Private Sector Housing Enforcement Policy 2019

Introduction

The Private Sector Housing Team in the Council’s Environmental Health Department is responsible for ensuring that housing conditions are safe and healthy for private tenants and occupiers. They do this by enforcing housing law, mainly in the Housing Act 2004 (“the Act”) and the Housing and Planning Act 2016.

This policy is specific to enforcement action taken by the Private Sector Housing Team, but is intended to be read in conjunction with the overarching Environmental Health Enforcement Policy. The principles of enforcement referred to in that policy also apply to housing enforcement.

Enforcement action for Housing Act offences and those regulations under the Act will normally be taken in accordance with this specific policy rather than using those referred to in Section 4 of the Environmental Health Enforcement Policy. This avoids any confusion between some similar terminology used across environmental health disciplines which have different definitions and meanings.

When the policy applies

This policy outlines the enforcement approach and the available powers we have at our disposal to regulate and manage non-compliance, predominantly within the private rented sector. It also includes those properties owned and managed by registered providers, but can apply to owner occupied homes in some circumstances.

This policy reinforces the Council’s tough enforcement stance against landlords who do not comply with their statutory obligations and enables us to penalise the worst landlords by direct financial sanctions. It is in line with the Government’s intention to prevent landlords from benefiting from any criminal behaviour. We aim to deliver swift action against rogue landlords resulting in financial penalties being paid directly to the Council. These can then be used to further improve conditions and management in the private rented sector.

Our enforcement policy contributes to the Council’s values of Putting Our Communities First and Working Together.

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Civil (financial) penalties under the Housing and Planning Act 2016
Shared Enforcement Responsibilities

In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

Enforcement Approach

The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In some circumstances officers may use informal action to offer advice, information and assistance to aid compliance with housing related legislation, working with landlords and residents. However, robust action will be taken to deal with housing contraventions.

Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions possible action will include prosecution.

The type of enforcement action pursued is always considered on a case by case basis, based on its own merits. Following consideration of the specific circumstances of the particular case the most appropriate enforcement option will be applied accordingly. In every case enforcement seeks to:

- Promote and achieve sustained compliance with the law
- Ensure that landlords take action to deal immediately with serious risks
- Ensure that landlords who breach legislative requirements are held to account

Identifying the need for action

Our officers will investigate and identify the need to take enforcement action by:

- proactive inspections of dwellings
- in response to a complaint or request for assistance

Enforcement Options

This section summarises the types of enforcement and legislation most commonly applied. It is not an exhaustive list and is not intended to be a definitive interpretation of the legislation nor provide a full statement of the law.

Action will normally be pursued in the enforcement of proper standards of housing, because it would be wrong to leave tenants in unhealthy or unsafe housing and then prolong this while formal action is being taken.
1. Informal action

In certain circumstances where the detrimental impact on the tenant or community is small or a breach is unsubstantiated we may not be able to take any action e.g. very minor disrepair.

Verbal or written warning: The council may use compliance advice, guidance and support as a *first response* in the case of low risk housing hazards or where a very minor breach of legislation has been identified. Advice is sometimes provided in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

Only in specified or exceptional circumstances will informal action be considered such as:

- when a tenant will not consent to works being carried out by their landlord, or if their complaint is vexatious;
- where a registered social landlord has a planned programme of works (including the works required by the Council) and the programme will be implemented within a short time and achieve a better overall result.

Written advice to Registered Providers (“RPs” being Social Landlords) in accordance with Enforcement Protocol Where RPs work within the principles of our Joint Working protocol a lighter-touch, initial response may be taken for lower risk situations. This will allow RPs to resolve matters within our agreed protocol, using their own internal procedures to an agreed timescale. Compliance advice will be given in writing, and we will monitor responses. Statutory Notices will be served where a Category One hazard is identified or were serious or unresolved matters are apparent. The presumption against an informal initial approach will apply where RPs are not fulfilling their statutory obligations.

Indirect action: When appropriate we will refer some cases to another authority or agency for further action, e.g. the Fire Authority and Planning Enforcement.

Leasehold contract disputes: We will promote the resolution of this type of dispute through civil litigation between the tenant and landlord rather than use statutory enforcement. Leaseholders will be advised of the informal dispute resolution services offered by the leasehold advisory service.

2. Service of Statutory Notices and Prohibition Orders

We will normally serve a notice requiring works to be carried out within a certain time frame to remedy a hazard, following assessment. A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified.

Prohibition Orders can apply to premises, or parts of premises, which are considered so deficient or hazardous as to warrant a prohibition for habitation. They are also used to prevent or control a certain type of use of a premises, e.g. to remedy
instances of overcrowding. Orders may be suspended for a certain period of time to allow compliance, or until a certain event in the future.

Where a Statutory Notice or Order is served, an explanation of the reasons for the decision and the appeals process will be provided to the recipient. Recipients of notices will normally be given notice of the Council’s intention to serve a notice or make an order. This will be to avoid any unnecessary appeals and to consider the recipient’s views before service.

3. Works in Default

These enforcement options involve the Council carrying out works, which are then charged to the responsible person (usually the property owner). Every effort is made to secure compliance in the first instance. Where a notice has not been complied with, ‘works in default’ may follow subject to the level of risk, practical constraints of the case and the financial circumstances. Before actually doing the work specified in the original notice, the Council will consider carefully the prospect of recovery of any costs incurred.

The Council will make every effort to recover the full cost of any work carried out ‘in default’ and its own administrative charges. This does not preclude parallel enforcement action where warranted.

4. Emergency Remedial Action

This use is restricted to situations where there is a Category One hazard that poses an imminent risk of serious harm to any occupier. No Enforcement Notice has to be served before taking this course of action. The use of such powers is a last resort and not commonly used.

5. Other Orders

We will also consider the following options independently, or collectively with other enforcement action, as particular circumstances permit:

5.1 Interim and Final Management Orders (Housing Act 2004) To ensure adequate management arrangements are in place in a licensable HMO, we have the power to make an Interim Management Order (“IMO”) in respect of a licensable property where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO we can make an application to the Residential Property Tribunal to make a Final Management Order and take over the control and management of the property for a period of up to 5 years. This disables the landlord’s ability to manage the property.

An Interim and Final Empty Dwelling Management Order can be made on empty properties and also allows the Council to take control and rent the property out. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

5.2 Compulsory Purchase Orders: The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a
last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

5.3 Rent Repayment Orders

The use of Rent Repayment Orders under the Housing Act 2004/Housing and Planning Act 2016 is prescribed by law and in statutory guidance. These powers will be considered in response to all serious offences where it is in the public interest and where there is sufficient evidence for a successful application to the First Tier Tribunal.

Rent Repayment Orders ("RROs") are a means by which we can seek to have up to 12 months of rent, Housing Benefit, or Universal Credit repaid, usually in addition to other fines where we can prove that the landlord is guilty of one of the qualifying offences. In applying for RROs we will follow the statutory guidance.

5.4 Banning Orders (Housing and Planning Act 2016)

A Banning Order will prohibit the undertaking of Landlord or Managing Agent activities for a specified period of time. These orders may be made against Landlords and Managing Agents where they have been convicted of ‘Banning Order offences’ under the Housing Act 2016. These include, for example, failure to comply with an Improvement Notice. We will apply for Banning Orders to be made where the evidence justifies this course of action and it is considered to be in the public interest to protect against rogue landlords.

6. Charging for Enforcement Action

The Housing Act 2004 allows us to charge for taking enforcement action, where enforcement action involves the service of statutory notices and orders notices. A charge will normally be made for the cost of officer and administration time. The Council has a separate Fees and Charges policy which is regularly updated.

7. Financial Penalties

We will normally issue civil penalty notices for Housing Act offences when we have specific powers to do so. In some very serious circumstances, prosecution may be more appropriate than the issue of a penalty notice. If a penalty is not paid, we will enforce the penalty. Financial penalties can be imposed under the following Acts and Regulations where the evidence has met the criminal standard of proof i.e. ‘beyond reasonable doubt’

Housing & Planning Act 2016: We have the power to impose a civil penalty of up to £30,000 for certain offences prescribed under this Act. The Council has a policy in place for civil penalties and this is detailed in the form of a Statement of Principles in Appendix A, with guidelines and worked examples in a charging matrix, Appendix B. This provides guidelines for the level of penalties for non-compliance under specified offences.
The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty, the council must consider:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence

Officers will have regard to the matrix and the statutory guidance. This will determine an indicative level of penalty for the offence under consideration. Having determined an indicative level of penalty, it will be adjusted in each individual case to take into account other mitigating or aggravating factors that are relevant.

The penalty imposed will reflect the type and severity of offence, landlord’s compliance history and other relevant factors. This will be done on a case by case basis. In considering the decision to issue a civil penalty or not, the Council must also be satisfied that there is sufficient evidence upon which a criminal court could convict and that the action is in the public interest. If a civil penalty option is decided, a prosecution cannot also be instigated.

**Smoke & Carbon Monoxide Regulations 2015**: We may issue a penalty charge of up to £5,000 where a landlord has breached this duty of compliance. Penalty charge amounts will be imposed in accordance with the published ‘Statement of Principles’, Appendix C. Penalty charges are subject to an internal review process and we will ensure any written representations made are considered and responded to. Once a penalty charge has been imposed, and subject to any decision made during the review process, any unpaid penalty charges will be referred for debt collection.

**8. Prosecution**

We may decide to prosecute in respect of serious or recurrent breaches, or where other enforcement action, such as statutory notices have failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions in The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. Prosecution will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction, this will include consulting any criminal landlord database available to us.

In most cases, we will consider the use of civil penalties as an alternative to prosecution where it is felt appropriate to do so. Similarly, consideration will be given to the use of Rent Repayment Orders in addition to prosecution and/or civil penalties for Housing Act offences where justified.

We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the
simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

9. The Decision to Prosecute/Issue a Civil Penalty/Simple Caution

Two tests are applied in determining whether a Prosecution, civil penalty or a Simple Caution is viable and appropriate. We follow guidance issued by the Crown Prosecution Service when applying the tests. More information can be found at: Code for Crown Prosecutors.

A Simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined also apply to the other types of formal enforcement actions that are available.

The Evidential Test

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt.

The Public Interest Test

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate.

10. Simple Caution

There are three preconditions, which must all be satisfied if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits his or her guilt,
- The person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution instead of prosecution in the courts would commonly be that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur. If a simple caution were to be offered and refused by the offender, then the case would proceed to court.
Following the acceptance of a caution, the offender may be invited to contribute towards the Council’s costs in investigating and preparing the case, if these are significant. However, a caution cannot be granted on condition that the Council’s costs are paid.

11. ‘Rogue Landlords’ Database

Under the provisions within the Housing and Planning Act 2016 the government will establish and maintain a database intended to record details of Landlords and Managing Agents given a Banning Order or convicted of certain offences on a nationwide basis. Application to have Landlord/Agents details entered on the database is a statutory duty where a Banning Order has been given and is at the discretion of the Housing Authority in other circumstances. We will apply to have Landlord’s details entered on the database where there is a duty to do so, and in other cases where the law allows discretion when it is in the public interest to do so. We are also committed to the Greater London Authority (GLA) Rogue Landlord and Agent Checker which is published on the Mayors website and cites criminal landlords and letting agents who have been successfully prosecuted for housing offences.
STATEMENT OF PRINCIPLES

Process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty on a person, the Council will give the person notice of the authority’s proposal to do so [a ‘Notice of intent’]

A person who is given a notice of intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within 28 days, this period starting on the day after the date on which the Notice of intent was given (if by hand) or two days after the date the Notice was sent by first class post.

After the end of the period for representations the Council will—

(a) Decide whether to impose a financial penalty on the person, and
(b) If it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

Where an offender remedies a breach during the representation period this would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate. However, compliance at that stage would be taken into account when determining the amount of the penalty [See ‘Discounts’ below].

If the Council decides to impose a financial penalty on the person, it will give the person a notice (a “final notice”) imposing that penalty.

The final notice will set out—

a) The amount of the financial penalty,
b) The reasons for imposing the penalty,
c) Information about how to pay the penalty,
d) The period for payment of the penalty,
e) Information about rights of appeal, and
f) The consequences of failure to comply with the notice

Civil Penalties Matrix

Officers will have regard to the matrix set out below, which is to be read in conjunction with the guidance below it. The matrix is not intended to provide a prescriptive tariff applicable in every case but provides guiding principles intended to help determine an indicative level of penalty for the offence under consideration, taking into account the statutory guidance. Having determined an indicative level of penalty, it will be adjusted in each individual case to take into account other relevant, mitigating or aggravating factors pertinent to that case.
Penalty bands in relation to severity of offence

<table>
<thead>
<tr>
<th>Band number</th>
<th>Severity of offence</th>
<th>Band width</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Moderate</td>
<td>£0 - £4,999</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>£5,000 - £9,999</td>
</tr>
<tr>
<td>3</td>
<td>Serious</td>
<td>£10,000 - £14,999</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>£15,000 - £19,999</td>
</tr>
<tr>
<td>5</td>
<td>Severe</td>
<td>£20,000 - £24,999</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>£25,000 - £30,000</td>
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</table>
Relevant considerations as to the level of penalty for each relevant offence

1. Failure to comply with an Improvement Notice

*Maximum court fine that can be levied for failure to comply with an Improvement Notice = Unlimited.*

An Improvement Notice specifies repairs/improvements that the recipient must carry out in order to address hazards in a property. Category 1 hazards are the most serious, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more category 1 hazards present.

In most cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, failure to comply with an Improvement Notice represents an on-going failure on the part of the landlord to deal with the hazard(s) thereby continuing to expose the tenant(s) to harm.

Failure to comply with an Improvement notice will usually be regarded as a serious matter thereby meriting a Band 3 or 4 penalty (£10,000 - £19,999).

**Consideration of landlord’s assets and income**

Where the landlord has five or less rented units, and there are no aggravating factors in the case, a Band 3 penalty may be considered appropriate.

Where the landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated management failures in the past a Band 4 penalty may be considered appropriate.

**Aggravating features/factors specific to non-compliance with an Improvement Notice.**

The nature and extent of hazards that are present are relevant. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property would justify an increase in the level of the penalty.

**Generic aggravating factors**

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous relevant convictions from successful prosecutions (providing they are not spent convictions), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].
2. Failure to licence a licensable HMO

*Maximum Court fine that can be levied for failure to licence an HMO = unlimited*

Higher risk HMOs of 3 or more stories, occupied by 5 or more persons forming 2 or more households are required to hold a ‘mandatory’ property licence issued by the Council. The licensing regime ensures that the HMO has sufficient kitchens, baths/showers and WCs, has adequate fire safety precautions and places a limit on the number of persons permitted to occupy it. The licence holder is required to comply with a set of licence conditions relating to property conditions and property management.

The Council views the offence of failing to licence a mandatory HMO as a significant failing; mandatory licensing was introduced by the Government in order to regulate conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Failure to licence a Mandatory HMO will usually be regarded as a serious matter thereby meriting a Band 3 or 4 penalty (£10,000 - £19,999). Where there are aggravating factors it may be considered as a severe matter thereby meriting a Band 5 penalty (£20,000 - £24,999).

**Consideration of landlord’s assets and income**

Where the landlord/agent is in control or owns one or two HMOs and there are no aggravating factors in the case, a Band 3 penalty may be considered appropriate.

Where the landlord or agent is in control or owns a significant property portfolio and/or has demonstrated management failures in the past a Band 4 penalty may be considered appropriate. More severe aggravating factors may warrant a Band 5 penalty.

**Aggravating factors specific to non-licensing offences**

The Council will have regard to the following factors in determining the final level of the penalty:

- The condition of the unlicensed property,
- The nature and extent of any significant hazards that are present,
- Poor management including lacking or inadequate amenities or fire safety precautions,
- Overcrowding,
- Evidence that the landlord/agent was familiar with the requirement to licence.

**Generic aggravating factors**

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous relevant
convictions from successful prosecutions (providing they are not spent convictions), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

**Consideration of landlord’s assets and income**

Where the landlord/agent is in control or owns one or two rented properties and there are no aggravating factors in the case, a Band 2 penalty may be considered appropriate.

Where the landlord or agent is in control or owns a significant property portfolio and/or has demonstrated management failures in the past a Band 3 penalty may be considered appropriate. More severe aggravating factors may warrant a Band 4 penalty.

**Aggravating factors specific to non-licensing offences**

The Council will have regard to the following factors in determining the final level of the penalty:
- The condition of the unlicensed property,
- The nature and extent of any significant hazards that are present,
- Poor management,
- Overcrowding,
- Evidence that the landlord/agent was familiar with the requirement to licence.

**Generic aggravating factors**

The Council will also have regard to the following factors in determining the final level of the penalty:
- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were ‘spent’], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

**3. Failure to comply with licensing conditions**

*Maximum Court fine that can be levied for failure to comply with licensing conditions = £5000*

All licences include a set of conditions imposing a variety of obligations on the licence holder relating to the letting, management and condition of the rented property, including:
- Undertaking Gas Safe and electrical checks,
• Installing and maintaining smoke alarms,
• Providing written tenancy agreements and protecting deposits,
• Notifying the Council in any specified changes in circumstances,
• Carrying out specified measures to prevent or address anti-social behaviour,
• Maintaining the property in reasonable repair,
• Ensuring that the gardens are tidy and free from refuse,
• Carrying out works that were a condition of the licence,
• Reducing occupation levels as necessary.

It is important that all licence conditions are complied with but failure to comply with certain licence conditions is likely to have a much higher impact on the safety and comfort of residents than with others.

In determining the level of civil penalty, the Council will therefore first consider:

• The number of licence condition breaches; and
• The nature and extent of deficiencies in respect of each condition.

The circumstances of each case will vary widely but officers will have regard to the following factors in determining the level of penalty:

a. Failure to comply with a condition to provide tenants with landlord’s/manager’s contact details or for failing to address relatively minor disrepair will each usually be regarded as a moderate matter meriting a Band 1 or 2 penalty (£0 - £9,999).

b. Failure to comply with a condition to provide adequate fire safety precautions, to address serious anti-social behaviour issues or to carry out works or improvements, would usually be regarded as a serious matter meriting a Band 3 or 4 penalty (£10,000 – £19,999). Failure to comply with this category of licence conditions may be viewed more seriously in larger HMOs than in smaller, as the risk posed to occupiers may be significantly higher. The decision on the level of civil penalty will significantly influenced by the risk presented.

Consideration of landlord’s assets and income

Case “a” above:

For a landlord/agent controlling/owning 1 or 2 properties and with no other relevant or aggravating factors, the offence would usually be regarded as a moderate matter meriting a Band 1 penalty (£0 - £4,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a moderate matter meriting a Band 2 penalty (£5,000 - £9,999).

Case “b” above:

For a landlord/agent controlling/owning 1 or 2 properties and with no other
relevant or aggravating factors, the offence would usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a severe matter meriting a Band 5 penalty (£20,000 - £24,999).

Aggravating factors specific to licence condition offences
None – the nature of the licence condition breaches and their impact upon the occupiers will be assessed as outlined in case “a” and case “b” above.

Generic aggravating factors
The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous relevant convictions from successful prosecutions (providing they are not spent convictions), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

4. Failure to Comply with an Overcrowding Notice

Maximum Court fine that can be levied for overcrowding offences = Unlimited.

Section 139 of the Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that falls outside of the scope of HMO licensing. The notice specifies, on a room by room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

Overcrowding exposes HMO tenants to unacceptably cramped living conditions, contributes to the spread of certain respiratory diseases, affects child educational development and has a negative impact on social well-being. It can also affect hygiene and sanitation due to inadequate sanitary facilities for those needing them, it can contribute to obesity and poor diet due to inadequate cooking and food preparation facilities for those needing them and have an impact on means of escape from fire.

The Council will view failure to comply with an Overcrowding Notice as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

Consideration of landlord’s assets and income
The civil penalty for a landlord controlling one or two HMOs with no other relevant or
Aggravating factors would usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

The civil penalty for a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, would usually be regarded as a severe matter meriting a Band 5 penalty (£20,000 - £24,999).

Aggravating factors specific to licence condition offences

The severity of overcrowding present; breaches that relate to over-occupation in multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous relevant convictions from successful prosecutions (providing they are not spent convictions), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

5. Failure to Comply with the Management of Houses in Multiple Occupation [England] Regulations

Maximum Court fine that can be levied for failure to comply with HMO management regulations = £5000

The HMO Management Regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers (regulation 3),
- Taking safety measures, including fire safety measures (regulation 4),
- Maintaining the water supply and drainage (regulation 5),
- Supply, inspection and maintenance of gas and electricity installations (regulation 6),
- Maintaining common parts (regulation 7),
- Maintaining living accommodation (regulation 8),
- Provision of sufficient waste disposal/refuse facilities (regulation 9).

It is important that all the regulations are complied with but failure to comply with certain regulations is likely to have a much higher impact on the safety and comfort of residents than with others.

In determining the level of civil penalty, the Council will therefore first consider:
The number of management regulation breaches; and
The nature and extent of deficiencies in respect of each regulation.

The circumstances of each case will vary widely but officers will have regard to the following factors in determining the level of penalty.

a. Failure to failure to display a notice containing their contact details or for failing to address relatively minor disrepair will each usually be regarded as a moderate matter meriting a Band 1 (£0 - £4,999).

b. Failure to failure to maintain fire alarms in working order, to maintain essential services to an HMO or to allow an HMO to fall into significant disrepair will each usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

Consideration of landlord’s assets and income

Case “a” above:

For a landlord/agent controlling/owning 1 or 2 HMOs and with no other relevant or aggravating factors, the offence would usually be regarded as a moderate matter meriting a Band 1 penalty (£0 - £4,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a moderate matter meriting a Band 2 penalty (£5,000 - £9,999).

Case “b” above:

For a landlord/agent controlling/owning 1 or 2 HMOs and with no other relevant or aggravating factors, the offence would usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a severe matter meriting a Band 5 penalty (£20,000 - £24,999).

Aggravating factors specific to management regulation offences

None – the nature of the management regulations breaches and their impact upon the occupiers will be assessed as outlined in case “a” and case “b” above.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous relevant convictions from successful prosecutions (providing they are not spent convictions), works in default of the landlord and breaches of
regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
  • Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

6. **Failure to comply with a Banning Order**

   The Housing and Planning Act 2016 Act includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities

   • Letting housing
   • Engaging in letting agency work
   • Engaging in property management work.

   Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council is satisfied that the offence of breaching a Banning Order has occurred, this would normally be the subject of prosecution proceedings.

   Where it is determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level to reflect the severity of the offence.

7. **Process for imposing a civil penalty and the right to make representations**

   Before imposing a financial penalty on a person, the Council will give the person notice of the authority's proposal to do so [a ‘Notice of intent’]

   A person who is given a notice of intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within 28 days, this period starting the day after the date on which the Notice of intent was given (if by hand) or two days after the date the Notice was sent by first class post.

   After the end of the period for representations the Council will—

   (a) Decide whether to impose a financial penalty on the person, and

   (b) If it decides to impose a financial penalty, decide the amount of the penalty

   In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

   Where an offender remedies a breach during the representation period this would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate. However, compliance at that stage would be taken into account when determining the amount of the penalty [See ‘Discounts’ below].

   If the Council decides to impose a financial penalty on the person, it will give the person a notice (a “final notice”) imposing that penalty.
The final notice will set out—

a) The amount of the financial penalty,
b) The reasons for imposing the penalty,
c) Information about how to pay the penalty,
d) The period for payment of the penalty,
e) Information about rights of appeal, and
f) The consequences of failure to comply with the notice

Discounts

In cases where there have been no relevant or aggravating factors, as outlined in each case above, the Council will retain the discretion to apply a discounted rate to any civil penalty in the following circumstances:

In the event that the offender complied with the identified breach (for example by making an application to license a previously unlicensed address) within the representation period at the ‘Notice of Intent stage, the Council will consider reducing the level of penalty by 20%
APPENDIX C

THE SMOKE AND CARBON MONOXIDE ALARM
(ENGLAND) REGULATIONS 2015

STATEMENT OF PRINCIPLES under regulation 13

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced legal requirements on private sector landlords from the 1st October 2015 in respect of premises occupied under tenancies starting on or after that date. The requirements are to:

1. Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;

2. Equip a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and

3. Carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

For the purposes of the legislation, living accommodation is a room that is used for the primary purposes of living, or is a room in which a person spends a significant amount of time, and a bathroom or lavatory is classed within this definition.

Enforcement

In those situations where the council has reasonable grounds for believing that:

1. There are no, or insufficient number of, smoke and/or carbon monoxide alarms in the property as required by the regulations; or

2. The smoke and/or carbon monoxide alarms were not working at the start of the tenancy or licence,

then the Local Authority shall, within 21 days, serve on the landlord a Remedial Notice detailing the actions that must be taken to comply with the regulations, and the Notice shall be in line with the requirements of the regulations.

If after the given period, being 28 days, the Notice has not been complied with, then a Penalty Charge will be levied by means of a Penalty Charge Notice on the landlord.

Penalty Charge Principles

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-
compliance. It should also cover the costs incurred by the council in administering and implementing the legislation.

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes. This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The Department of Communities and Local Government estimated that 231 deaths and 5860 injuries could be prevented over ten years accruing a saving of almost £607.7 million by the provision of smoke alarms.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion and disorientation to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can be a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The Department of Communities and Local Government estimated that six to nine deaths and 306 to 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

For these reasons, an effective incentive to comply with these regulations is fully justified. It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, could present an excessive financial burden but this is balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

For these reasons a penalty charge of £5,000 is set for non-compliance with a Remedial Notice. This will be the usual charge. The council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord. This discretion will not apply when:

1. The person/company has obstructed the council in the carrying out of its duties; and/or
2. The person/company has previously received a penalty charge under these regulations.

**Appeals in relation to a penalty charge notice**

The landlord has a right to seek a review of the penalty charge notice by writing to the council (details on the Notice) within 28 days of the Penalty Charge Notice being issued.

On consideration of any representation and accompanying evidence, the council may confirm, vary or withdraw the penalty charge notice. This decision is then confirmed by issuing a decision notice on the landlord. If the penalty charge is confirmed or varied, the notice shall state a further appeal can be made to a Residential Property Tribunal and details given.

Any representation shall be considered on its individual merit. Any extenuating circumstances will be considered by the Council in deciding whether to reduce the cost of the penalty charge.

**Recovery of Penalty Charge**

The council may recover the penalty charge as laid out in the regulations. Due to costs incurred by the council, any penalty charge notice will be pursued for payment.

**Review of Statement**

This Statement of Principles shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and in the public interest. A review shall take place annually should no other change have occurred.