- still very much based on opinion and a few examples, case history would be good to help define and understand these factors
- As for 5.

9. Do you agree with the starting points and the minimum and maximum financial penalty levels we've set?

- Looks reasonable
- Good record of charging reasonable rents I would have thought would act as encouragement to charge less for rents
- I think if someone has a serious medical condition or are a caregiver then they should get another person to deal with repairs. Such as a regular handy person who tenants have contact with.
- I do agree, although would have liked £50000
- You seem to have covered everything
- I think it should be made obvious that these are "Some examples of mitigating factors" NOT "All examples of mitigating factors"
- See previous
- Would not reduce fine for landlord just because they admit offence.
- Agree with everything except the mitigation of self-reporting - too easy for the worst offenders to abuse it.
- the max penalty is set by the legislation so you have no choice. Unless you can also charge costs of taking the action, the lowest proposed penalties are too low which means the cost of the action will have to be subsidised by an already under resourced Local Authority service and it won't deter others from offending
- Thanks for attaching the table.
- appear balanced
- very fair
- Some of the top end fines seem excessive and are likely to encourage malevolent tenants to lodge fraudulent claims, especially with the abundance of no win no fee ambulance chasers around
- Starting points should be higher across the board

10. Do you agree with how we'll review the penalty?

- This appears to be a fair and reasonable approach
- yes well reviewed
- But if the cost to the Council is £1100 then that should be taken no matter what.
- What about an appeal path if the offender believes that the penalty is disproportionate ?
- It is just another way of raising tax on landlords.
- as previous
- Council charges are too high
- the 4 bullet points above should be taken into account when formulating the enforcement policy and procedures for setting the level of penalty rather than for individual cases. Unsure about the justification of adding the cost to the Council when this is not covered in Stat Guidance or Sentencing Guidelines
- it seems a fair way of dealing with it. must include costs based on actual time taken
- Ref possibility of putting the Landlord out of business- consideration would also need to be given to the effect on any Tenants.
- needs to have that flexibility and fairness to account for differences within a similar offence
- see previous comment.

11. Do you agree with how we may reduce the penalty?

- There needs to be an incentive like this to allow offenders to reconsider what they have done and be rewarded for compliance
- The offender charges reasonable rents would act as encouragement to bring down cost of subsidising housing with benefits
- You will fall for the odd sob story and will leave yourself open to criticism
- Your reasons seem fair.
- If a landlord can't pay for the repairs or the fine they should not be renting out a property. If the financial penalty affects others? The renter is always affected by a poor landlord. If the rent isn't paid the landlord won't say ok i will lower it because of others it affects. They say where is my rent. So make the landlords pay the proper fine.
- Landlords could easily be victims with this legislation.
- Do not agree that the penalty be reduced for admitting offence at an early stage
- there has to be very strong compelling evidence to enable a reduction in the penalty on the grounds given otherwise it will undermine the process
- I disagree only with the reduction of penalties if the offender admits guilt early. There were earlier opportunities for landlords to address offences before escalation to this stage.
- Too easy to get off the hook by trying it on and then admitting guilt at an early stage to reduce penalty; or to claim they won't be able to make amends to victim if they're fined too much: this is the same argument housing developers use to not having to provide affordable housing ("not profitable enough").
- Admission of guilt should never be a reason to reduce the fine.
- fair
- If the financial penalty makes it difficult for the offender to comply with the law make restitution to victims?
- As there is no protracted process i.e. an appearance at court not sure what difference an early guilty plea does to reduce the harm or potential harm caused by their offence

12. Do you agree with the way we will work out the overall penalty for multiple offences?

- Seems fair and reasonable
- I think there should be a penalty for each offence. Multi property owning landlords are by no means poor, and could also be subject to community service if they prove they're unable to pay the full amount. Letting them pay one fee for multiple offences makes it less likely they'll be deterred from offending as many own a large amount of properties and only being charged once could be seen as 'getting away with it'
- I agree with the latter not with the first part
- If the person is a multiple offender then that can only be for gain and not incompetence.
- If there are two or more offences or it happens again and again you should start at a lower penalty, depending on the offence and then raise it each offence after. And if there are multiples then a heavy fine should be given. Landlords make a lot of money from those who have little. The only way to get them to follow the laws is to penalise them in their bank accounts.
- Just keep victimising Landlords, they provide accommodation for thousands of people.
- Seems a fair method

- each offence must be dealt with on a case by case basis and the penalty calculated as set out. maybe the cost to the Council of dealing with the matter is the only thing that needs to be taken into account when multiple offences have taken place otherwise it may undermine the system.
- very fair - if multiple offences have taken place then each one should be treated as such and not compromised because there has been several offences as that is not fair to the individual with single offences and also says if they knowing commit the offence then commit others.
- option 2

13. Do you have any other comments on our policy for working out the level of a financial penalty?

- I feel strongly that the level of tenant cooperation towards the landlord should be considered.
- Bristol desperately needs rent controls for all rents & types of tenants. Someone needs to remind government to fund housing in Bristol at a more appropriate rate. Government needs to stop pretending to be a household income and be the creator of the currency which it is as it spends. Ask the treasury department if you don't believe me, ask them how is money created? They all know.
- As it's a health and safety issue should be zero tolerance
- It seems as if you have thought of everything. I live in bath and am an NLA member. I suspect you will find NLA members' properties are better maintained than those who haven't joined because they want to keep their heads down.
- Consider how much rent is being paid for the property that has the problems. How long the renter has been there, the response of the landlord to previous problems.
- "The council shall communicate the new regulations to the landlord community openly and widely. Free trading should be provided to ensure the landlord community is full aware of them.
- it looks like a good approach. good luck on implementing it. yet another burden/change for Council's to undertake with less resources
- No
- If the landlord is a jointly named landlord how will the penalty be applied? Is one individual more culpable than the other?
- Please provide the number of 'Rogue' landlords that are fined each year and for what offence.
- no
- Careful consideration needs to be paid when enforcing fines for non compliance due to the ever changing nature of the regulatory environment landlords find themselves in
- I would like to see similar powers for the prosecution of tenants by the LA where safety, property, life, harm, harassment, cost to the landlord etc are caused by the tenant!

Appendix D - Selected comments from consultation based on relevance to question posed.

1. Do you agree that this is the right way for us to use the new RRO powers?

- 'As long as there is irrefutable evidence that the Landlord/Agent has done any of the reasons listed.'

There has to be evidence beyond reasonable doubt. This is covered by the law and the statutory guidance, so no amendment to the proposed policy is necessary.

- 'Tenants need more support from BCC in dealing with bad landlords. I would hope these measures help in penalizing rogue landlords and supporting tenants.'

This comment is in support of the proposed policy, no amendment is necessary.

- 'Poor landlords should not be subsidised from the public purse.'

This is the intention of the policy, no amendment necessary.

2. Do you agree with this change to our Enforcement Policy?

- 'Appears to be a reasonable approach'

This comment is in support of the proposed policy, no amendment is necessary.

- 'Looks like an excuse for the council to raise money as and when it feels like it -i.e. a ' kangaroo court'.'
- 'What right of appeal does the landlord have against the CPN?
At least a prosecution means the council has to prove wrongdoing and a court is independent.'

There has to be evidence beyond reasonable doubt. This is covered by the law and the statutory guidance, so no amendment to the proposed policy is necessary.

A person who receives a CPN may appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty or the amount of the penalty. The First-tier Tribunal is administered by Her Majesty's Courts and Tribunals Service. No kangaroos are involved!

- 'It seems more reasonable than wasting court time and resources, but how will it be enforced?'

If a CPN is served, the financial penalty will be recovered by our Debt Recovery service. No amendment to the policy is required.

- 'The terms most appropriate and effective are too vague and it is unclear on what grounds any decision will be made.'

These terms are taken from the statutory guidance so the Council policy must reflect them. No amendment to the policy is required.

- 'I hope this means the council has to spend less money in penalizing bad landlords. It looks like the CPN will facilitate that.'

Overall we believe this policy will be cost-neutral. This procedure will allow us to deal with rogue landlords more quickly and efficiently, in comparison to legal cases which entail significant costs. No amendment to the policy is necessary.

- 'Yes, this may be more appropriate to prosecution for lower level offences'

The CPN is intended to be an alternative to prosecution at all levels, and the highest fines are at £30,000. No amendment to the policy is necessary.

- 'Slight concerns over derogation of process, and whether there are independent checks on the council for appropriate application of CPNs over prosecution.'

Those receiving CPNs have the right of appeal to the First-tier Tribunal against the decision to impose a penalty or the amount of the penalty. The Local Government Ombudsman oversees local authorities' decisions and the policy is in accordance with the statutory and LGA guidance. No amendment to the policy is necessary.

3. Do you agree that the method we introduce in our draft policy is an appropriate way to work out the level of a financial policy?

- 'Until this is tried out it is difficult to know what impact this policy may have. I think it requires a trial period.'

The policy will be kept under review as it is used and updated as necessary if there are significant reasons to do so. No amendment to the policy is necessary at this time.

- 'I agree that it has been thought out well, and is very appropriate.'
- 'It seems reasonable to me when a rogue landlord has behaved badly.'

Thank you for your comments. No amendment to the policy is necessary.

- 'This appears to be another way of raising revenue for any number of minor complaints'

Financial penalties will not be used for 'minor complaints', but as an alternative to prosecution. We do not take enforcement action to 'raise revenue' and there has to be evidence beyond reasonable doubt. A person who receives a CPN may appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty or the amount of the penalty. The First-tier Tribunal is administered by Her Majesty's Courts and Tribunals Service. No amendment to the proposed policy is necessary.

- 'Transparency is key. These penalties sound useful but should be used appropriately.'

The proposed policy will be published on our website (www.bristol.gov.uk/privatehousingpolicies). No amendment to the policy is necessary.

- 'The £1100 average cost of CPN added to the Penalty to deter is not qualified or justified. The council has costs with the existing Prosecution process, so unless this is justifying that there are additional costs (show please), then this is setting the council as both juror and judge. I think there may be a legal challenge point here.'

The average cost of serving a CPN includes costs associated with carrying out inspections, making the decision, preparing and serving the legal paperwork and dealing with representations. This may be

reduced or increased where a case is either straightforward or takes longer than normal. The Local Government Ombudsman oversees local authorities' decisions and the policy is in accordance with the statutory and LGA guidance. A person who receives a CPN may appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty or the amount of the penalty. CPNs are an alternative to prosecution, so a person can't be prosecuted and receive a CPN for the same offence. No amendment to the proposed policy is necessary.

4. Do you agree with this method of working out how serious an offence is?

- 'Looks like all bases covered'

Thank you for your comment. No amendment to the policy is necessary.

- 'It is sensible to differentiate between the categories, because sometimes we are asked to do something which is totally ridiculous and even good landlords have difficulties at times fulfilling every requirement 100%'

This comment is in support of the proposed policy, no amendment is necessary.

- 'Would like a mention of tenants' responsibilities.'

The four culpability bands will take this into account. No amendment to the policy is necessary.

- 'it clearly allows an assessment of culpability and harm to be undertaken, examining both aspects which together allows an appropriate score'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'Agree in principle, but would like to see an actual example here to show how it works.'

From time to time we will publish decisions made on our website. These may be anonymised. No amendment to the policy is necessary.

- 'common sense and fairness.'

Thank you for your comment, no amendment to the proposed policy is necessary.

- 'Seems reasonable, but concerns over experience & qualifications of who will be making this analysis.'

The officers deciding on the level of CPN will be authorised by the council and qualified. The Local Government Ombudsman oversees local authorities' decisions and a person who receives a CPN may appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty or the amount of the penalty. No amendment to the proposed policy is necessary.

5. Do you agree with the number of culpability bands

- 'I agree, but these could be confusing to both landlord and tenant. Quite a complicated table.'

The policy is in accordance with the statutory and LGA guidance. No amendment to the proposed policy is necessary.

- 'I suppose legally it has to be done that way'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'terminology is unclear. wording used is subjective '

The legal basis of this policy, as well terminology and wording, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'it allows clear differentiation between the different levels of behaviours'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'Any more makes it unnecessarily complex.'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

6. Do you agree with the factors we will take into account when deciding on the level of culpability?

- 'Look reasonable thought out'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'I think that a landlord's overall management should be taken into account i.e a landlord that does everything by the book but makes a minor slip up should be treated differently to a landlord that flaunts the rules as much as they are able and who makes a similar minor slip up. i.e Landlord one's level of commitment to running a safe and fair rental business should have some sway over landlord two, who pushes everything as far as he can get away.'

The four culpability bands will take this into account. No amendment to the proposed policy is necessary.

- 'terminology is unclear. wording used is subjective'

The legal basis of this policy, as well terminology and wording, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'there are clearly cases where landlords wilfully neglect their obligations and other occasions where they know nothing about the problem or have tried their best to resolve it'

The four culpability bands will take this into account. No amendment to the proposed policy is necessary.

7. Do you agree with the number of harm bands?

- 'Seem to be explained quite well and are understandable'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'I think you really should have just two bands'

The number of culpability and harm bands is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'harm should be categorised by impact so its right to have a number of bands, however there is no definition of harm - to health and safety, economic or emotional effects on tenants - ie through harassment and losing their home, or to how many tenants/occupiers it has affected and their vulnerability'

The proposed policy will be amended to include the definition of harm in the Housing Health and Safety Rating System Operating Guidance, published by the Office of the Deputy Prime Minister in February 2006.

- 'Need examples.'

We will from time to time publish on our website decisions made. These may be anonymised. No amendment to the policy is necessary.

- 'There is nothing here that takes into account tenant behaviour - I have had tenants take down/dismantle fire alarms, this would be seen as very serious and could cause serious harm if not death, these things need to be taken into account as the tenant is not always right.'

The four culpability bands will take this into account. No amendment to the policy is necessary.

8. Do you agree with the factors we will take into account when deciding on the level of harm?

- 'Seems to be set out in a way that can be understood by both landlord and tenant'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'probably a little too many factors'

The number of culpability and harm bands is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'terminology is unclear. wording used is subjective'

The legal basis of this policy, as well terminology and wording, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'as above - "harm" and the effects needs to be defined better'

The proposed policy will be amended to include the definition of harm in the Housing Health and Safety Rating System Operating Guidance, published by the Office of the Deputy Prime Minister in February 2006.

9. Do you agree with the starting points and the minimum and maximum financial penalty levels we've set?

- 'Looks reasonable'

The proposed policy will be amended to include the definition of harm in the Housing Health and Safety Rating System Operating Guidance, published by the Office of the Deputy Prime Minister in February 2006.

- 'I do agree, although would have liked £50000'

The maximum penalty level is set in schedule 9 of the Housing and Planning Act 2016. No amendment to the proposed policy is necessary.

- 'You seem to have covered everything'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'I think it should be made obvious that these are "Some examples of mitigating factors" NOT "All examples of mitigating factors"'

We have amended the proposed policy to make this clearer.

- 'Would not reduce fine for landlord just because they admit offence.'

The legal basis of this policy, including the principle of a reduction for early admission of guilt, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'Agree with everything except the mitigation of self-reporting - too easy for the worst offenders to abuse it.'

The legal basis of this policy, including the principle of a reduction for early admission of guilt, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'appear balanced'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'Starting points should be higher across the board'

The legal basis of this policy, including the starting points, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. The average cost of serving a CPN (£1,100) will also be added to each penalty. No amendment to the policy is necessary.

- 'Some of the top end fines seem excessive and are likely to encourage malevolent tenants to lodge fraudulent claims, especially with the abundance of no win no fee ambulance chasers around'

The maximum penalty level is set in schedule 9 of the Housing and Planning Act 2016. Tenants do not gain financially when a penalty is made. No amendment to the proposed policy is necessary.

- 'the max penalty is set by the legislation so you have no choice. Unless you can also charge costs of taking the action, the lowest proposed penalties are too low which means the cost of the action will have to be subsidised by an already under resourced Local Authority service and it won't deter others from offending'

The legal basis of this policy, including the starting points, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. The average cost of serving a CPN (£1,100) will also be added to each penalty. No amendment to the policy is necessary.

10. Do you agree with how we'll review the penalty?

- 'This appears to be a fair and reasonable approach'
- 'yes well reviewed'

These comments are in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'What about an appeal path if the offender believes that the penalty is disproportionate ?'

A person who receives a CPN may appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty or the amount of the penalty. No amendment to the proposed policy is necessary.

- 'Council charges are too high'

The maximum penalty level is set in schedule 9 of the Housing and Planning Act 2016. The policy is in accordance with the statutory and LGA guidance. No amendment to the proposed policy is necessary.

- 'needs to have that flexibility and fairness to account for differences within a similar offence'

The four culpability bands and three harm bands will take this into account. The policy is in accordance with the statutory and LGA guidance. No amendment to the proposed policy is necessary.

- 'Ref possibility of putting the Landlord out of business- consideration would also need to be given to the effect on any Tenants.'

The policy requires that the wider impacts of the financial penalty on innocent third parties should be considered when deciding on the level of the penalty. No amendment to the proposed policy is necessary.

- 'it seems a fair way of dealing with it. must include costs based on actual time taken'

The average cost of serving a CPN will be added to each penalty. No amendment to the policy is necessary.

11. Do you agree with how we may reduce the penalty?

- 'There needs to be an incentive like this to allow offenders to reconsider what they have done and be rewarded for compliance'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'You will fall for the odd sob story and will leave yourself open to criticism'

The legal basis of this policy, including the principle of reductions, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested.

The policy will be amended to make it clear that any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

- 'Your reasons seem fair.'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'If a landlord can't pay for the repairs or the fine they should not be renting out a property. If the financial penalty affects others? The renter is always affected by a poor landlord. If the rent isn't paid the landlord won't say ok I will lower it because of others it affects. They say where is my rent. So make the landlords pay the proper fine.'

The proposed policy makes it clear that whether proposed level of financial penalty is proportionate to the overall means of the offender will be considered. However, the policy also makes it clear that whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

The policy will be amended to make it clear that any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

- 'Landlords could easily be victims with this legislation.'

There has to be evidence beyond reasonable doubt. This is covered by the law and the statutory guidance, so no amendment to the proposed policy is necessary. A person who receives a CPN may appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty or the amount of the penalty. No amendment to the proposed policy is necessary.

- 'Do not agree that the penalty be reduced for admitting offence at an early stage'

- 'I disagree only with the reduction of penalties if the offender admits guilt early. There were earlier opportunities for landlords to address offences before escalation to this stage.'

The legal basis of this policy, including the principle of a reduction for early admission of guilt, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

- 'Too easy to get off the hook by trying it on and then admitting guilt at an early stage to reduce penalty; or to claim they won't be able to make amends to victim if they're fined too much: this is the same argument housing developers use to not having to provide affordable housing ("not profitable enough").'

The proposed policy makes it clear that whether proposed level of financial penalty is proportionate to the overall means of the offender will be considered. However, the policy also makes it clear that whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome. No amendment to the proposed policy is necessary.

- 'Fair'

Thank you for your comment. No amendment to the policy is necessary.

- 'If the financial penalty makes it difficult for the offender to comply with the law make restitution to victims? As there is no protracted process i.e. an appearance at court not sure what difference an early guilty plea does to reduce the harm or potential harm caused by their offence.'
- 'there has to be very strong compelling evidence to enable a reduction in the penalty on the grounds given otherwise it will undermine the process'

The legal basis of this policy, including the principle of a reduction for early admission of guilt, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

12. Do you agree with the way we will work out the overall penalty for multiple offences?

- Seems fair and reasonable

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'If the person is a multiple offender then that can only be for gain and not incompetence.'

The policy will be amended to make it clear that any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

- 'I think there should be a penalty for each offence. Multi property owning landlords are by no means poor, and could also be subject to community service if they prove they're unable to pay the full amount. Letting them pay one fee for multiple offences makes it less likely they'll be deterred from offending. As many own a large amount of properties and only being charged once could be seen as 'getting away with it'

- 'If there are two or more offences or it happens again and again you should start at a lower penalty, depending on the offence and then raise it each offence after. And if there are multiples then a heavy fine should be given. Landlords make a lot of money from those who have little. The only way to get them to follow the laws is to penalise them in their bank accounts.'
- 'each offence must be dealt with on a case by case basis and the penalty calculated as set out. maybe the cost to the Council of dealing with the matter is the only thing that needs to be taken into account when multiple offences have taken place otherwise it may undermine the system.'

The legal basis of this policy, including the Totality Principle, is taken from the Sentencing Council's Sentencing Guidelines which has also been consulted on and widely tested. No amendment to the policy is necessary.

13. Do you have any other comments on our policy for working out the level of a financial penalty?

- 'I feel strongly that the level of tenant cooperation towards the landlord should be considered.'

The four culpability bands will take this into account. No amendment to the proposed policy is necessary.

- 'As it's a health and safety issue should be zero tolerance'

The policy is in accordance with the statutory and LGA guidance. No amendment to the policy is necessary.

- 'It seems as if you have thought of everything. I live in bath and am an NLA member. I suspect you will find NLA members' properties are better maintained than those who haven't joined because they want to keep their heads down.'

This comment is in support of the proposed policy, no amendment to the proposed policy is necessary.

- 'Consider how much rent is being paid for the property that has the problems. How long the renter has been there, the response of the landlord to previous problems.'

The policy makes it clear that whether the proposed level of financial penalty is proportionate to the overall means of the offender will be checked. No amendment to the proposed policy is necessary.

- 'The council shall communicate the new regulations to the landlord community openly and widely. Free trading should be provided to ensure the landlord community is full aware of them.'

The proposed policy will be published on our website (www.bristol.gov.uk/privatehousingpolicies). From time to time we will publish decisions made on our website. These may be anonymised. No amendment to the policy is necessary.

- 'it looks like a good approach. good luck on implementing it. yet another burden/change for Council's to undertake with less resources'

Thank you for your comment. No amendment to the policy is necessary.

- 'If the landlord is a jointly named landlord how will the penalty be applied? Is one individual more culpable than the other?'

The proposed policy is on how the council decides the amount of penalty when serving a CPN. The decision on whom to serve the CPN will be made in accordance with our enforcement policy (www.bristol.gov.uk/privatehousingpolicies). No amendment to the proposed policy is necessary.

- 'Please provide the number of 'Rogue' landlords that are fined each year and for what offence.'

From time to time we will publish decisions made on our website. These may be anonymised. No amendment to the policy is necessary.

- 'Careful consideration needs to be paid when enforcing fines for non compliance due to the ever changing nature of the regulatory environment landlords find themselves in'

There has to be evidence beyond reasonable doubt. This is covered by the law and the statutory guidance, so no amendment to the proposed policy is necessary.

- 'I would like to see similar powers for the prosecution of tenants by the LA where safety, property, life, harm, harassment, cost to the landlord etc are caused by the tenant!'

The policy is in line with DCLG's recommendation that the council should have a policy on determining the appropriate level of financial penalty in a particular case. No amendment to the proposed policy is necessary.

Civil penalty as an alternative to prosecution under the Housing Act 2004

Bristol City Council policy on deciding on a financial penalty amount

Introduction

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.

Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) has stated that:

'[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000...It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants.'

This policy sets out guidance as to how Bristol City Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

Consultation

Views were sort from landlord agent and tenant and were taken into consideration when finalising this guidance. See appendix 1 for a list of the consultees.

Legal reference

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- section 30 (failure to comply with improvement notice),
- section 72 (licensing of Houses in multiple occupation (HMOs)),
- section 95 (licensing of houses under Part 3),
- section 139(7) (failure to comply with overcrowding notice), or
- section 234 (management regulations in respect of HMOs).

A new Schedule 13A has also been inserted into the 2004 Act which prescribes the procedures that a local housing authority must follow before imposing a financial penalty, for imposing the penalty, the appeal process and the procedure for recovery of the penalty.

Government Guidance

The Government's Department for Communities and Local Government (DCLG) have published the following document: "[Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities](#)". This is statutory guidance to which local housing authorities must have regard. This statutory guidance recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

The purpose of this policy

This is Bristol City Council's published policy in line with DCLG's recommendation that it should have a policy on determining the appropriate level of financial penalty in a particular case.

Local Government Association guidance

The Local Government Association has published guidance on the use of Civil Penalty Powers. This policy is also in accordance with the principles of the LGA guidance.

Basis of this policy

In accordance with the new section 249A(4) of the 2004 Act the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.

The Council has decided to largely base this policy on the principles set out in the [Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline which this Council considers to be the most relevant sentencing guidance issued by the Sentencing Council](#). The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.

The range of financial penalties in this guidance use similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

Guidance for officers.

Appendix 2 of this policy gives guidance to officers on how to make these decisions on the level of financial penalty under the 2016 Act.

Appendix K

Appendix 1 – List of Consultees

Acorn

Association of Local Landlords (Wessex) Ltd

Association of Residential Letting Agents

Bristol Association of Lettings and Managing Agents

Bristol Student Union Lettings

Bristol Mediation Services

Considerate/ National Accreditation Scheme

Chartered Institute of Environmental Health

Citizens Advice Bureaux

National Landlord Association

National Approved Letting Scheme

Residential Landlord Association

Royal Institutions of Chartered Surveyors

SARI

Shelter

South West Landlord Association

West Country Landlords Association

Local Government Association

Unseen

Local Authorities :

Bath and North East Somerset

North Somerset

Leeds

Oxford

South Gloucestershire

Appendix 2 - Bristol City Council process for determining the level of penalty to set -

Schedule 9, Housing and Planning Act 2016

STEP ONE – Determining the offence category

The Council will determine the offence category using only the **culpability** and **harm** factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Very high

Where the offender intentionally breached, or flagrantly disregarded, the law or
Who has a high public profile and knew their actions were unlawful

High

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Medium

Offence committed through act or omission which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable¹

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Category 3- Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

We will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for

¹ A wide definition of vulnerability will be used. See appendix 3 for a non-exhaustive list.

example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.¹²

STEP TWO - Starting point and category range

Having determined the **category**, the LA should refer to the following **starting points** to reach an appropriate level of civil penalty within the category range. The LA should then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case ***which may include the inference that the offender can pay any financial penalty.***

A Bristol specific example.

As many offenders will be owners of one or more properties in Bristol, they are likely to have assets that they can sell or borrow against. Property values in Bristol are high, and have consistently increased so even those offenders with mortgaged properties are likely to have value in the property that can be released. Therefore, if an offender claims that they are unable to pay a financial penalty and shows that their income is small, consideration should be given to properties owned that can be sold or refinanced.

The remainder of this page is intentionally left blank, and the **Starting points and ranges** section is on the next page.

² [Housing Health and Safety Rating System Operating Guidance, February 2006](#), Para 2.09-2.10 page 11.

Starting points and ranges

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability.

		Range	
	Starting point	Min	Max
Low culpability			
Harm category 3	£50	£25	£175
Harm category 2	£125	£50	£350
Harm category 1	£300	£125	£750
Medium culpability			
Harm category 3	£350	£175	£750
Harm category 2	£1,000	£350	£2,000
Harm category 1	£2,500	£750	£4,500
High culpability			
Harm category 3	£1,000	£500	£2,250
Harm category 2	£3,000	£1,000	£5,500
Harm category 1	£6,250	£2,500	£12,500
Very high culpability			
Harm category 3	£2,500	£1,250	£4,500
Harm category 2	£6,250	£2,500	£12,500
Harm category 1	£15,000	£6,250	£30,000

Context

Below is a list of some, but not all factual elements that provide the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. ***In particular, relevant recent convictions³ are likely to result in a substantial upward adjustment.*** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to
 - a) the nature of the offence to which the conviction relates and its relevance to the current offence; and
 - b) the time that has elapsed since the conviction

Other aggravating factors include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact

³ See appendix 4 for a non-exhaustive list of relevant convictions.

- Obstruction of justice
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements.
- Refusal of free advice or training
- member of Accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

STEP THREE - Review any financial element of the penalty

Check whether the proposed level of financial penalty is proportionate to the overall means of the offender. The Council may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range in the table above.

Full regard should be given to the totality principle at step seven where multiple offences are involved.

General principles to follow in setting a penalty

The Council should finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the offender.

The level of financial penalty should reflect the extent to which the offender fell below the required standard. **The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund private rented sector teams in the Council. To cover the costs of the work put into the serving any financial penalty notice the costs of serving the notice will be added to the overall penalty. This will also act as a deterrent to non-compliant landlords as it is clear that landlords or agents who do not apply will know that they will have to pay for the cost of any enforcement action (where that has not been recovered under other powers).

The Council has calculated that the average cost of serving a financial penalty notice is (£1100) and this will be added to the penalty as a deterrent to non-compliant landlords or agents. This may be reduced or increased where a case is either very straightforward or alternatively takes longer than normal.

Review of the penalty

The Council should review the penalty and, if necessary adjust the initial amount reached at step two to ensure that it fulfils the general principles set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP FOUR - Reductions

Consider any factors which indicate a reduction in the penalty and in so doing the LA should have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the financial penalty on employment of staff, service users, customers and local economy.

STEP FIVE – Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

STEP SIX - Additional actions

In all cases the Council must consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

STEP SEVEN - Totality principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on [Offences Taken into Consideration and Totality](#).

‘The total financial penalty is inevitably cumulative.

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LA.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalties. There are a number of ways in which this can be achieved.

For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.’

STEP EIGHT – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix 3 – Non exhaustive list of vulnerable people

Young adults and children
Disabled persons
People on a low income
Persons with a Drug or alcohol addiction
Victims of domestic abuse
Looked after children
People with complex health conditions
People exploited where English is not their first language.
Victims of Trafficking or sexual exploitation
Refugees
Asylum seekers
People at risk of harassment or eviction
People at risk of homelessness.

Appendix 4 – Non exhaustive list of relevant offences

Housing law or landlord and tenant

Offences 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

Offences involving fraud

Offences 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

Offences involving violence

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

Offences involving drugs

- Consideration should be given to the nature of the offence and what bearing it could have on the management of a private rented property. The nature, quantity and class of drugs should be taken into account.

Offences involving sexual offences

- An offence contained in schedule 3 of the Sexual Offences Act 2003.

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.

Appendix L

Bristol City Council

Private Housing Enforcement Policy

2016 (revised 2017)

1 Foreword

Private Housing sets out to maintain and improve the housing conditions in privately owned property in Bristol as well as dealing with housing matters arising from privately owned land.

Private Housing's normal approach is to give informal advice, assistance and information. Where this approach fails or it is necessary to meet its enforcement objectives, the service will take the necessary enforcement action.

Private Housing's functions are aimed at improving and maintaining basic standards in Private Housing in Bristol. Enforcement is particularly relevant to the private rented sector in Bristol, where we aim to ensure compliance with regulatory requirements. These currently include the licensing of houses in multiple occupation (HMOs) and other rented accommodation in certain areas of the city, bringing empty properties back into use, enforcement of the housing health and safety rating system, overcrowding, public health matters, some local environmental quality issues and anti-social behaviour associated with privately rented accommodation. More recently it includes a focus on improving the professionalism of residential lettings and managing agents.

Any new legislation which comes into force relating to standards and management in privately owned housing which is undertaken by the Private Housing Service will also fall within the general principles of this policy.

The services provided meet the objectives contained in Bristol City Council's Housing Strategy and the Private Housing Service policy statements.

This policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens on businesses. This policy is in accordance with Bristol City Council's Enforcement Policy for Regulatory Services and takes into account Bristol City Council's approach to better enforcement as a result of the Government's Better Regulation agenda.

The Private Housing Service works closely with partners across the West of England Local Authorities and Registered Providers of Social Housing (RPs). The protocols we have agreed with partners are referred to in this policy.

This policy sets out the service's transparent approach to enforcement so that people understand how they will be dealt with by Private Housing and its officers.

2017 revision - The Housing and Planning Act 2016 (the 2016 Act) brings in new powers to tackle poor management by landlords and agents of properties in the Private Rented Sector. This revision adds in the new powers available and sets out how the Council will use them.

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3 Background

3.1 Aims of Policy

The aims of the policy are to:

- set out the legal requirements, policies, principles and priorities that the Private Housing Service will follow when enforcing legislation;
- help provide safer and healthier private housing;
- increase public confidence in the quality and management of accommodation leading to a vibrant private rented sector in Bristol;
- raise the profile and demonstrate the transparency of enforcement in the private rented sector.
- improve the energy efficiency of private rented sector accommodation.

3.2 What is Enforcement Action?

Enforcement means an action carried out in exercise of or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, application for a rent repayment order or the issue of civil penalty notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.

3.3 Enforcement Objectives

The Private Housing Service primarily covers all privately owned residential accommodation and privately owned land in the city. In normal circumstances enforcement action will be carried out with the objectives to ensure that:

- symptoms arising from empty homes are tackled to ensure the amenity of the area is not affected, the property is safe and secure and not causing a statutory nuisance;
- tenants of a private landlord or a Registered Provider of Social Housing (RP) live in homes free of actionable hazards¹ which affect their health and safety;
- privately rented houses, including Houses in Multiple Occupation (HMOs), are managed in accordance with any relevant statutory regulations or other legal requirements.
- reasonable and practicable steps are taken to prevent or reduce any anti-social behaviour by the occupiers or visitors to privately rented properties.
- all licensable rented properties are licensed and licence conditions are met;
- owners or occupiers who are vulnerable and unable to support independent living, live in accommodation which is free of significant risks to their health and safety;
- owners or occupiers of privately owned land or property do not cause a statutory nuisance to other land or property owners, or do not present an unacceptable risk to public health, safety or the environment.

¹ An actionable hazard is one which has been rated in Band A-D in the Housing Health and Safety Hazard Rating System under the Housing Act 2004. Ref. Bristol City Council Policy for the Housing Health and Safety Hazard Rating System – Housing Act 2004

- persons are held responsible for their actions which are detrimental to local environmental quality or to the health safety and welfare of other residents.
- where required privately rented accommodation meets minimum energy efficiency ratings and that Energy Performance certificates are provided.
- letting professionals meet the legal requirements that apply to their business such as; to register with a Government Redress scheme; to advertise fees appropriately; and to comply with any other legislation that regulates services they provide.
- the Private Housing Service meets the Council's statutory duties which it is responsible for or to carry out the powers it has adopted.

3.4 Regulatory Services Enforcement Policy

The [Regulatory Services Enforcement Policy](#) sets out general principles of good enforcement practice that should be followed by any of Bristol City Council's regulatory services and their officers. It follows the "Principles of good regulation" set out in the Legislative and Regulatory Reform Act 2006 (2006 Act):

- regulatory activities should be carried out in a way which are transparent, accountable, proportionate and consistent;
- regulatory activities should be targeted only at cases in which action is needed.

The Regulatory Services policy anticipated that managers of regulatory services across the Council would review and, where necessary update, their current enforcement policies and procedures and service standards in order to ensure that they are consistent with the overarching policy and this policy meets that objective.

3.5 Regulators' Codes

The 2006 Act requires that we have regard to the current Regulators' code when developing policies and procedures that guide our regulatory activity. This policy has regard to the [Regulator's code](#) which came into force in April 2014. We have set out how we meet these duties in detail on our website. [How Private Housing meet the Regulator's Code requirements.](#)

3.6 Primary Authority

Primary Authority requirements under Regulatory Enforcement and Sanctions Act 2008 applies to some of the legislation Bristol City Council enforces see [Appendix 3](#).

Where there is a Primary Authority in place in relation to the legislation we are enforcing we will comply with the Primary Authority requirements.

The [Better Regulation Delivery Office](#) (BRDO) publish a [list of Primary Authorities](#) and the businesses they support. For further information on how Primary Authority arrangements work, please see the [.gov website](#).

3.7 Providing Assistance Information and Education

We start from the position of working with our service users to help them comply with their regulatory requirements. This is a more efficient way of meeting our objectives, rather than having to take enforcement action. We will provide clear, accessible advice and guidance and provide contact details where further information is

required. Information is provided in a range of formats such as newsletters and fact sheets. Such information can be found on the following three websites and is also available in hard copy and other formats and languages on request:

www.bristol.gov.uk/privatehousing

www.privatehousinginformation.co.uk

www.nouseemptywest.co.uk

In addition, we provide advice and assistance through:

- The [Rental Standard](#) which - encourages compliant landlords and agents;
- Landlord Liaison Service which:
 - works with landlords and agents from the Private Rented Sector in Bristol.
 - produces a quarterly Landlords newsletters
 - organises the West of England Private Sector Landlords' and Agents Panel - engaging with landlords and agents on service direction and standards
 - attends landlord and agent association's meetings
 - organises the annual Landlord Expo - bringing together property professionals, local authorities and service users.
 - holds Landlord forums – open meetings for Landlords and Agents to address current issues affecting privately rented properties.
 - Provides a comprehensive Landlord training manual and distance based learning;
 - Where funding is available to provide financial assistance for landlords to meet basic requirements.

3.8 Targeting Enforcement Action

To ensure that we meet our policy and enforcement objectives effectively **we will** have regard to the principle that our formal enforcement activity should be targeted only at cases in which action is needed.

These are some examples of how we may target action – this is not an exhaustive list:

3.8.1 Property type or occupation

- empty properties - door to door surveys, Council Tax information or by our empty property priority system;
- landlords whose tenants receive Local Housing Allowance/Universal credit. These tenants tend to be more vulnerable and the standards in these properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers;
- unlicensed properties;
- poorly managed privately rented properties or those with anti-social behaviour linked to them.
- construction type - where there is a problem with a particular method of construction, for example precast reinforced concrete (PRC) properties;
- household types.

- properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).

3.8.2 Areas

- where there are particular problems in a specific locality. This can be on a street by street basis or an area of Bristol;
- where an area of Bristol is identified as having adverse health or socio-economic indicators;
- to provide a co-ordinated approach alongside other initiatives; for example, Healthy Home Zones; and the regulatory activity is relevant to tackling them.

3.8.3 Individuals

Where a landlord, lettings professional, agent, individual or organisation('s):

- persistently fails to manage privately rented accommodation in accordance with legal requirements;
- repeatedly fails to comply with informal or formal requests to meet minimum legal requirements or commits offences under Private Housing related legislation;
- persistently fails to submit a valid licence application or meet licensing standards;
- places tenants in overcrowded accommodation;
- activities result in the need for us to work proactively to meet our enforcement objectives;
- fails to register with a government approved Redress scheme;

In addition under the Housing and Planning Act 2016 where the individual is:

- on the government database of rogue landlords and agents;
- has a rent repayment order against them; or
- is subject to a banning order or a management order.

To ensure that there are checks and balances in our enforcement approach any targeted action will need to be agreed with a manager before it is undertaken.

4 Licensing of Private Rented Sector properties

4.1 Mandatory HMO licensing

A Mandatory licence is currently required for HMOs with three or more storeys with five or more occupiers living in two or more households sharing some facilities.

The government intends to widen the scope of licensing so it is important for landlords and agents to keep up to date with their legal responsibilities, it is anticipated that mandatory licensing will be expanded to HMOs with five or more occupiers, regardless of the number of storeys in that property.

4.2 Discretionary licensing

Councils have the discretion to bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Housing Act 2004. These powers allow local authorities to require landlords of some privately rented properties to apply for a licence. There are two types of discretionary licensing. Additional

licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public. Selective licensing may be appropriate where that the area contains a high proportion of properties in the private rented sector and there are issues in relation to; housing condition, migration, deprivation, or crime.

The Council has declared some areas of the city as discretionary licensing areas, landlords and agents need to check to see if their property(s) are in the relevant areas.

4.3 Operating an unlicensed property

Systematic surveys using available relevant information held by the Council will be carried out to identify unlicensed properties. If a landlord has approached the Council for a licence an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently duly made within 28 days. We will consider any representations regarding exceptional circumstances that may have resulted in the application not being made. In other circumstances the Council will carry out an investigation and if appropriate consider taking formal action.

Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee within 28 days may also be investigated for failing to licence a licensable property.

Fines for failure to license a property are unlimited. Where landlords have been convicted of the offence of operating an unlicensed property the Council may use Rent Repayment Orders to claim back any Housing Benefit or equivalent paid whilst the property was unlicensed. We may also provide tenants with information and advice on how and when they can apply to The First Tier Tribunal Service to claim back the rent they paid whilst the property was unlicensed.

Under the 2016 Act the council can also serve a civil penalty notice of up to a maximum of £30,000 for failure to license a property.

4.4 Duration of Licences

Licences will normally be granted for the full five year period. We may reduce the length of the licence from five years to an appropriate lesser period:

- to remove any advantage over those licence holders who applied at the appropriate time; or
- where the property has not been satisfactorily managed; or
- where we are concerned the proposed management arrangements may not be satisfactory and want to see evidence that they are before allowing a longer licence period to be granted.

4.5 Fit and Proper Person Policy

In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. The Council's [Fit and Proper Person Policy](#) guides our decisions on this. A person's fit and proper status may be reviewed at any time if circumstances change. A finding that the person does not satisfy this standard may result in refusal of an application or revocation of existing licence(s).

4.6 Breach of licence requirements

Licences issued for rented properties include requirements on the number of persons or households that are permitted to occupy a property as well as licence conditions. Licence conditions may require works with regard to the physical condition of the property or in relation to the management of the property.

Knowingly permitting the over occupation of a licenced property or failing to meet licence condition(s) without reasonable excuse are a criminal offence(s).

The 2016 Act introduced civil penalty notices of up to £30,000 which the Council can serve on individuals as an alternative to prosecution.

5 Management Orders

These powers will be used as a last resort where other attempts have failed and where there is no reasonable prospect of a licence being granted.

Management Orders may also be used where it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity or anti-social behaviour is affecting other occupiers, visitors or persons in the vicinity of the premises.

Under the 2016 Act, where an agent or landlord is banned from operating in the private rented sector management orders may also be used.

The Council has arrangements in place to manage properties where a Management Order is made. These include external organisations.

6 Regulation of residential lettings and management professionals

In addition to having legal responsibilities in relation to the management of properties which are privately rented, business's letting and managing residential property are required to comply with a number of other legal requirements, some of which are regulated by the Council's Private Housing Service.

7 Empty Properties

The Private Housing Service systematically identifies long term empty properties and will work with the owner to bring back into use. The empty property policy statement sets out the detail of our priorities in this area:

- action will be tailored to match housing need, nuisance issues and length of time the property has been empty;
- we recognise that some areas of the city suffer from higher levels of empty properties and housing need.

As the overall aim is to provide more accommodation of the type required in Bristol we will take action on empty properties within a procedure that could ultimately lead to the use of Compulsory Purchase Orders to bring a property into use.

Where necessary, we will take enforcement action to deal with the symptoms that arise when a property is left empty.

8 Overcrowding

We will investigate complaints from private rented sector tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on a neighbours' health, safety or welfare.

We will liaise with the Council's Housing Solutions Service where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.

When deciding on the most appropriate course of action each case will be judged on its own merits.

We may advise persons living in overcrowded living conditions that their health is at risk but that the most appropriate action is not to require them to move out.

We may serve overcrowding notices in relation to HMOs if having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the property.

Under the 2016 Act the council can serve a civil penalty notice of up to £30,000 on a person failing to comply with an overcrowding notice.

9 Anti-social behaviour

There are new powers to tackle anti-social behaviour, please see our website for further information.

Where we have legal powers to deal with anti-social behaviour of private rented sector tenants or visitors to a rented property, we will initially liaise with partners such as academic institutions, landlords and their associations to seek an informal resolution. Where this fails we will consider taking legal action against the person responsible if this is possible. This can include taking action under any licence conditions.

Where complaints of anti-social behaviour are more appropriately dealt with by other Council services, such as the Pollution Control, Anti-social Behaviour or Streetscene Enforcement teams, or the Police, these complaints will be referred to them.

Where the relevant criteria are met we will consider making a discretionary Management Order.

10 Retaliatory Eviction

The Deregulation Act 2015 provides tenants protection from eviction in retaliation for making a complaint in relation to health and safety issues in their home. The protection only applies in certain circumstances please see [link](#) for further guidance.

The circumstances require that a relevant formal legal notice has been served under the Housing Act 2004. Following consultation with tenant, landlord and agent groups Private Housing will only serve the relevant formal legal notices in line with this policy.

11 Enforcement Action

Where assistance, information and education has failed to ensure compliance with a statutory requirement or failed to ensure compliance with requirements made through use of our discretionary powers enforcement action may be taken. Enforcement actions include no action, informal action and formal action.

11.1 No action

In certain circumstances it may be appropriate to take no action. For example:

- when we decide that the health and safety risk is sufficiently low enough;
- where there are extenuating circumstances regarding the person against whom we would take action on;
- taking legal action would be disproportionate or inappropriate taking into account the circumstances of the case.
- Where the tenant does not want us to take action and we consider it is appropriate not to take action in the circumstances.

We may however make recommendations which are above the legal minimum requirements, advise if there are legal avenues open to persons to resolve the issues themselves or refer to another appropriate regulator or advice service.

11.2 Informal Action

In most cases, officers will endeavour to seek the desired improvements or protection of the public's health and safety in relation to private housing by working initially on an informal basis with those involved. Informal action may take a variety of forms, for example:

- verbal requests;
- letters or e-mails;
- schedules of work.

The advice will make clear what is expected to be done to meet a legal requirement and what is a recommendation which does not legally require action.

It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

However, where the circumstances of the case justify it, officers will be expected to take a formal approach in the first instance. Formal action will also be taken where compliance with a statutory requirement has not been achieved by informal action.

11.3 Formal Action

Circumstances where it may be appropriate to take formal legal action include where:

- there is an actionable hazard which puts at risk a person's health and safety due to :
 - risk of a fall leading to serious injury
 - no heating and or lack of insulation in cold weather;
 - the Energy Performance Certificate is rated "F" or "G"
 - no hot water to wash and prepare food safely;
 - exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres;
 - exposed live electrical wiring which people are likely to make contact with;
 - raw sewage surcharging into a neighbour's property;
- there are a multiple hazards creating a more serious situation or there is an overall lack of repair or maintenance of a property resulting in it being run down.
- there is a hazard which presents risk serious of injury to someone occupying or visiting the property.
- a person refuses to or is likely not to carry out the works informally;
- there is history of failure to meet requests to carry out legally required works;
- there is history of a failure to manage a property in line with legal requirements;
- there is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management);
- it is necessary to safeguard and protect health and safety in the future;
- it is necessary to bring an empty property back into use when informal requests to do so have failed.
- A letting or managing agent has failed to meet legal requirements for instance but not exclusively in relation to requirements to be members of an appropriate redress scheme.
- Failure to have a current Energy Performance Certificate.
- there is evidence of a retaliatory eviction.
- under the 2016 Act;
 - an individual is subject to a Banning Order
 - on the database of rogue landlord and agents

The above is not intended to be an exhaustive list. Each case will be considered on its individual merits.

When an officer decides it is more appropriate to take formal action first without giving an opportunity to resolve the issue informally, we would expect that the officer explains to the person concerned why formal action is being taken.

There are a number of options for formal action. The decision as to which is the most appropriate will depend on the circumstances of the case, the relevant legislation, the risk to health and safety and tests relevant to each option. The options include:

- service of formal notice or order;
- emergency action;
- a penalty charge notice;
- simple cautions;
- civil penalty notice;
- prosecution;
- work in default of the person served with notice;
- revocation or refusal of a licence.
- management order
- banning order
- rent repayment order
- warrant to enter
- requiring the production of information, documents or other materials.

11.3.1 Service of formal notices or orders

Notices and orders will be served in accordance with the requirements of the relevant legislation. The person on whom the notice or order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any charges (see below) and the consequences of non-compliance. Contact details will be provided so that the detail and requirements of the notice can be explained.

11.3.2 Emergency Action

In emergency situations where it is not possible to contact the relevant person and gain their co-operation, enforcement action may be taken immediately without notice, for example:

- where there is an imminent risk of serious harm to the health or safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004);
- where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of The Local Government (Miscellaneous Provisions) Act 1982.

11.3.3 Civil Penalty Charges

Certain legislation enables the Council to serve a Penalty Charge Notice or Monetary Penalty Notice. Failure to pay a civil penalty may result in the Council bringing prosecution proceedings or in the recovery of the charge as a debt through courts action. Private Housing is responsible for enforcing the following requirements which can be subject to a civil penalty:

- Failure to comply with a notice requiring the provision of a smoke or carbon monoxide detector (£5000 maximum).
- Failure to have a valid Energy Performance Certificate (EPC) for a rented property. (£200 maximum).
- From 1st April 2018, failure to comply with [new energy efficiency requirements](#) for rented properties. (£5000 maximum).
- Failure to display details of the Government approved redress scheme that businesses are a member of. (£5000 maximum).

- Failure to display [fees that apply to landlords agents and tenants](#). (£5000 maximum).
- Failure to be a member of a Government approved [residential lettings or management redress scheme](#) when required to do so. [Government guidance](#) states that the expectation is that for this contravention, a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the Council is satisfied that there are extenuating circumstances. It will be up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a penalty.

The Council may issue more specific guidance in relation to these contraventions which will be made available on our website. Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served. See also civil penalties in the section below.

11.3.4 Simple Caution

Simple Cautions may be appropriate where someone has admitted to an offence, or where it is their first offence of this type or they have assisted officers in remedying the situation that led to the offence. For example applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple Cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences.

11.3.5 Prosecution

Recommending a case for prosecution is a serious step. Officers will carry out an investigation into any suspected offences to collect evidence, to establish if a statutory defence is available and reasons why the case may or may not be in the public interest to pursue further. A checks and balance assessment is carried out before making a recommendation to refer a case to the Council's Legal Service. Legal Services will consider whether the case has been investigated sufficiently to ensure we have met our legal requirements including; the evidential and public interest tests set out in the [Code for Crown Prosecutors](#). The decision to start prosecution proceedings in court is taken by the Service Director for Legal Services.

Regard shall also be had to equalities issues, compliance with the relevant Regulatory Code and Enforcement Policies. Where confiscation is appropriate, proceedings will be instigated under the Proceeds of Crime Act 2002.

11.3.6 Civil Penalty Notices in the 2016 Act

The 2016 Act gives the council the power to issue Civil Penalty notices of up to £30,000 as an alternative to prosecution, where there is evidence beyond reasonable doubt of certain offences i.e. failure to:

- comply with an improvement notice;
- license a property which requires a licence;
- comply with licence conditions or occupancy requirements
- comply with an overcrowding notice;

- comply with HMO management regulations requirements.

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will be made on a case-by-case basis in line with this policy and the other guidance referred to.

Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

The government have issued [statutory guidance](#) to councils on the use of Civil Penalty notices under the 2016 Act. The council has also published its own policy (*link to policy when published*) on how it will decide on the level of financial penalty which is in accordance with the government guidance.

11.3.7 Fines Recovery of Costs and Proceeds of Crime

The upper limit for fines in the magistrates court has been removed, this means if found guilty of an offence the court there is no maximum fine.

In some cases the Council can apply to court to recover rent from a landlord if a property has been let illegally.

Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at Court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved.

11.3.8 Publicising prosecutions

Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The Council will publicise sentences following prosecution on a case by case basis. Publicising guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders.

11.3.9 Work in Default

Where the Council has legally required someone to do works but they have failed to do so, powers are available to carry out works in their default. The powers are provided in the legislation being used in relation to specific case.

In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once we have started works it is an offence for that person to obstruct us or any of the contractors that have been employed to carry out the works.

The complete cost of the works and all costs will be recovered in accordance with the relevant statutory provisions.

It should be noted that carrying out works in default does not prevent prosecution which may also be appropriate.

11.3.10 Revocation of licences

Revoking a property licence under the Housing Act 2004 may be taken under the following circumstances:

- breach(es) of licence condition(s);
- where the licence holder and/or manager are no longer considered to be Fit and Proper person(s).
- by agreement.
- where there is a banning order on the licence holder.

11.3.11 Rent Repayment Orders

Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:

- Violence for securing entry
- Illegal eviction or harassment of occupiers
- Failure to comply with an improvement notice or prohibition order
- Failure to license a property which requires a licence
- For breach of a banning order

Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

When deciding whether or not to apply for an RRO the Council's policy is to:

- Treat each case on its own merits
- Ensure that applying for an RRO would meet the enforcement objectives in this policy
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application
- Whether it is more appropriate for the tenant to apply for the order themselves.

The council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled [Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities](#).

11.3.12 Charging for Enforcement Action

The Housing Act 2004 allows councils to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other

legislation also allows us to recover costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.

The Private Housing Service is likely to seek to recover all costs and fees when formal action is taken when we think it is reasonable to expect the owner or person required to carry out works, to pay them in the circumstances. The full costs of all officers' time, including overheads and any relevant expenses, will be charged. In some cases we may force the sale of a property to recover our cost. We will only do so if we have the power to and it is reasonable and proportionate to do so in the circumstances of that case.

11.4 Enforcement - general

Any officer carrying out enforcement work will be authorised to do so by the Council. Each authorised officer in the Private Housing Service should carry both an identity card and, when necessary, a warrant card. The warrant card also shows a photograph of the officer, their name and job title, and lists the legislation under which the officer is authorised.

We will use all available powers to meet the enforcement objectives within this policy. These include powers of entry, the ability to require the production of documents under the Housing Act 2004, the power to require information about a person's identity, or interest in land and the power to require certificates regarding gas and electrical safety in Houses in Multiple Occupation. We will have regard to any relevant Government guidance as part of our enforcement activity.

When carrying out enforcement we will have regard to other legal requirements that might apply to our actions; for example, the Data Protection Act 1998, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984.

12 Protocols

Several protocols have been established to help clarify how the Private Housing Service will work with other partner organisations or services in relation to private Housing. These protocols may be added to and or amended.

12.1 Fire Safety Enforcement Protocol with Avon Fire and Rescue Service

The Fire Safety protocol sets out how both the Council and Avon Fire and Rescue Service will take enforcement action in relation to fire safety in properties where there is an overlap between each organisation's duties and powers.

12.2 West of England Enforcement Protocol with Bristol Partnership Registered Providers of Social Housing (Housing Associations)

The WoE local authorities and the Registered Providers of Social Housing (RPs) who are in the Bristol Partnership have signed up to this protocol. The protocol sets out how each partner will work with each other in relation to complaints about housing standards in RP properties and if necessary how the Council will take enforcement action in relation to a complaint about an RP.

12.3 Noise Protocol

The Housing Health and Safety Rating System under the Housing Act 2004 covers hazards from noise and in some circumstances where properties have untypically poor noise insulation can be required to improve sound insulation in a property.

The Pollution Control Teams and Private Housing have agreed a Noise protocol between the two services for dealing with complaints about noise.

13 Consultation and Partners

We work with a wide range of partners and stakeholders such as private sector landlords and agents, residents, businesses, other Council teams, agencies such as Fire and Rescue Services and the Police and neighbouring local authorities.

We value the partners we work with and will engage with them in relation to enforcement activity and procedures where the subject area is relevant and appropriate to them.

This policy has been widely consulted. A list of people or organisations consulted in relation to this policy is provided in Appendix 1.

14 Equalities Impact Assessment

Appendix 2 refers to the Equalities Impact Assessment for this policy.

15 Appeals and Complaints Procedure

This policy and the guidance and other policies referred to in it will be relevant documents to consider when reviewing complaints in relation to our enforcement activity. It is important to stress that they are not the definitive list of guidance available and there may be more relevant or up to date guidance that should be considered in relation to any complaint.

We will inform all persons who are the subject of formal enforcement activity of their right of appeal; this will vary dependent on the particular legislation being used.

The Council's [complaints process](#) is available for complaints relating to the application of this policy where there is not an appeal procedure otherwise available. If you want to appeal against a formal notice or order you should use the statutory appeal rights open to you.

16 Approval of this policy

The Strategic Director of Neighbourhoods approved the revisions to this policy on to be inserted after consultation February 2017 under the powers delegated to her in the Council's constitution.

17 Enquiries

Any enquires about this policy can be made by:

Email: private.housing@bristol.gov.uk

Telephone: 0117 35 25010

Fax: 0117 377 2533

Letter: Private Housing and Accessible Homes Service, Bristol City Council (100TS)

PO Box 3176 Bristol BS3 9FS

18 Appendix 1 List of consultees to 2017 revisions

Acorn
Association of Local Landlords (Wessex) Ltd
Association of Residential Letting Agents
Bristol Association of Lettings and Managing Agents
Bristol Student Union Lettings
Bristol Mediation Services
Considerate/ National Accreditation Scheme
Chartered Institute of Environmental Health
Citizens Advice Bureaux
National Landlord Association
National Approved Letting Scheme
Residential Landlord Association
Royal Institutions of Chartered Surveyors
SARI
Shelter
South West Landlord Association
West Country Landlords Association
Local Government Association
Unseen

Local Authorities :

Bath and North East Somerset
North Somerset
Leeds
Oxford
Wolverhampton
South Gloucestershire

19 Appendix 2 Equalities Impact Assessment

An Equalities Impact Assessment was not required as it was agreed that the proposal does not have the potential to impact on people with protected characteristics in the following ways:

- access to or participation in a service,
- levels of representation in our workforce, or
- reducing quality of life (i.e. health, education, standard of living)

20 Appendix 3 Legislation subject to Primary Authority requirements.

This is a list of the legislation Private Housing may enforce which the Primary Authority requirement under the Regulatory Enforcement and Sanctions Act 2008 can be applied. This list was up to date as of 1st October 2013.

Anti-social Behaviour Act 2003 (c. 38)
Caravan Sites and Control of Development Act 1960 (c. 2)

Clean Neighbourhoods and Environment Act 2005 (c. 16), Parts 2, 6 and 7
Criminal Justice and Police Act 2001 (c. 16), Part 1
Criminal Justice and Public Order Act 1994 (c. 33), Parts 5, 7 and 12
Defective Premises Act 1972 (c. 35)
Environmental Protection Act 1990 (c. 43)
Health Act 2006 (c. 28), Part 1
Housing Act 1985 (c. 68), Parts 8, 9 and 10
Housing Act 1996 (c. 52), Part 8
Housing Act 2004 (c. 34), Parts 1 to 4
Litter Act 1983 (c. 35)
Local Government Act 1972 (c. 70), Parts 9 and 11
Local Government Act 1985 (c. 51), Part 2
Local Government Act 1988 (c. 9), Part 4
Local Government Act 2000 (c. 22), Part 1
Local Government (Miscellaneous Provisions) Act 1976 (c. 57)
Local Government (Miscellaneous Provisions) Act 1982 (c. 30)
Noise and Statutory Nuisance Act 1993 (c. 40)
Prevention of Damage by Pests Act 1949 (c. 55)
Public Health Act 1936 (c. 49)
Public Health Act 1961 (c. 64)
Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541)