



Housing Enforcement and Compliance Policy & Guidance

Housing Enforcement and Compliance Policy & Guidance

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Section 1

Introduction

The aim of the Safer Housing and Housing Licensing and Compliance teams is to ensure that citizens of Nottingham live in premises that provide a safe and healthy environment for any potential occupier and their visitors. We do this through effective and consistent education and enforcement interventions that will achieve measurable improvements to housing standards and management.

Although our work is primarily focused on the private rented sector there are circumstances where we would deal with complaints relating to owner occupied and housing association properties.

The private rented sector plays an important role in the Nottingham housing market, helping to create a vibrant and diverse City. Nottingham City Council ('the Council') seeks to work closely, and engage positively, with the people involved in providing housing to a growing population. This includes:

- owners;
- landlords;
- licence holders;
- managers;
- other partners;
- tenants.

We expect landlords to comply with the law and proactively manage their properties to ensure that the health and welfare of tenants is protected. Where individuals or companies are failing in their responsibilities and duties, the Council will take enforcement action. This document provides a guide to what landlords and other partners can expect when dealing with the Council's 'Safer Housing' and 'Housing Licensing & Compliance' teams.

The Council will provide advice and guidance to assist landlords in complying with their legal requirements to keep citizens safe and healthy. The Council will seek to help with opportunities for landlords to develop their knowledge and understanding, which should reduce the risk of enforcement action being taken. The Council will provide this support through its website, by promoting accreditation, looking for opportunities to train landlords and will develop further landlord engagement opportunities.

When considering taking enforcement action under the Housing Act 2004 and housing related legislation the Council shall have regard to its own enforcement policy 'Nottingham City Council Enforcement Policy 2015' available at:

<http://beta.nottinghamCity.gov.uk/business-information-and-support/better-business-regulation/>

The Council's enforcement policy has been developed in line with the principles of the Regulators Code, published by the Department for Business Innovation and Skills, 2014, available at:

<https://www.gov.uk/government/publications/regulators-code>

The overall aim of enforcement action is to protect safety and health and improve housing standards by:

- changing the behaviour of landlords that do not comply with the law and seeking legal recourse of those who disregard or flout the law;
- eliminating any financial gain or benefits from non-compliance; and
- providing transparent and consistent regulation within the private market.

In choosing which enforcement action to take the Council will aim to seek legal compliance, encourage positive behaviour and resolve the problem which is a cause of potential harm to citizens and deter future non-compliance. Furthermore; the enforcement action chosen will be proportionate to the nature of the non-compliance and harm caused.

Decisions about whether enforcement action will be taken, and the type of action to be taken, will be made by the appropriate officers of the Council and will not be influenced by third parties, either outside the Council or within its employment.

Officers employed are competent experienced and will make decisions on a case by case basis using their professional judgment, skills and knowledge to make decisions having regards to this guidance but also the circumstances of each case.

This document contains both policy and guidance. Where a section states that it is policy, it should be read as such. Where a section does not state that it is policy, it should be read as guidance.

Section 2

Summary of enforcement policy

The 'Safer Housing' and 'Housing Licensing and Compliance' teams operate within Community Protection, a joint Council Police department. Community Protection operates a 5 stage model of enforcement (shown below) which recognises that the majority of issues the Council deals with can be resolved through advice and warnings. As the degree and level of enforcement activity increases, the number of cases reduces.



Where, for example, issues present an immediate risk to health or there is a history of non-compliance, we reserve the option to move directly to the higher stages of the enforcement model.

We deal with a range of activity under the Housing Act 2004 and associated legislation, including the licensing of properties within the housing market: the key areas of licensing activity are set out below. This is not a definitive list but it gives an overview of how the Council will seek to work with landlords. The Council will seek to ensure it recovers appropriate costs from those landlords who are not being proactive in managing their properties or are letting unsafe houses.

For example the Council may charge for any follow up inspections required where landlords fail to comply with their licence conditions or where the Council has to take other enforcement action.

This policy deals with the practical application of enforcement procedures that will be used to achieve compliance with housing and environmental standards. The range of legislation enforced by Environmental Health and Safer Housing can be found in Appendix 1.

How will the Council carry out investigations?

The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all. We will target our proactive and reactive inspections and compliance work on those premises, nuisances and other public health issues through an intelligence led risk based approach.

The three key principles we will apply to our enforcement activity are;

- Consistency
- Proportionality
- Openness

Consistency: this means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will use their professional curiosity to take into account many factors such as the level of risk, culpability, any history of non-compliance and the attitude and actions of those involved. However, whilst enforcement decisions will be individually tailored to the circumstances in making these decisions officers will be guided by current procedures and best practice.

Proportionality: this means that enforcement action taken will be proportional to the risks and the severity of the breach of the law involved. This will ensure that the most serious risks are targeted first. Where there is a history of multiple low / medium risk issues affecting citizens and / or neighbourhoods these may also be prioritised.

Openness: this means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements and advice or guidance. We will endeavour to provide general information, advice and guidance to make it easier for landlords to understand and meet their regulatory obligations. Such information will be provided via the Council's website.

Where appropriate, landlords will be consulted on the works required to remove health and safety hazards and a reasonable time will be given to complete the works depending on the risk. However, where this is not achieved and a formal notice is served these time periods will be contained within the notice. We will also take action to deal with, pest infestations, accumulations of rubbish, ASB and crime relating to poor tenancy management where it is appropriate to do so.

Serious hazards, nuisances and other public health matters which are not dealt with by the responsible person will result in a statutory notice or other enforcement action. Service of a notice will incur a cost to the recipient where legislation allows.

Working in partnership

The service supports the delivery of a safer city. It works in partnership and will share data with organisations in accordance with data protection legislation for the purpose of the protection of safety, prevention and detection of crime and ASB, problem solving and preventing harm to health. Where it is appropriate and the right thing to do the service shall share and receive information from organisations including, but not limited to:

- Police
- Social care
- Health service
- HMRC
- Revenue benefits
- Universities and student unions
- Fire Service

Regard will always be had to the requirements of the Data Protection legislation; appendix 2 gives details of the Data Protection Statement currently in place.

Safeguarding

Where the Council is carrying out its compliance and enforcement work and we become aware of issues relating to the safeguarding of children and vulnerable adults we have a duty to make the appropriate referrals to ensure the welfare of those persons at risk are protected.

The Council policy on safeguarding can be found at:

<http://www.nottinghamcity.gov.uk/business-information-and-support/business-and-trading-licences-and-permits/safeguarding-children-and-protecting-vulnerable-people/>

A similar approach will be taken will be taken with other statutory responsibilities of the council such as prevent or crime and disorder.

What types of enforcement action will the Council use?

In ensuring that the main objective of enforcement action is achieved, the Council will consider all appropriate enforcement actions available to it. Appropriate enforcement action that can be taken includes but is not limited to:

- Written warnings;
- Statutory notices or orders under part 1 of the Housing Act 2004 and other relevant legislation;
- Works in default;
- Revoking or varying licences;
- Rent repayment orders;
- Simple cautions;
- Civil penalty notice;
- Criminal proceedings (e.g. prosecution);
- Interim or final management orders;
- Banning Orders.

One or more of the above actions may be taken simultaneously depending on the circumstances of the case.

Notice of entry

Where a complaint of housing disrepair is received and an inspection is required, a notice of entry is required to be served under section 239 of the Housing Act 2004. This informs all relevant interested parties of the Council intended inspection

If the complaint is of an urgent nature and the Council intend to use its emergency powers this will negate the need for the service of a section 239 notice.

Where the Council are unable to gain access using a notice of entry or such notice would defeat the object of entry the Council are able to make application to the Magistrates Court for a warrant to enter.

It may also be necessary for notice of entry to be served under other associated legislation and these pieces of legislation also provide for an application to magistrates court for a warrant of entry.

Statutory notices or orders under part 1 of the Housing Act 2004

The Council must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the provisions Part 1 of the Housing Act 2004. When Council officers inspect a dwelling they will look for any risk of harm to an actual or potential occupier of a dwelling, which results from any deficiency that can give rise to a hazard. Officers will use the formal scoring system within Housing Health and Safety Rating System (HHSRS) to demonstrate the seriousness of hazards that can cause harm in dwellings.

Where the rating shows that the hazard falls within Category 1, the Council is under a duty to take appropriate enforcement action. Where the rating shows the hazard falls within Category 2, whilst the Council is not under a duty to take action it may still

do so where it is deemed necessary and proportionate to the hazard. The forms of appropriate enforcement action that can be taken as follows:

For Category 1 Hazards Only:

- Emergency remedial action under (Housing Act 2004, Section 40)
- Emergency prohibition order (Housing Act 2004, Section 43)

For Category 1 or Category 2 Hazards:

- Improvement notice (Housing Act 2004, Section 11 & Section 12)
- Prohibition order (Housing Act 2004, Section 20 & Section 21)
- Hazard awareness notice (Housing Act 2004, Section 28 & Section 29)
- Demolition order (Housing Act 1985, Section 265(1) & Section 265(2))
- Declaring the area in which the premises concerned are situated to be a clearance area (Housing Act 1985, Section 289(2))

Statutory notices served under other associated legislation

Although housing issues will primarily be dealt with under the Housing Act 2004 as detailed above there may be circumstances that other legislation is more appropriate.

A few examples are detailed below:

- Environmental Protection Act 1990: we will use this where a property defect is considered prejudicial to health or causing a nuisance
- Building Act 1984: we will use this to tackle drainage issues and dangerous buildings or building elements
- Public Health Acts 1936 and 1961: we will use this to tackle drainage issues and filthy and verminous premises
- Prevention of Damage by Pests Act 1949: we will use this to require works necessary where there is a potential for an infestation
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015: we will use this where there is a lack of smoke alarm or where there is no carbon monoxide detector in a room with a solid fuel burning appliance.
- Community Protection Notices: we will use these where ASB is associated with the property.

The main list of other legislation the Council may use is detailed in Appendix 1.

Works in Default

Where landlords fail to comply with a notice which requires works to be completed, the Council may carry out those works instead; these are known as 'works in default'. Details of charges related to this can be found on page 14. These charges are currently under review.

Revoking / Varying a Licence

Where a property is licenced under Part 2 or Part 3 of the Housing Act 2004, the Council has the power to revoke or vary the licence.

Licences can be revoked where any term of the licence has been breached or where other offences have been committed which mean that the persons involved are no longer fit and proper persons for the purposes of housing licensing.

Licence can also be revoked by the agreement of the licence holder for example where the property is sold or where the licence holder wishes to relinquish the licence.

Licences can be varied where there has been a change of circumstances at the property and this includes the discovery of breaches or offences committed by persons involved with the licence or management of the property.

Where a licence holder is made the subject of a Banning Order under Section 16 of the Housing and Planning Act 2016, the Council is under a duty to revoke any licences they hold. This part of the Housing and Planning Act is not yet in force.

Civil Penalties

The following section on civil penalties is policy and was written in accordance with Section 3.3 of the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance"), published by the Department for Communities and Local Government.

The power to impose civil penalties as an alternative to prosecution, for specific offences under the Housing Act 2004, was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. The offences for which a civil penalty can be imposed are as follows:

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

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. Prosecution may be the most appropriate option where an offender has committed similar offences in the past. However that does not mean that the council will not use civil penalties in cases where serious offences have been committed.

A Civil penalty can be imposed for up to £30,000 per offence and each individual breach of the management regulations (section 234) is treated as a separate offence. The exact amount of any civil penalty will be calculated in accordance with the Council's 'Civil Penalties Enforcement Guidance' document.

The council will consider its enforcement options on a case by case basis and may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution is the most appropriate and effective sanction.

Where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the serious offence/s but that it is not considered in the public interest to seek to remove the landlord from the market by way of a banning order, the Council will consider imposing a civil penalty as an alternative to prosecution.

Prior to imposing a civil penalty, the Council will serve a notice of intent and this will give the recipient an opportunity to make representations against the proposed civil penalty.

Rent Repayment Orders

Where housing benefit has been paid to a landlord and the Council is satisfied that the landlord has committed one or more specific offences, the Council can apply for a Rent Repayment Order. Where the landlord is convicted of one of the relevant offences, the Council is under a duty to consider applying for a Rent Repayment Order. The specific offences for which an order can be sought are as follows:

- Failure to comply with an Improvement Notice (Housing Act 2004, Section 30)
- Failure to comply with a Prohibition Order (Housing Act 2004, Section 32)
- Offences in relation to licensing of HMO's (Housing Act 2004, Section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (Housing Act 2004, Section 95)
- Breach of a Banning Order (Housing and Planning Act 2016, Section 21)
- Using violence to secure entry to a property (Criminal Law Act 1977, Section 6)
- Illegal eviction or harassment of the occupiers (Protection from Eviction Act 1977, Section 1)

The Council will usually apply for the full amount that can be recovered and lesser amounts will only be sought in exceptional circumstances.

Any applications for Rent Repayment Orders will be made in accordance with the Council's 'Rent Repayment Orders Guidance' document; available on our website.

Simple Cautions

A simple caution may be offered as an alternative to prosecution where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the offence/s and that the public interest would be satisfied by offering a simple caution in respect of the breaches of licence conditions rather than prosecute.

A simple caution must not be offered to a person who has not made a clear and reliable admission to committing the offence/s. Before the simple caution is administered officers shall ensure the Landlord has made an admission of guilt, understands the implications of accepting a simple caution and consents to accept it.

Prosecutions

Prosecution will be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction and where a prosecution is required in the public interest. When deciding whether to prosecute the Council has regard to its Enforcement Policy and the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Interim or Final Management Orders

The Council is under a duty to apply for an interim management order where a property requires a licence, or will after the current one is revoked, but there is no reasonable prospect of it becoming licenced or there are significant health and safety concerns at the property. An interim management order can be made for up to 12 months.

Where an interim management order is coming to an end and the criteria for applying for the order still apply, the Council can apply for a final management order, which can be made for up to 5 years.

Whilst a management order is in place, the Council, or an agent appointed by the Council, will be responsible for managing the property and carrying out any works that are required. The Council will receive the rental income and deduct any relevant expenditure from this amount before transferring the excess, if any remains, to the landlord.

Banning Orders

Where a landlord has been successfully prosecuted for a banning order offence, the Council can apply to the First-Tier Tribunal (Property Chamber) for a banning order against the landlord. A banning order will last for at least 12 months and means that the subject of the order cannot:

- Let housing in England;
- Engage in English letting agency work;
- Engage in English property management work;
- Hold a license under Part 2 or Part 3 of the Housing Act 2004.

“Banning order offence” refers to an offence of a description specified in regulations made by the Secretary of State.

Other powers available to the Council

It is also recognised that there may be circumstances where shared or complimentary enforcement action may be taken. This may include, but is not limited to:

- Harassment and illegal / retaliatory eviction
- Redress scheme
- Fraud
- Tenancy law
- Anti-social behaviour
- Proceeds of crime
- Planning breaches

How will the Council choose which type of enforcement action to take?

In accordance with the ‘5 Stage Model’, the Council will normally try to address offences or hazards by first ‘asking’ the landlord to comply with their duties and responsibilities and ‘warning’ them about the consequences of failing to comply. This would usually be done by a formal warning letter laying out legal requirements in a schedule of works. This would allow a responsible landlord to work with the Council to resolve any issues.

Initial Enforcement

The Council will use initial enforcement where ‘ask and warn’ has failed or there is a history of none compliance can choose instead to move straight to ‘initial enforcement’ where there is an imminent risk to the health, safety and welfare of the tenants or where the council believes something is prejudicial to health or dangerous. This may take account of:

- Number and nature of hazards
- Nature of management regulation breaches
- Nature of licensing contraventions
- Presence of imminent risk

- Are works to remove or reduce works practical
- Are costs to remove or reduce the hazards reasonable
- Compliance history
- Views of all parties (landlord, managing agent, tenant and any other relevant agencies)
- Impact on neighbourhood
- Impact of homelessness where necessary

The council **may** move straight to enforcement in certain circumstances, those being:

- Two investigations/complaints which result in an inspection and warning letter
- One investigations/complaints which result in formal enforcement action
- One substantiated complaint to the department of illegal eviction
- Three complaints where notice to quit is served on the tenants after our involvement
- Additionally, in other circumstances that we deem appropriate and individually justified.

Where one of the above criteria are met, the council will no longer approach that landlords properties by making an attempt to resolve the matter using ask and warn, and following the inspection of the property, where works are identified, the council will move straight to initial enforcement action under the appropriate legislation.

Substantive Enforcement

Where a landlord has failed to comply with their legal duties and responsibilities, after initial enforcement action has been taken or where the circumstances warrant it the Council will consider the most appropriate type of action from those listed on page 7. Circumstances that may warrant 'substantive enforcement' action may include:

- the landlord has not complied with initial enforcement;
- has a history of failing to comply with their legal duties and responsibilities;
- there are imminent risks to health and safety in relation to the property, or;
- the offence or hazard is deemed serious enough to warrant a substantive action as a first response.

The Council may take into consideration aggravating factors, but is not limited to, the following when determining which course of substantive action to take:

- the seriousness of the failing;
- the culpability of the offender;
- the harm caused or risked being caused by the failing;
- the vulnerability and number of victims;
- the number of properties;
- the length of time the offender has been a landlord;

- the tenants behaviour;
- the landlord's willingness to engage and rectify the issue;
- the landlord's previous history of compliance or non-compliance;
- our confidence in management of the property;
- whether there was any financial gain as a result of the non-compliance.

Breach

Where an offence is serious enough or where the landlord has a history of non-compliance, or has failed to respond to initial and/or substantive enforcement action the Council may determine that there is a public interest to take the highest level of enforcement action available which can include; civil penalties, prosecution, simple caution, banning orders (when they come into force) and interim/final management orders. It is expected that the use of these powers may remove some of the worst landlords from Nottingham's private rented sector.

To reduce the likelihood of retaliatory eviction, initial enforcement action will continue until the property is brought up to a satisfactory condition, whether or not the original tenant remains in the property.

Charging for enforcement activity

There will be a charge for Notices served and Orders made under Part 1 of the Housing Act 2004, The Council will normally charge £350 if a notice or order is served/made under Part 1. A charging notice will be served on the responsible party; this is served under section 49 of the Housing Act 2004.

If there is an appeal against the notice then the charge will not be applied until the appeal is resolved and subject to the notice being confirmed by the tribunal.

There is no right of appeal against a charging notice; only to the notice or order to which the charge relates.

Where works in default are carried out, an administrative charge of either 25% of works cost or £25, whichever is the greater amount, will be added to the total amount to be recovered.

These charging system are currently under review and may change in the future.

Land Charges

Certain legal notices served will be registered as a part 1 land charge which will not be removed from the register until it is complied with.

Where works are completed by the Council (as emergency or in default) or a charge is made for the service of notice these notices will be registered as a part 2 land charge, which will not be removed from the register until payment is received. Land charges will show up on a general land search (for example when searches are made by a purchaser's solicitor if a property is being sold).

Service/Enforcement Charges

The Council offers the following chargeable services:

CCTV survey of drains: The cost of a drain survey is £170 for up to 2 hours on site (£60 per additional hour) and additional £20 materials if a smoke test is carried out. A DVD of the accessible sections of the drainage system is supplied. To minimise costs we do not provide detailed written reports but we will provide details of any significant defects found.

Energy Performance Certificates: The cost of an energy performance certificate is £50. Where we have had to carry out an EPC as part of an expert investigation this may be an additional charge to the standard enforcement action charge.

Where a citizen requires the overcrowding inspection because they need it for immigration or UK Visa purposes then an inspection will be completed to determine if the property is suitable for the total number of potential occupants. This is a chargeable service which currently stands at £110. A report will be provided detailing the results of the inspection.

Housing disrepair procedure

When the council receives general housing complaints and referrals from other agencies the information received about the property will be used to determine the level of risk posed to the occupant and cases will then be categorised on a risk based assessment. Citizens can expect a call within two working days so this information can be gathered.

In designating categories, Consideration will be given to the amount of disrepair, the ownership of the property (history of non-compliance), the occupation of the property (presence of vulnerable persons) and any other relevant factors that may highlight additional risk.

Low risk cases

A standard 'low risk' advice letter will be sent to the tenants and landlord within 10 working days. This letter will advise citizens that the council will be dealing with their case in writing.

The sort of cases that will be designated low risk are those where:

- there is little or no health risk posed to the occupants
- there are no vulnerable occupants present
- we would be unlikely to be able to take enforcement action
- both parties are likely to be able to resolve informally

Examples of cases that might be classed as low risk are where the occupants are outside of vulnerable ages and where there are no health problems or disabilities.

Examples of disrepair that would be classified as low risk would include low level mould due to condensation or complaints that the kitchen or bathroom facilities are outdated rather than insufficient.

Complaints against responsible RSL's will be referred back to them as they would be expected to have their own effective procedures for dealing with disrepair.

In these cases the tenants will be offered advice generally involving how to write to their landlord detailing their complaint. Standard letters templates may be provided as required.

An advice leaflet on how to tackle condensation may be provided. A letter will be sent to the landlord advising them that the council has received a complaint, it will remind them about their legal responsibilities, and asking them to inspect their property and carry out any necessary repairs.

Citizen will receive a call back after 3 months to establish if problems are resolved. Where a low risk situation deteriorates it will be re-assessed and if it is determined that it has got worse then it may be re-designated as medium risk.

Medium risk cases

A standard 'medium risk' advice letter will be sent to tenants and the landlord within 10 working days. This letter will advise citizens that the council will be dealing with their case in writing.

The sort of cases that will be designated medium risk are those where:

- there is not an unreasonable level of health risk posed to the occupants
- there are no vulnerable occupants present
- the council would be likely to follow an 'advise and warn' route initially

Examples of cases that might be classed as medium risk are cases where the occupants are outside of vulnerable ages and where there are no health problems or disabilities.

Examples of disrepair that would be classified as medium risk would include water leaks, wear and tear to carpets/flooring in low risk locations, intermittent heating in summer, missing CO detectors.

Complaints against responsible RSL's will be referred back to them as they would be expected to have their own effective procedures for dealing with disrepair.

The tenants will be offered advice, on how to write to their landlord detailing their complaint a standard letters template may be provided if required.

The council may offer advice on other organisations that may be able to offer them support; for example signposting to UNIPOL or Nottingham Law Centre, along with websites such as Shelter that will detail their rights as tenants.

The letter sent to the landlord will set out their legal responsibilities, urging them to carry out the repairs, and advising them of our intent to follow the matter up in 3 months.

These complaints will receive a follow up after 3 months. Cases that are completely unresolved with no action will be elevated to high risk at this point. Cases where repairs are underway will be marked for follow up in another 3 months. Where a medium risk situation deteriorates it will be re-assessed and if it is determined that it has got worse than it may be re-designated as high risk.

High risk cases

High risk case will be sent a notice of entry under section 239 with a covering letter to the tenant and landlord within 10 working days. These properties will be inspected and rated under Housing Health and Safety Rating System.

The sort of cases that will be designated high risk are those where:

- there is a high level of health risk posed to the occupants
- there are vulnerable occupants present
- there are multiple deficiencies in multiple locations
- there is prior history of non-compliance with the landlord

Examples of cases that might be designated as high risk are cases where the occupants are of vulnerable ages and where there are health problems or disabilities.

Examples of disrepair that would be classified as high risk would include intermittent heating in winter, no heating in summer, disrepair to door or ground floor windows, lack of basic kitchen or bathroom facilities, major trip hazards, missing stair

handrails, no/defective smoke detection in a family house, unstable structures and service cut off.

Urgent risk cases

Urgent risk cases will aim to be contacted and inspected within 24 hours. The sort of cases that will be designated high risk are those where:

- there is an imminent risk posed to the occupants

Examples of disrepair that would be classified as posing an imminent risk would include no heating in winter, no hot water, disrepair to a final exit door that means property can't be secured, no kitchen, sewage leak, collapsed flooring, dangerous electrics no/defective fire detection in an HMO or risk of structural collapse.

Any properties that are licenced under part 2 or part 3 of the Housing Act 2004 will be assessed for compliance of the licence conditions and HMO Management Regulations if applicable.

Tenure

Owner Occupied Properties

There may be occasions where it is brought to the attention of the department that there is an owner occupied property in disrepair. We have a duty under the Housing Act 2004 to review housing conditions and inspect residential premises where we have been made aware of the potential for category 1 or 2 hazards exist. In these circumstances we would always seek to work with the owner occupier to reach a mutually agreeable outcome.

Nottingham City Homes

Nottingham City Homes is an arm's length management organisation responsible for managing Nottingham City Councils housing stock. They are considered to be a responsible social landlord with their own procedures and facilities for dealing with complaints about housing disrepair.

Additionally, the Council has no powers of enforcement to take action on properties managed by Nottingham City Homes as this would class as the Council taking action on itself. For these reasons the Safer Housing team do not deal with complaints in relation to Nottingham City Homes properties. Tenants of these properties are advised to follow Nottingham City Homes' formal complaints procedure.

Housing Associations / Registered Social Landlords

The council will seek to deal with registered social landlords (RSLs) in a proportionate manner initially classing complaints against RSLs as low risk.

However, where there are vulnerable occupants or history of compliance has indicated that the RSL is not taking a responsible approach to complaints then we will inspect and take enforcement action in line with the 5 stage model of enforcement.

Other aspects of Safer Housing work

Hoarding

Hoarding situations may be brought to our attention in both the private rented and owner occupied sector. The Council's priority would always be to protect the interests of any vulnerable occupants and work with them engaging other agencies where appropriate to avoid the need for enforcement action. However, there may be circumstances where nuisance is being caused to neighbouring properties and we are under duty to take enforcement action.

Drainage

The Council will serve notices under relevant legislation requiring CCTV surveys to be carried out of drains relating to both owner occupied and private rented properties where necessary. This may be in relation to pest control referrals as well as drain disrepair issues. The Council can carry out the CCTV surveys, either in default of the notice or by agreement with the owner. Where no faults are found there will be no charge for the survey.

Nuisance

The council has a duty to investigate complaints of statutory nuisance. Where the complaint relates to domestic properties this duty will fall to Safer Housing. This may involve issues such as odours and/or water penetration between neighbouring properties where they are significant and persisting.

Overcrowding and Immigration

Where citizens believe their property is overcrowded then the Council will assess the property and the current occupation based on information provided to determine if it is statutorily overcrowded. Where this is found to be the case an inspection will be completed to confirm this.

Where a citizen requires the overcrowding inspection because they need it for immigration or UK Visa purposes then an inspection will be completed to determine if the property is suitable for the total number of potential occupants. This is a chargeable service which currently stands at £110. A report will be provided detailing the results of the inspection.

Caravan Parks

Caravan Parks/Mobile home sites/ Residential Park Home sites are required to be licensed and be periodically inspected by the Council. Where breaches of licence conditions are found enforcement action will be taken in line with the five stage model of enforcement.

Section 3

Housing licensing

The Council undertakes HMO licensing (mandatory licensing) under the Housing Act 2004 and will promote a consultation for any newly proposed discretionary licensing schemes within the City: this will include schemes such as 'Additional' and 'Selective' licensing.

Licence applications

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

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

An application will only be considered to be duly made once all the necessary sections have been properly completed and all the necessary information and documentation has been provided. Failing to submit a duly made application may lead to further investigations and potentially enforcement action for operating an unlicensed property.

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

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

Determining the licence

The Council will grant a licence where it is satisfied that the statutory requirements of the relevant Part of the Housing Act 2004 have been met. It is expected the majority of licences will be issued based on the application and supporting documents, so it is

important that this information is correct. The licence will usually be granted for the duration of the scheme.

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

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

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

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

Licence revoked	Previous licences revoked, within last 2 years, due to non-compliance with conditions or because one or more of the persons involved was no longer fit and proper.
Other significant issues	<p>Any other significant issue identified and evidenced that is of such concern that it would not be appropriate to issue a licence to a proposed licence holder (within legislative requirements). These people, companies etc. will be reviewed on a regular basis.</p> <p>It may include the following:</p> <ul style="list-style-type: none"> Not fit and proper (identified from another source) Evidence of associates not being fit and proper Person / company under investigation for contraventions under relevant legislation. Consistent / repetitive interventions by the Council or other partners. E.g. ASB / police intervention Planning permission not applied for Planning permission refused Evidence of insufficient funds to maintain property Managing Agent not part of a redress scheme Proposed licence holder based abroad and insufficient ability to manage the property Landlords / companies 'of interest' to be drawn from Planning, Building Control, Council Tax, Revenue and Benefits, Debtors, Trading Standards, Office of Fair Trading, other Councils, accreditation partners, Gangmaster and Labour Abuse Authority, Police, Fire and Rescue Service, Housing Aid, Law Centre and any other partners

During the term of the licence

It is expected that licence holders will ensure properties are well managed, safe and comply with all relevant conditions. The licence fee covers an inspection of a proportion of licensed properties to check on compliance during the scheme. The number checked will partly be dependent on the application content and the outcome of any initial inspection. If a licence holder has failed to comply with any conditions and further work is required, the Council may charge for a re-inspection.

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

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

Compliance enforcement scoring model

The Council intends to develop a risk based scoring system which encourages good management by helping to identify those landlords and properties with repeated lower-level problems. These typically include problems which on their own would not warrant enforcement action, or a change to a licence, but when considered cumulatively, have a negative impact on the tenant, neighbourhood or are associated with ASB.

The scoring system will be a tool for collecting evidence of poor management over a period of time and will be used to influence decisions about a person's suitability to hold a licence or manage a licensed property.

Querying a licence decision

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

- proposed licence conditions;
- a proposal to refuse to grant a licence;
- a proposal to revoke a licence, or;
- a proposal to vary a licence.

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

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

The relevant person(s) will need to provide evidence showing that they or their associates are fit and proper person(s). Guidance on fit and proper persons will be issued by the Council.

Proposed Refusal - The application is unsatisfactory

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

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

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

Proposed Refusal - Unsatisfactory management arrangements

The following factors may be considered:

- Is the property accredited to the Nottingham Standard or actively seeking such accreditation?
- Are the proposed licence holder or manager active members of a landlord organisation or in the process of becoming so?
- Have the proposed licence holder or manager completed relevant training or are they willing to attend such training?
- Have there been any further contraventions over period of the licence?
- Is there evidence of improved management at the property?
- Have certificates been provided promptly (within 7 days of request)?
- Have supporting documents been provided promptly (within 7 days of request)?
- Have the relevant Council arrangements been complied with (e.g. planning permission, the Article 4 Direction, HMO amenity guidance and Letting Board Policy)?
- Have the proposed licence holder and manager met all legal requirements and not just those under the Housing Act 2004 (e.g. redress scheme, deposit protection, EPC, right to rent)?
- Does the licence holder have detailed written policy plans for dealing with complaints, anti-social behaviour and repairs and maintenance?
- Does the licence holder or manager have written records of their past inspections, including notes of any issues found and the action taken to address them, and details of their planned inspection program?
- Has the licence holder or manager provided the tenants with the necessary information packs?

Unlicensed properties

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

Where the Council is required to do more than the normal amount of administrative work to secure an application a finder's fee of £150 will be applied to the total cost of the licence fee.

Media Publicity

Media coverage will normally be sought in the following cases:

- The offence is widespread in the area and coverage will assist in securing compliance by others;
- To draw attention to particular issue or set of hazards;
- The offence is serious and/or was committed wilfully and the Council wishes to draw attention to their willingness to take a hard line in such cases;
- Coverage is otherwise in the public interest;
- A press release will be issued about convictions where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors, as well as the wider environment.

Complaints

In the event that an individual or company is not satisfied with the service or does not agree with the action taken by the investigating officer, they should first contact the Principal Environmental Health Officer. A response to the complaint would be expected within 10 working days; if we are unable to respond within 10 working days we will respond and let you know when you can expect a response.

If this does not resolve the complaint the Council also has a formal complaints system, known as 'have you say', where you can make a comment, compliment or complaint. Visit www.nottinghamcity.gov.uk/haveyoursay for more details or use any of the following other methods:

- Textphone or minicom us on 18001, then 0115 915 5555;
- Telephone us on 0115 915 5555;
- Visit us at any Council reception point or office;
- Write to us at 'Have Your Say, Nottingham City Council, Loxley House, Station Street, Nottingham NG2 3NG'.

NB This does not have any bearing on any right of appeal that may exist in relation to the various legal enforcement actions taken by the Council.

This policy will be monitored and reviewed by a suitable management team. This guide will be reviewed regularly to take into consideration relevant changes to legislation or other guidance that may affect it.

Appendix 1 – List of legislation

Antisocial Behaviour Act 2003
Antisocial Behaviour, Crime and Policing Act 2014
Building Act 1984
Caravan Sites Act 1968
Caravan Sites and Control of Development Act 1960
Clean Neighbourhoods and Environment Act 2005
Crime Justice and Public Order Act 1994
Environmental Protection Act 1990
Housing Act 1957, 1985 and 1996
Housing Act 2004
Housing and Planning Act 2016
Housing (Grants, Construction and Regeneration) Act 1969
Local Government (Miscellaneous Provisions) Act 1976 and 1982
Nottinghamshire County Council Act 1985
Prevention of Damage by Pests Act 1949
Protection from Eviction Act 1977
Public Health Act 1936 and 1961
Smoke Alarm and Carbon Monoxide Alarm Regulations 2015
The Management of Houses in Multiple Occupation (England) Regulations 2006
The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
Town and Country Planning Act 1990 s215, 219, 224 and 225
The Enterprise and Regulatory Reform Act 2013, s83,84 and 85
The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc.) (England) Order 2014

This list is not exclusive but gives a list of the main pieces of legislation used.

Appendix 2 – Data Protection Statement

Environmental Health & Safer Housing - Data Protection Statement

Nottingham City Council (the Council) as the data controller takes its responsibilities seriously under the Data Protection Act 1998 to ensure that any personal data it collects and uses is done so fairly, lawfully, proportionately, correctly and safely.

For information about what is, personal data please see the Information Commissioner's Office website: <https://ico.org.uk/>

Processing includes the collection, use, sharing and retention of personal data. The personal data you provide will be processed in connection with the administration of housing licensing, compliance, reactive and proactive safer housing activities or in pursuance of any other legitimate interest held by the Council including (but not limited to) Benefits and Council Tax, to verify data accuracy, and social care services.

The Council will share your personal data with other public bodies, agencies and organisations e.g. the Department for Work and Pensions, other Councils, HM Revenues and Customs, the Police, as well as utility companies, credit reference agencies and service providers/ contractors and/or partner bodies, where the disclosure of such information is either:

- a) necessary for the purposes of the prevention and/or detection of crime;
and/or
- b) is otherwise necessary to comply with any legal obligation.
- c) necessary for the purposes of confirming accreditation status.

Information processed by the Council for the purposes of obtaining a licence will form part of the full Register of Licences, which is open to public inspection by appointment, terms and conditions apply. The organisation or department requesting this information will be required to submit a formal written request for this information.

The Council undertakes Data Matching to ensure data quality and integrity and to comply with legal requirements placed upon the Council.

The Council publishes HMO data on an open register, which can be viewed by selecting HMO Register via <http://www.nottinghamcity.gov.uk/housing/private-sector-housing/houses-in-multiple-occupation-hmo/licensing-of-houses-in-multiple-occupation/>

The personal data provided will not be retained for longer than necessary.

The Council's Privacy Statement is available to view via <http://www.nottinghamcity.gov.uk/privacy-statement/>

For further information please contact the Data Protection Team on 0115 8763855 or email data.protection@nottinghamcity.gov.uk

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