



PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

1. INTRODUCTION

Mid Sussex District Council's Housing Standards Team is committed to improving standards in all housing tenures, in particular ensuring all privately rented accommodation is well managed, properly maintained, safe and habitable.

Housing Standards will actively respond to:

- Private sector tenants who contact the Council with complaints about poor conditions within their home.
- Complaints about properties potentially causing problems for neighbouring properties.
- Enquiries from owner occupiers or private tenants and landlords who would like advice about housing conditions.
- Enquiries for advice about the legal minimum housing standards, particularly HMOs (houses in multiple occupation).

Work proactively to:

- Identify unlicensed HMOs.
- Work collaboratively with other teams to identify poor housing conditions and landlord practices.

2. PRINCIPLES OF THE ENFORCEMENT POLICY

2.1 When discharging its duties, the Council and officers will follow the principles of good enforcement set out in the following:

- Regulators' Compliance Code
- Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
- Police & Criminal Evidence Act 1984 (PACE) and associated Codes
- The Enforcement Concordat
- Housing Act 2004
- Regulation of Investigatory Powers Act 2000
- Housing and Planning Act 2016
- Mid Sussex District Council Environmental Health Enforcement Policy
- Legislation and statutory guidance
- Procedures and guidance notes within each team

2.2 The Private Sector Housing Team's enforcement activity will be:

- Proportionate – by reflecting the nature, scale and seriousness including the history of any breach or non-compliance.
- Targeted – efforts will be directed towards those who are responsible for directly placing residents at risk of serious harm by their actions or failures.
- Transparent – undertaken in accordance with our policies and procedures. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- Consistent – enforcement undertaken will be monitored within Housing Standards to ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and to share and develop good practice.
- Accountable – be accountable to those being regulated and the public for our actions. Enforcement action will be undertaken in a responsible manner that has clear purpose.

2.3 While it's understood the primary responsibility is for individuals and businesses to ensure compliance with relevant legislation, the Council will assist them, where possible, to understand their legal responsibilities. The aim of the Council is to secure compliance with the legislation, which it will do by making the most efficient use of the Council's resources.

3. ENFORCEMENT OPTIONS

3.1 The Housing Health and Safety Rating System (HHSRS)

The HHSRS is the prescribed method of assessing housing conditions and operates by reference to Category 1 and 2 hazards, with Category 1 hazards being more serious in nature with the Council having a duty to undertake the most satisfactory course of action, although it's only a power in cases of Category 2 hazards.

3.2 Powers of Entry

The Housing Act 2004 is the principal act used to enforce housing standards and places a requirement in most circumstances to provide at least 24 hours' notice to the owner and occupier of the property before visiting a property.

There are some occasions when no prior notice is required to be provided including to determine if a property is an unlicensed HMO. If entry is refused, then a warrant from the magistrates' court can be applied for.

3.3 Before considering any action in respect of a tenanted property, the tenant/s will normally be expected to have first contacted their landlord or managing agent about the problem in writing, email or text to ensure they have been given the opportunity to resolve the issues.

3.4 No Action

The Housing Standards team has a duty to investigate complaints about deficiencies in dwellings or alleged statutory nuisance. Where it appears to the officer that problems are solely attributable to the behaviour of the occupants or neighbours, then advice will be given to the complainant, and no further action will be taken.

3.5 Informal Action

Such action will include advice, written instruction or referrals to other organisations. Informal action will be considered when there is no legislative requirement or duty to serve a formal notice or order, while the circumstances aren't serious enough to warrant formal action, i.e., previous dealings suggest informal action will achieve compliance or the consequences of non-compliance offer little risk to the occupiers.

3.6 Service of Statutory Notice or Orders

3.6.1 The informal approach may not be possible or appropriate including when a duty exists to undertake specific actions, the informal route is inappropriate or hasn't previously worked. The Council has either a duty (Category 1) or a power (Category 2) to serve a statutory notice requiring assessed hazards be reduced or removed.

A decision on the most appropriate course of action will be determined for all situations where a Category 1 hazard(s) is present.

In deciding whether a statutory notice is to be served for Category 2 hazards, the factors shown below will determine if a notice is required:

- A hazard band D has been identified (HHSRS).
- Vulnerability and personal circumstances of the current occupiers.
- Where the Category 2 hazard is progressive and will likely become a Category 1 unless preventative action is taken.
- Where there are several Category 2 hazards which would present a hazard to occupiers as they moved room to room.
- In other exceptional circumstances and at the discretion of the Housing Standards Team Leader.

If only minor deficiencies which score band E or below using the HHSRS are identified in a dwelling, these won't normally result in formal action, as the deficiencies present a low risk to the health and safety of the resident or visitor.

3.6.2 Under the Housing Acts, the following enforcement actions are available to the Council when considering the most appropriate course of action:

- Serve an Improvement Notice or Suspended Improvement Notice
- Make a Prohibition Order or Suspended Prohibition Order
- Serve a Hazard Awareness Notice
- Make a Demolition Order
- Declare a Clearance Area
- Make an Interim or Final Empty Dwelling Management Order
- Take Emergency Remedial Action (Category 1 Hazards only)
- Make an Emergency Prohibition Order (Category 1 Hazards only)
- Serve an Overcrowding Notice

3.6.3 Officers will use the Housing Health and Safety Rating System Enforcement Guidance (published by the ODPM, February 2006) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf to inform them on the most appropriate course of action.

3.6.4 Notices and Orders served under the Housing Act 2004 must include a Section 8 'Statement of Reasons', requiring the Council to set out the reasons why one type of enforcement action was taken rather than another.

3.6.5 Not more than one course of action can be taken at a time for the same hazard (unless it is an emergency action) but alternative action can follow if one of the actions taken has proved unsuccessful.

3.6.6 Charges will be made for any formal enforcement action the Council takes. Section 49 details per type of notice the administrative and other expenses which can be recovered. Costs will be reviewed on an annual basis.

4.0 SANCTIONS FOR NON-COMPLIANCE WITH NOTICES

4.1 When there is non-compliance under Part 1 or Part 2 of the Act or any other legislation enforced by Housing Standards, the following enforcement options are to be considered.

4.2 Simple Cautions

4.2.1 Guidance has been provided by the Ministry of Justice – Simple Cautions for Adult Offenders (the latest version is dated 13 April 2015). A simple caution is a formal warning given to a person who agrees to it along with admitting to committing an offence. Simple

cautions are designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution. Simple cautioning is not to be used as an alternative to a weak prosecution case.

4.2.2 The Cautioning Officer will be the Head of Environmental Health or Assistant Director Communities and the cautioning procedure in the Ministry of Justice guidance will be followed.

4.3 Civil penalty notices/financial penalties

4.3.1 Local authorities can impose a civil penalty as an alternative to prosecution for the certain offences under the Housing Act 2004 and the electrical safety standards in the private rented sector regulations. Appendix 1 is the detailed policy on the enforcement and calculation of civil penalties.

4.4 Proceeds of crime

4.4.1 The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued because of their criminal activity. The Housing Standards team will use this legislation where appropriate and in consultation with Legal Services.

4.4.2 Rent Repayment Orders (Housing Act 2004/Housing and Planning Act 2016) can be applied for and agreed by the First-tier Tribunal. The Housing Standards team will use this where appropriate and in consultation with Legal Services and having reference to the published guidance [Rent Repayment Orders Guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/rent-repayment-orders-guidance.pdf).

4.5. Prosecution

4.5.1 The Council recognises any decision to prosecute is significant and could have far reaching consequences for all involved including defendants, victims and witnesses. Prosecution will be related to risk and not used as a punitive response to minor breaches.

The circumstances where prosecution is appropriate should include one or more of the following:

- Where there is a blatant disregard for the law such that health or safety has been put at risk.
- Where there is a failure to comply in full or in part with the requirements of a statutory notice.
- Where a particular contravention has the potential to cause harm.

4.5.2 Initially the case officer in conjunction with the team leader will decide whether prosecution is appropriate, subsequently when the evidence has been obtained the case will be discussed with the Head of Environmental Health/Assistant Director Communities

prior to referring any case to the Legal Team. The case officer will produce a case file and briefing note for the Legal team, who will decide whether the case meets the requirements of the Code of Practice for Crown Prosecutors [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](#).

4.5.3 It follows that a prosecution will only be progressed when there is a realistic prospect of conviction with the case having passed both the evidential and public interest tests. The decision to proceed with a prosecution, rests with the Head of Environmental Health/Assistant Director Communities.

4.6 Banning Orders

4.6.1 The Council may apply for a Banning Order under the Housing and Planning Act 2016. A Banning Order prevents a person from letting a property in England and/or engaging in letting agency or property management work, if they have been convicted of a banning order offence.

The Council will apply for banning orders where the evidence justifies this course of action and is in the public interest.

4.6.2 When deciding to apply to the First-tier Tribunal for a banning order, the Council will consider the seriousness of the offence, previous convictions/rogue landlord database entries, the harm caused to the tenant, punishment of the offender and the deterrent needed to prevent others from committing similar offences.

Once granted, a banning order remains in place for at least 12 months and the Council can take over management of all property owned by the banned landlord.

4.6.3 Non statutory guidance is available at: [Banning orders for landlords and property agents under the Housing and Planning Act 2016 \(publishing.service.gov.uk\)](#).

4.7 Rogue Landlord Database

4.7.1 The database holds details of landlords and managing agents who have been given a banning order or convicted of certain offences. Application to have landlord/agent's details entered on the database is a statutory duty where a banning order has been given and is at the discretion of the local housing authority in other circumstances. An application to enter landlord's details on the database where there is a duty to do so will be completed. In other cases where the law allows, discretion will be applied on a case-by-case basis. When deciding whether to make an entry onto the rogue landlord database the Council considers the severity of the offence, any mitigating factors, culpability and serial offending, and when it is in the public interest to do so.

4.8 Works in default

4.8.1 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works usually by formal Notice or Order but has failed to either start works or make adequate progress.

4.8.2 The Council will usually only consider undertaking works in default for emergency situations which removes items that offer an imminent risk of serious harm to the health and safety of any occupier or neighbouring properties. The Council will always try to recover the costs involved with works in default by placing a charge against the property or seeking to use its powers to enforce the sale of the property to recover the costs.

5.0 HOUSES IN MULTIPLE OCCUPATION (HMO)

5.1 As HMOs are higher risk than single family homes, the conditions, facilities and management are more closely regulated. Some HMOs are subject to mandatory HMO licensing. Administering mandatory licensing and any associated enforcement action will be undertaken in line with this policy.

5.2 HMO Licencing: Suspend, Revoke or Refuse to Renew or Grant a Licence

Under Part 2, Housing Act 2004 and The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018, where the relevant person does not comply with the prescribed conditions and/or is not deemed to be a fit a proper person to hold a licence, suspension, revocation, and refusal to refuse or grant a licence are courses of action that may be considered. Prospective applicants for a licence will need to be 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records. The data will be kept and processed in line with the Council's data protection and data retention policy, see https://www.midsussex.gov.uk/media/4983/011_data_protection_policy_v019.pdf.

5.3 Interim and Final Management Orders

The Council has a duty to make an interim management order (IMO) in respect of a licensable HMO where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous property condition. Upon the expiry of an IMO a further application to the First-tier Tribunal (Property Chamber – Residential Property) can be made for a final management order, taking over the management of the property for a period of up to five years.

5.4 Management Regulations

5.4.1 All identified hazards and breaches of the relevant HMO Management Regulations in any HMO, whether licensable or not, will be dealt with in line with this policy. Appendix 1

provides the way in which financial penalties will be calculated for failures to licence an HMO and breaches of the management regulations.

6.0 OTHER LEGISLATION ENFORCED BY ENVIRONMENTAL HEALTH SERVICE RELATING TO ALL TENURES OF HOUSING

6.1 Redress Scheme

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 introduced a requirement for letting agents and property managers to belong to an approved redress scheme.

The Council can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

The starting point for such an offence will be £5,000, although during the representation stage the offender may wish to raise issues which they believe provide mitigation including the fine would be disproportionate or would lead to the business failing.

6.2 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

Within rental properties, certain early warning in case of fire and carbon monoxide detection must be provided. If not, there is a prescribed process the Council must follow to ensure such devices are installed. A Statement of Principles in Appendix 2 sets out the process by which the amount of penalty charge for an offence is determined.

6.3 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

It's now a duty for a private landlord who grants or intends to grant a tenancy to have an electrical installation inspection and test carried out by a qualified and competent person, at least every five years.

If, based on the balance of probability, we believe a breach has occurred, then a remedial notice must be served. Other enforcement options include service of an urgent remedial action notice or undertaking the remedial action and recovering costs.

If a duty has been breached, then a financial penalty may be imposed not exceeding £30,000. How the financial penalty is determined is shown in Appendix 1.

6.4 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Domestic Minimum Energy Efficiency Standard (MEES) Regulations set a minimum energy efficiency level for domestic private rented properties, with the regulations applying to all domestic private rented properties that are:

- let on specific types of tenancy agreement
- legally required to have an Energy Performance Certificate (EPC)

A statement of principles to determine the amount of penalty notice is provided in Appendix 3.

7. COMPLAINTS

- 7.1 If any person believes they have not received fair or consistent treatment as outlined in this policy, they can access the Council's Complaints Procedure. The matter will be considered, and a decision made as to whether the Enforcement Policy has been breached in this instance and the complainant will be given a reply in writing explaining the decision. This is without prejudice to any formal appeal mechanism.

Civil Penalties under the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

In this policy, the term ‘landlord’ should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms ‘House of Multiple Occupation’ or ‘HMO’ are defined by the Housing Act 2004.

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provide local authorities with the power, through the insertion of section 249A Housing Act 2004, to impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice Section 30
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 Section 72
- Offences in relation to the Selective Licensing of ‘houses’ under Part 3 Section 95
- Failure to comply with an Overcrowding Notice Section 139
- Failure to comply with a management regulation in respect of an HMO Section 234

Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 provides local authorities with the power to impose a civil penalty in respect of breaches of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

In addition, Section 23 of the Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at the same property, a separate civil penalty can, and usually will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.

This guidance outlines the Council’s policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties in the Council (a) know how the Council will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised

differently. The further objectives of using financial penalties as a means of enforcing the above offences are explained below.

Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled “Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities”. The Council has regard to this guidance in the exercise of their functions in respect of civil penalties.

Paragraph 3.5 of the statutory guidance states that, ‘The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending’. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a) Severity of the offence: The more serious the offence, the higher the penalty should be.
- b) Culpability and track record of the offender: A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) The harm caused to the tenant: This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d) Punishment of the offender: A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- e) Deter the offender from repeating the offence: The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) Deter others from committing similar offences: While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

- g) Remove any financial benefit the offender may have obtained as a result of committing the offence: The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The factors detailed in the statutory guidance and policy aims will be considered by the Council when deciding where, within the Civil Penalties matrix below, a particular offence and penalty fall.

Other Policy Aims

The Council is mindful that despite its best efforts, many landlords may operate unlawfully for a significant period of time without detection, and only a proportion of landlords committing relevant offences will be discovered. The Council is, therefore, mindful that when deciding to impose a Civil Penalty, it should create an environment where it is clear to the offender and others that operating unlawfully as a landlord will be financially disadvantageous when compared to operating lawfully.

The Council intends to create an environment where landlords engage with the Council's requests and demands fulsomely, openly and honestly. This helps create a level playing field which supports the aims of transparency and consistency. No landlord should be able to financially benefit from withholding information the Council deems relevant that is, or should be, in their control to disclose. It is expected that fulsome and complete supporting evidence is provided to support any Written Representations received in response to a Notice of Intent.

Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors the Council deems significant including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.

In deciding what level of penalty to impose, officers will conduct the following four stage process. First, they will consider the seriousness of the relevant housing offence to identify a starting level of the penalty. Second, an assessment of the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property will be considered, which may have the effect of increasing or decreasing the penalty. Third, aggravating and mitigating factors that may relate to a number of factors including, but not limited to, culpability, track record and harm will be considered, which may have the effect of increasing or decreasing the penalty. Fourth, if any of the Discounts, as set out below, apply, the penalty will be decreased.

Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table below with the headings 'Seriousness of offence' and

‘Starting level [£]’. Consideration of the number and type of rental properties controlled or owned or managed may adjust the penalty.

To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased in excess of a total of £5,000. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty in excess of £5,000. The presence of numerous mitigating factors will not automatically be considered as exceptional circumstances.

The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might give rise to mitigation.

To ensure any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factors will rarely result in the penalty being increased in excess of a total of £5,000. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £5,000. The presence of numerous aggravating factors will not automatically be considered as exceptional circumstances.

The Council may, exceptionally, including for the reason given above, increase the penalty by greater than £5,000 on account of aggravating factors or, again exceptionally, decrease it by greater than £5,000 on account of mitigating factors. In order to meet the objectives of this policy, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £5,000 on account of aggravating or mitigating factors in exceptional circumstances only excluding any Discounts as set out below. The Council will consider on a case-by-case basis whether any such circumstances exist.

Seriousness of offence	Starting level [£]
Mild	2,500
Moderate	7,500
Serious	12,500
Very Serious	17,500
Severe	22,500
Very Severe	27,500

Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004

Maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice - Unlimited

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, 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 some 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, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

The seriousness of the offence is viewed by the Council as being a Severe matter, attracting a financial penalty with a starting level of £22,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5,000, attracting a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £27,500.

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

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

Generic aggravating features/factors

The Council will have regard to general factors in determining the final level of the civil penalty including, but not limited to:

- A previous history of non-compliance would justify an increased civil penalty. Non-exhaustive examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were 'spent'), receipt of financial penalties, rent repayment orders, works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.

- A failure to cooperate with a Council investigation. Non-exhaustive examples of failure to cooperate would include failing to comply with a s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with a s.235 Housing Act 2004 notice, failing to provide a substantive response to a letter of alleged offence.
- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after relevant correspondence was sent by the Council.
- The number of residents placed at risk.
- Offending over an extended period of time i.e. 6 months or longer.
- Whether any vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.

Failure to License offences

Maximum Court fine following prosecution that can be levied for failure to license an HMO or Part 3 House – Unlimited

Failure to license a Mandatory ‘HMO’ – Section 72(1) of the Housing Act 2004

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority.

The Council would view the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

This seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council’s policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5,000, attracting a civil penalty of £22,500.

Aggravating features/factors specific to failure to licence offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004
Maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice – Unlimited

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. 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.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant(s) of an HMO to unacceptably cramped living conditions.

The seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £22,500.

Aggravating features/factors specific to non-compliance with an Overcrowding Notice

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to Comply with a Banning Order – Section 21 of the Housing and Planning Act 2016

Maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.

The Housing and Planning Act 2016 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 the most serious housing-related offences. In the event the Council was satisfied an offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it's determined a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

Failure to Comply with The Management of Houses in Multiple Occupation [England] Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation - unlimited

The Management of Houses in Multiple Occupation (England) Regulations 2006 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
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected Regulation 6
- Maintaining common parts Regulation 7
- Maintaining living accommodation Regulation 8
- Providing sufficient waste disposal facilities Regulation 9

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 in respect of:

- Providing information to occupiers Regulation 4
- Taking safety measures, including fire safety measures Regulation 5
- Maintaining the water supply and drainage Regulation 6
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected Regulation 7
- Maintaining common parts Regulation 8
- Maintaining living accommodation Regulation 9
- Providing sufficient waste disposal facilities Regulation 10

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with the duty of manager to provide information to occupier

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide information to occupier as a Mild matter, attracting a financial penalty with a starting level of £2,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £2,000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £2,000, attracting a civil penalty of £4,500.

Aggravating features/factors specific to Management Regulation breach offences

- The number and/or nature and/or extent of the management regulation breach(es) and/or the deficiencies within each regulation.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to take safety measures

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to take safety measures as a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £22,500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to maintain water supply and drainage

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the water supply and drainage as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £17,500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to supply and maintain gas and electricity

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the gas and electricity supply as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £17,500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to maintain common parts, fixtures, fittings and appliances

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the common parts, fixture, fittings and appliances as a Moderate matter, attracting a financial penalty with a starting level of £7,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £12,500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to maintain living accommodation

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the living accommodation as a Moderate matter, attracting a financial penalty with a starting level of £7,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £12,500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Duty to provide waste disposal facilities

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide waste disposal facilities as a Moderate matter, attracting a financial penalty with a starting level of £7,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £12,500.

Aggravating features/factors specific to Management Regulation breach offences

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Breach of licence conditions – Section 72(3) Housing Act 2004

Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited

All granted HMO licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property.

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with licence conditions related to:

- Signage or the provision of information for tenants
- Provision of written terms of occupancy for tenants
- Procedures regarding complaints
- Procedures regarding vetting of incoming tenants
- Compliance with deposit protection legislation
- The recording and provision of information regarding rent payments
- Procedures relating to rent collection
- The provision of information regarding occupancy of the property
- The provision of information regarding change of managers or licence holder details
- The provision of information related to changes in the property
- Requirements relating to the sale of the property
- Attending training courses
- Requirements to hold insurance
- The provision of insurance documentation

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Mild matter, attracting a financial penalty with a starting level of £2,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2,000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has

demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £2,000, attracting a civil penalty of £4,500.

Aggravating features/factors specific to Licence Condition breach offences

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions related to:

- *Procedures and actions regarding inspections*
- *Procedures regarding repair issues*
- *Maintenance and use of common parts (including gardens, outbuildings and property exterior) and living areas*
- *Safeguarding occupiers and minimising disruption during works*
- *Providing information regarding alterations and construction works*
- *Procedures regarding emergency issues*
- *Waste and waste receptacles, pests, minor repairs, alterations or decoration*
- *Giving written notice prior to entry*
- *Allowing access for inspections*
- *Minimising risk of water contamination*
- *The compliance of furnishings or furniture with fire safety regulations*

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Moderate matter, attracting a financial penalty with a starting level of £7,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £12,500.

Aggravating features/factors specific to Licence Condition breach offences

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions related to:

- *The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances*
- *Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status*
- *Procedures and actions regarding ASB*

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £17,500.

Aggravating features/factors specific to Licence Condition breach offences

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions related to:

- *Minimum floor areas*
- *Occupancy rates*
- *Occupancy of rooms that are not to be used as sleeping accommodation*

- *Limits on number of households allowed to occupy the property or part of the property*

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £22,500.

Aggravating features/factors specific to Licence Condition breach offences

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions related to:

- *The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations and appliances, fire detection or other fire safety features or requirements*
- *The prevention including provision of safe means of escape*

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Severe matter, attracting a financial penalty with a starting level of £22,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £22,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £27,500.

Aggravating features/factors specific to Licence Condition breach offences

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to Comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 impose duties on private landlords in relation to electrical installations. Regulation 3 is detailed below:

3. Duties of private landlords in relation to electrical installations

(1) A private landlord who grants or intends to grant a specified tenancy must—

- (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
- (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
- (c) ensure the first inspection and testing is carried out—
 - (i) before the tenancy commences in relation to a new specified tenancy; or
 - (ii) by 1st April 2021 in relation to an existing specified tenancy.

(2) For the purposes of sub-paragraph (1)(b) "at regular intervals" means—

- (a) at intervals of no more than 5 years; or
- (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.

(3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—

- (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
- (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;

- (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;
- (d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
- (e) supply a copy of the most recent report to—
 - (i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and
 - (ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.

(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—

- (a) 28 days; or
 - (b) the period specified in the report if less than 28 days,
- starting with the date of the inspection and testing.

(5) Where paragraph (4) applies, a private landlord must—

- (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—
 - (i) the electrical safety standards are met; or
 - (ii) further investigative or remedial work is required;
- (b) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and
- (c) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.

(6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

(7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person—

- (a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;
- (b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
- (c) makes an offer, whether oral or written, to rent those premises.

It is important that a private landlord complies with all aspects of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, however, the Council recognises that a failure to comply with certain aspects of Regulation 3 is likely to have a much bigger impact on the safety and comfort of residents than others.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (3)(b), 3(d), 3(e)

The Council would view the seriousness of the offence of failing to comply with (3)(b), 3(d) or 3(e) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a Mild matter, attracting a financial penalty with a starting level of £2,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £2,000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below, will increase by £2,000, attracting a civil penalty of £4,500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation.
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b), (5)(c)

The Council would view the seriousness of the offence of failing to comply with (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) or (5)(c) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £17,500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sections (4), (5a), (6)

The Council would view the seriousness of the offence of failing to comply with (4), (5a) or (6) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features (see below), will reduce by £5,000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features (see below), will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors (see below), will increase by £5,000, attracting a civil penalty of £22,500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation.
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

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 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 a 28-day period, this period starting the day after the date on which the Notice of Intent was given. As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from the Civil Penalties Matrix and guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide fulsome and cogent evidence to support the existence of any such circumstances when they make representations in response to the notice.

In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.

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 written representations received in the appropriate time period and will also consider the totality principle.

Furthermore, an offender's compliance with the identified breach during the representation period 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 may be relevant with respect to any mitigating factors that could decrease the amount of any imposed financial penalty.

If, following the receipt of written representations and/or the expiry of the time period to make written representations, the Council decides to impose a financial penalty on the person, it will give the person a Final Notice imposing that penalty.

The Final Notice will set out and summarise:

- 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

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

- A discount of 15% of the original calculated financial penalty will be deducted from the penalty imposed in the Final Notice should the penalty be paid within a specified time period (normally 28 days).

Illustrative example

The landlord of a Mandatory HMO property fails to obtain a licence. They only operate two HMO properties and there are no other relevant factors or aggravating features. The offence is regarded as a Very Serious matter. Upon receipt of the 'Notice of Intent' to impose a £17,500 financial penalty. Written representations are made to the Council.

On account of the written representations received by the landlord, the council imposes a financial penalty of £16,000. In the event the landlord pays within the specified period a 15% discount is given so that the landlord makes a discounted payment of £13,600.

Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“ the Regulations”)

Section 13 of the Regulations requires local housing authorities to prepare and publish a statement of principles which they propose to follow in determining the amount of a penalty charge.

The Regulations introduced legal requirements on most private sector landlords 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. During any period when the premises were occupied under the tenancy, to ensure that a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation, and which contains fixed combustion appliance other than a gas cooker.
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.
4. Where, following a report made on or after 1st October 2022 by a tenant or by their nominated representative to the landlord, a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced.

For the purposes of the legislation, living accommodation includes a bathroom or lavatory.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of the Regulations.

If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the Regulations. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice if they can demonstrate they have taken all reasonable steps to comply. Where there is evidence, including written correspondence, of repeated and consistent efforts to obtain access to the property, with access repeatedly being prevented by the occupant(s) of the property, a landlord will not be considered to be in breach of their duty to comply with the remedial notice. A landlord will be expected to have:

- Communicated the risk of harm that the lack of functioning alarms posed to all occupants in writing on multiple occasions.
- Requested access to comply with the remedial notice on a regular basis of no longer than every seven days in writing.

In considering the imposition of a penalty, the Council may look at the evidence concerning the breach of the requirement of the notice. A non-exhaustive list of methods that may be used to obtain relevant evidence includes, but is not limited to:

- Evidence obtained from a property inspection
- Evidence provided by the tenant or agent
- Evidence provided by the landlord demonstrating compliance with the Regulations by supplying dated photographs of alarms, together with installation records

Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy requirements. A non-exhaustive list of methods that may be used to evidence compliance with these testing requirements includes, but is not limited to:

- Tenants signing an inventory form which states that they observed the alarms being tested and confirming that the alarms were in working order at the start of the tenancy

When determining the amount of the penalty charge, regard will be had to whether this is a first breach under the Regulations.

Determining the amount of the penalty charge for a first breach

The minimum amount of a penalty charge for a first breach of the Regulations will be £2,500. The starting level of a penalty charge for a first breach of the Regulations will be £3,000. The penalty charge amount will then be varied depending on aggravating and mitigating factors.

Aggravating factors include, but are not limited to:

- The number of alarms not working or missing (the Regulations state there should be one per storey)
- Other fire safety concerns/defects in the property which increase the risk posed to the occupants
- The length of time the offence is believed to have been on-going
- The frequency of complaints by the occupiers to the landlord about the non-working or missing alarms
- The costs of any remedial work the Council have carried out in response to the breach
- Whether the property is let as an HMO (which increases the overall risk)

- The number of occupants living in the property
- Presence of vulnerable occupiers such as elderly, children or disabled people
- Any history of previous enforcement or non-compliance of the landlord
- Attempts to obstruct the investigation

Mitigating factors include, but are not limited to:

- The property being small and low-risk (for example a one-bedroom ground floor flat with a large number of fire escapes including large windows)
- A single occupant living in the property
- Evidence that all required alarms were checked and in working order at the start of the tenancy
- Written evidence that some efforts to gain access and comply with the remedial notice were made and access was prevented by the occupant

Determining the amount of the penalty charge for a subsequent breach

The penalty for subsequent breaches by the same landlord will be £5,000.

Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the Regulations”) make it unlawful to rent out a domestic property if it has an EPC (Energy Performance Certificate) rating of F or G (unless a valid exemption has been registered on the PRS Exemptions register).

The Regulations make it unlawful to fail to comply with a compliance notice served by the Council.

The Regulations cover all relevant properties, even where there has been no change of tenancy.

The Regulations were introduced to improve the energy efficiency of housing in the private rented sector and to reduce greenhouse gas emissions and tackle climate change. They should help make tenants’ homes more thermally efficient.

An energy performance certificate (EPC) gives the property an energy efficiency rating – A rated properties are the most energy efficient and G rated are the least efficient. It’s valid for 10 years and must be provided by the owner of a property, when it is rented or sold.

If you are a landlord and you fail to provide an EPC at the start of a tenancy, you will be in breach of the Regulations.

An EPC contains information about the type of heating system and typical energy costs. It also gives recommendations about how the energy use could be reduced, lowering running costs. You can find the recommended energy efficiency improvements on the current EPC.

If you’re a private landlord, you must either:

- ensure your rented properties have an EPC with a minimum ‘E’ rating
- register a valid PRS exemption on the PRS exemptions register

Failure to do either of these is a breach of the Regulations.

The Council investigates any potential breaches of the regulations. If the Council is satisfied that you are, or have at any time in the 18 months preceding the date of service of the penalty notice, breached the Regulations, you may be subject to a penalty notice imposing a financial penalty. The Council may also impose a publication penalty.

The “publication penalty” means publication, for a minimum period of 12 months, or such longer period as the Council may decide, on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord’s name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

The Council will impose the following financial penalties:

- (a) letting a property with an F or G rating for less than 3 months: £2,000
- (b) letting a property with an F or G rating for more than 3 months: £4,000
- (c) registering false or misleading information on the PRS exemptions register: £1,000
- (d) failing to provide information to the Council demanded by a compliance notice: £2,000

The Council may not impose a financial penalty under both subsections (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.