

## Worcester City Council

# Housing Enforcement Policy

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0.1	02.09.2014	
0.2	24.03.2015	Update complaints procedure
0.3	04.05.2017	Update following recent legislation
0.4	02.2022	Legislation update, clarification of scope and incorporate financial and civil penalty.

# Worcester City Council Housing Enforcement Policy 2022

## 1. General

- 1.1 The content of this policy will be revised as necessary to meet changing circumstances and the Policy shall be reviewed by Officers at least every three years or whenever significant legislative changes occur, and proposed amendments shall be approved through the appropriate mechanism.
- 1.2 All relevant officers are required to support and comply with the policy...
- 1.3 The policy considers and complies with the provisions of The Regulators' Code 2014.
- 1.4 This policy considers the guidance set out in the 'Code for Crown Prosecutors'.
- 1.5 The Council recognises that there are many situations where there is a shared or complementary role with other agencies. All relevant officers will work together with other agencies to ensure that the best possible outcome is achieved within the terms of this Policy. This will require actively seeking collaboration with agencies such as the Police, Fire Authority, Magistrates Courts, Trading Standards, Health and Safety Executive as well as internal colleagues of the Council such as Development Control, Building Control and Legal Services. This list of agencies is indicative, but it is by no means exhaustive.
- 1.6 This Policy is available to the public on request and is also available on the Council's website [www.worcester.gov.uk](http://www.worcester.gov.uk). Any comments on the enforcement policy can be made to the Head of Homes and Communities as service lead.
- 1.7 The Council agrees that effective and well targeted regulation is essential in promoting fairness and protection from harm. However, the Council agrees that, in achieving these and other legitimate objectives, regulation and enforcement should be proportionate and flexible enough to allow, or even encourage, economic progress.
- 1.8 Owner-occupied properties will not normally be the subject of enforcement of property standards unless they are having a detrimental effect on other properties or on the area. For example, a home owner with a roof leak affecting an attached property and not responding to informal requests to repair.

## 2. Areas of Enforcement

Areas of enforcement where this Housing Enforcement Policy applies are:

- Property standards for rented and other properties where appropriate
- Minimum Energy Efficiency Standards
- Electrical Safety
- Harassment and illegal eviction
- Empty properties
- Filthy and hoarded properties
- Household Drainage

And all further activities related to the above. Officers are also authorised to use other relevant powers for example the ability to require property related information to be provided under the Local Government Miscellaneous Provisions Act 1976, section 16.

### **3. Purpose**

To ensure that enforcement decisions will be fair, consistent and undertaken in an open manner appropriate to the risk posed by non-compliance. In particular in responding to non-compliance that officers identify, we will clearly explain what the non-compliant item or activity is, the advice being given, actions required, or decisions taken, and the reasons for these. Where the risk is not significant and imminent and therefore requiring immediate formal action, we will provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

### **4. Principles of Enforcement**

The council's approach to Enforcement of the law will be informed by the principles of;:

- Proportionality in applying the law and securing compliance
- Consistency of approach
- Transparency about how the Council, as a regulator operates, and what those regulated may expect
- Targeting, using risk assessment to channel resources into high-risk areas
- Helpfulness, as the Council believe that prevention is better than cure and will attempt to alter the behaviour of the offenders
- Standards to be drawn up in consultation with interested parties, setting out our service levels and expected performance
- Procedures to deal with complaints of poor, inappropriate or non-existent service; the policy will be well publicised, effective and readily accessible to all
- It must be in the public interest to prosecute

#### **4.1 Proportionality**

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties can expect that action taken by the Council to achieve compliance will be proportionate to any risks to public health or the environment and to the seriousness of that risk.

#### **4.2 Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar aims. The Council will also work closely with other enforcement agencies in its efforts to achieve consistency.

#### **4.3 Transparency**

Transparency means that the Council undertakes to help those regulated to understand what is expected of them and what they in turn can expect from the Council. It also means making clear to those regulated not only what they have to do but where this is relevant, what they don't have to do. In other words, the Council will distinguish clearly between statutory requirements and advice or guidance what is desirable but not compulsory. General information and advice will be provided in clear and concise language using a range of appropriate formats and media.

#### **4.4 Targeting**

Targeting means making sure that inspections are targeted primarily towards those activities where they would be most effective by assessing the risks to their regulatory outcomes. The Council will ensure that the risk assessment proceeds and informs all aspects of its approach and regulatory activity, including:

- Data collection and other information requirements
- Inspection programmes
- Advice and support programmes
- Enforcement and sanctions

Risk assessments will be carried out according to the principles contained within 'The Regulators Compliance Code'. Higher risk activities such as Houses in Multiple Occupation will naturally receive more attention than single let properties. Landlords who have a history of failing to comply with legal requirements can expect their properties to be pro-actively targeted for inspection. The council will pro-actively target investigation of rented properties found to be not complying with minimum energy efficiency standards. Empty properties will be risk scored and prioritised when they are empty for a longer period of time.

#### 4.5 **Helpfulness**

The Council believes that part of its role is working actively with any person affected by its services to advise on and assist with compliance. The Council will provide a friendly, courteous, easily contactable, effective service which will deal promptly with service requests whilst minimising unnecessary overlaps and time delays.

#### 4.6 **Standards**

The Council has corporate standards setting out the level of service and performance which the public and business proprietors can expect to receive. Routine complaints and enquiries will be responded to within 5 working days whenever possible given resources available and staff will prioritise resources and response based on perceived relative risks.

#### 4.7 **Complaints Procedure**

The Council has published details of its Corporate Complaints Procedure. The procedure is aimed at dealing effectively with complaints of poor, inappropriate or non-existent service. This means making the procedure readily accessible to all services users including those regulated. The Corporate Complaints Procedure forms part of the Council's performance monitoring systems to assist in continuous improvements of the services which the Council provides. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

#### 4.8 **Public Interest**

When formal action is necessary the person responsible for creating the risk must be held to account for it. However, it must still be in the wider public interest that enforcement action is taken.

### 5. **Enforcement Options**

When conducting formal investigations, Officers will adhere to Police and Criminal Evidence (P.A.C.E), Code of Practice on Disclosure of Information. Although technically available as an option, enforcement action will only be taken against owner occupiers where their action, or lack

of, adversely affects neighbouring properties or there is a clear existent or imminent potential risk to public health, safety or the environment.

### 5.1 **Advice and Assistance**

Advice from an Enforcement Officer will be clear, readily understandable and confirmed in writing upon request. Before formal action is taken, an opportunity will normally be given to discuss the circumstances of the case unless there is need for immediate action due to the severity of the situation or to prevent evidence being destroyed, or to respond to a repeat offender. Where immediate action is considered necessary an explanation will be given as soon as possible and, confirmed in writing. Any written documentation issued will contain all the information needed to understand what work is required, why it is needed and shall state the legislation contravened and measures to enable compliance with the legal requirements. Financial assistance is available in certain circumstances under the Council's Housing Assistance Policy. Details will be given of all rights of appeal, whether to the Council or to external bodies.

### 5.2 **Informal Action**

Informal action to secure compliance with legislation includes advice, verbal warnings and requests for action, the use of letters and inspection reports. The circumstances when it is appropriate to consider using informal action are as follows;

- The act was not sufficiently serious to require formal action
- From past history, it can be reasonable expected that informal action will achieve compliance
- The result of non-compliance will not cause a significant risk to public health, safety, wellbeing or the environment
- Where informal action will be more effective than formal action

### 5.3 **Statutory Notices and Carrying out Works**

Enforcement Officer's will consider the use of statutory notices, where one or more of the following apply;

- There is a legal requirement to act
- There is/are significant contraventions of legislation
- There is a lack of confidence in response to an informal approach
- There is a history of noncompliance with informal action
- There is evidence of little knowledge of statutory requirements
- The result of noncompliance could be potentially serious to public health, safety wellbeing or the environment

Statutory notices will only be issued by officers who have been authorised and are considered competent. The failure to comply with a Statutory Notice served under e.g. The Housing Act 2004 is likely to result in a civil penalty or court proceedings where the circumstances fulfil the criteria in the Enforcement Policy. If a right of appeal exists, details will be included with the notice.

*It should be noted that some notices are served in order to obtain specific information and, as such, do not represent enforcement action.*

Works may be carried out in default of the responsible person. This will be considered on a case by case basis. Emergency works can also be carried out where appropriate. This is typically where the property owner/ landlord cannot be contacted or is refusing to take action on a situation deemed to be presenting imminent risk. The carrying out of any works in default does not prevent the consideration of other formal action such as formal caution, civil penalty or prosecution.

#### 5.4 **Formal Cautions**

Formal Cautions, where appropriate, will be issued in accordance with Home Office Guidelines. A Formal Caution may be issued where there is sufficient evidence to provide a realistic prospect of conviction but because of the attitude, history and willingness to co-operate, it is considered inappropriate to prosecute. To issue a Formal Caution the Council must be satisfied that the offender has admitted to the offence in writing and has agreed to be cautioned. Formal cautions issued may be cited when considering any similar offences within three subsequent years.

#### 5.5 **Prosecution**

Prosecution may normally be warranted when one or more of the following apply;

- Where the offence involves a significant breach of the law such that public health, safety, wellbeing or the environment is or has been put at risk
- Where the alleged offence involves a failure by the suspected offender to correct an identified potential risk having been given the opportunity to comply with the lawful requirements of an authorised Officer
- Where the offence involves a failure to comply in full or in part with the requirements of a Statutory Notice
- Where there is a history of similar offences related to risk to public health, safety, wellbeing or the environment

Before a prosecution goes ahead, the officer responsible for deciding on the enforcement action will liaise with the Legal Services team to be satisfied that there is relevant, substantial and reliable evidence that an offence has been committed.

The alleged offender will normally be given the opportunity to state their case and circumstances around any alleged offence prior to formal consideration of prosecution.

#### 5.6 **Civil Penalties and Financial Penalties**

The Housing and Planning Act 2016 amended the Housing Act 2004 and introduced Civil Penalties as an alternative to prosecution for offences in relation to licensing Houses in Multiple Occupation (HMOs), failure to comply with an improvement notice and failure to comply with HMO management regulations. The legislation allows a maximum financial penalty of £30,000 to be imposed per offence. Given the history of relatively low fines imposed by magistrates for prosecutions for these offences and the fact that any civil penalty money received by the Council will be used to support the work of the Private Sector Housing Team, the use of Civil Penalties will be the normal approach to such offences rather than prosecution unless public interest warrants the action of prosecution, for example to enable a Banning Order. In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil Penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in Appendix 1. The associated financial penalty procedures are attached in appendix 2. The framework for setting a civil penalty for a specific situation has been consulted with the West Midlands Housing

Enforcement Officers Group and a common approach been adopted. Each specific case will be assessed on its own merits and the charging table used as a framework to aid assessment and determination of an appropriate civil penalty.

Financial penalties are provided for in certain legislation and regulations, for example requirements for electrical safety in private rented accommodation and the regulations requiring minimum energy efficiency standards to be provided in private rented accommodation. The approach to determining appropriate financial penalties are covered in detail in Appendices 3 and 4 of this policy.

All financial penalty considerations are open to a review request by the affected person. Any review will be undertaken by a line manager or other person to ensure independent consideration from the investigating officer.

The setting of a civil or financial penalty fine will take into account aggravating and mitigating factors including any submission by the responsible person. Such factors will include any financial or other harm caused, any financial gain or costs avoided, history of compliance, deterrent and investigation costs.

## **5.7 Banning Orders**

The Government has advised that from October 2017, when a landlord is prosecuted for a relevant offence, the Council may seek a Banning Order to prevent that person from managing rented property. When this power comes into force, this will only be used where there is a persistent offender who has been subject to prosecution for multiple offences, in line with any Government guidance issued.

## **6. Accountability and Liaison with Businesses**

The council will regularly consult on the service it provides and comments received will be used to change procedures where appropriate. Landlords and other businesses we deal with should feel they are able to communicate with officers directly and that we will take account of their business in how we deal with them. Landlords are met with directly and via the Landlord Forum in order to help inform them and receive feedback and input into our policy determination. Normal practice will be to inform businesses where possible of new or changed legal requirements and we will always seek to offer advice and assistance where appropriate.

## **7. Costs of Enforcement, licensing and other activities**

The reasonable costs associated with enforcement, licensing and other activities will be charged to the responsible persons. For example, the costs of inspection and notice being served under the Housing Act 2004 and officer time costs associated with any works in default carried out along with the works costs. House in Multiple Occupation Licences and renewals will also be charged at a rate to reflect the officer time and cost involved including an administration element. Penalty Fees will also be charged to include consideration of officer time costs, administration and a deterrent element based upon history of compliance when available. Specific fees and charges will be reviewed annually and published by the Council as part of the overall fees and charges structure. The Council will actively seek to recover any costs incurred through use of civil action and use of enforced sale of property under the Law of Property Act 1925 where applicable.

## 8. Rent Repayment Orders

- 8.1 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)). Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences which are described below.
- 8.2 Rent repayment orders are being extended to cover the following situations:
- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
  - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
  - Breach of a banning order made under section 21 of the Housing and Planning Act 2016;3
  - Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;
  - Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977
- 8.3 A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed above. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.
- 8.4 Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).
- 8.5 Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:
- a. **Punishment of the offender.** Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
  - b. **Deter the offender from repeating the offence.** The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
  - c. **Dissuade others from committing similar offences.** Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
  - d. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

- 8.6 A local housing authority can impose a civil penalty or prosecute for the offence and apply for a rent repayment order for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (section 30);
  - Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));
  - Offences in relation to licensing of houses under part 3 of the Act (Section 95(1))
- 8.7 If a local housing authority becomes aware that a person who is a landlord has been convicted of any of the offences listed at paragraph 4.2, and the offence was committed in their area, it must consider applying for a rent repayment order.
- 8.8 The First-tier Tribunal must order that the maximum amount of rent (up to 12 months) is repaid where the landlord has been convicted of the offence to which the rent repayment order applies. This is regardless of whether or not the local housing authority or tenant has applied for a lesser amount. Where the landlord has not been convicted, the First-tier Tribunal will determine the amount to be repaid in accordance with section 44 (tenants) or section 45 (local housing authorities) of the Housing and Planning Act 2016.
- 8.9 Where a landlord has been convicted of any of the offences listed at paragraph 4.2 and the rent repayment order, or part of it, is being made in favour of the local housing authority (because rent was paid through Housing Benefit/Universal Credit), the First-tier Tribunal must require the landlord to repay all of the rent paid to the landlord by the local housing authority up to a maximum of 12 months, provided the conditions in section 46 of the Housing and Planning Act 2016 are met.

## Appendix 1

Housing Act 2004 Charging table for initial guidance on value of Financial Penalty to be considered

<i>Failure to comply with an Improvement Notice (Section 30)</i>	£
<i>1st offence (note 1)</i>	5000
<i>2nd subsequent offence by same person/company(note 2)</i>	15000
<i>Subsequent offences by same person/company (note 7)</i>	25000

<i>Premiums (use all that apply)</i>	
<i>Acts or omissions demonstrating high culpability (note 8)</i>	+2500
<i>Large housing portfolio (10+ units of accommodation)(note 3)</i>	+2500
<i>Multiple Category 1 or high Category 2 Hazards (note 4)</i>	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)</i>	+2500
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Offences in relation to licensing of HMOs (note1) under Part 2 of the Act (Section 72)</i>	£
<i>Failure to obtain property Licence (section 72(1))(note 1)</i>	10000
<i>2nd subsequent offence by same person/company (note 2)</i>	30000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach</i>	5000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)</i>	£
<i>Failure to Licence (section 95(1))(note 1)</i>	10000
<i>2nd subsequent offence by same person/company (note 2)</i>	30000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%
<i>Breach of Licence conditions (Section 95(2)) - Per licence breach</i>	5000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Offences of contravention of an overcrowding notice (section 139)</i>	£
<i>1st relevant offences (note 1)</i>	5000
<i>2nd subsequent offence by same person/company (note 2)</i>	15000

<i>Premiums (use all that apply)</i>	
<i>Acts or omissions demonstrating high culpability (note 8)</i>	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)</i>	+2500
<i>Perpetrator demonstrates Income to be less than £440/week(note 6)</i>	-50%

<i>Failure to comply with management regulations in respect of HMOs (Section 234)</i>	£
<i>1<sup>st</sup> relevant offences (note 1)</i>	1000/offence
<i>Second subsequent offences by same person/company for the same offence</i>	3000/offence

<i>Premiums (use all that apply)</i>	
<i>Acts or omissions demonstrating high culpability (note 8)</i>	+2500
<i>Large housing portfolio (10+ units of accommodations) (note 3)</i>	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)</i>	+2500
<i>Perpetrator demonstrates Income to be less than £440/week(note 6)</i>	-50%

## Notes

### Note 1 - Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to assist in determining the full financial penalty to be imposed.

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

### Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

### Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

### Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

## Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance. At the time of publication this document can be found at [www.gov.uk](http://www.gov.uk) and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

## Note 6 - Perpetrator demonstrates income to be less than £440/week Net

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

**Note 7 - Previous history of non-compliance with these provisions**

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

**Note 8 - Acts or omissions demonstrating high culpability**

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Once the specific circumstances of the case have been considered using the above mechanism, the decision to apply a civil penalty and determination of the civil penalty amount will be reviewed by another officer to aid consistency and ensure fair application of the framework for the given situation. Other factors to consider will be the amount of any apparent financial gain, avoidance, council costs and harm to the tenant as well as a deterrent factor.

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## Appendix 2

### Process for imposing Civil Penalty charges

- 1.0 Where it has been determined that a civil penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.
- 1.1 A "Notice of Intent" shall be served on the person suspected of the offence, specifying:
  - a. The amount of any proposed financial penalty
  - b. The reasons for proposing the financial penalty
  - c. Information about the right to make representation to the Council.
- 1.2 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 1.3 Following the 28 day period the Council will decide:
  - a. Whether to impose a financial penalty on the person, and
  - b. The value of any such penalty imposed.
- 1.4 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
  - 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 to the First tier Tribunal
  - f. the consequences of failure to comply with the notice.
- 1.5 Consequences of non-compliance and miscellaneous provisions
- 1.6 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the civil penalty relates.
- 1.7 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence
- 1.8 The Council may, at any time:
  - a. Withdraw a notice of intent or final notice
  - b. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either action, it will write to the person to whom the notice was given.

- 1.9 Where a person has received two civil penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

### **Appendix 3**

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

Standard Penalty fines to be considered:

Penalty fine for each first offence under the regulations £1,000.

Penalty fine for each subsequent offence under the regulations by the same landlord £3,000.

Each individual case to be determined on its own merits and culpability of the offender and mitigating circumstances to be considered that may vary from the proposed standard penalty fines set out above.

Multiple breaches of the regulations by the same landlord at the same property will accumulate to no more than £30,000.

Where the council is satisfied that an offence has occurred for which a Penalty fine under the regulations appears appropriate, a Notice of Intent will be issued to the private landlord giving 28 days for them to make representations.

Any representations received will be considered in a case review by the manager of the investigating officer and subject to legal advice prior to determination of whether to issue a financial penalty and the amount of that penalty.

The proceeds of any financial penalty received under these regulations will be applied to the costs of the enforcement functions in relation to the private rented sector.

## Appendix 4

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

Landlords need to meet minimum energy efficiency standards in private rented accommodation from 1<sup>st</sup> April 2020. Those found not to be in compliance will normally be informed and given time to comply with the requirements. However where found that the landlord has not responded to ensure or move in a reasonable time to comply, or known to have submitted false or misleading information to gain an exemption, or those landlords having a history of non compliance, then a financial penalty under the above regulations will normally be considered appropriate.

#### Guidance for determining the level of a financial penalty

The maximum level of penalty varied on the type of breach under the regulations

Financial penalties (Regulation 40)

*Where the local authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:*

- (a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose a publication penalty*
- (b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose a publication penalty*
- (c) Where the landlord has registered false or misleading information on the PRS Exemptions register, the local authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.*
- (d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose a publication penalty.*

**The council will use the following matrix as an initial guide to officers to determine the appropriate penalty**

	Low culpability	High culpability	Notes
Low harm	25%	50%	% = Proportion of maximum penalty
High harm	50%	100%	

#### **Notes –**

If two or more Penalty Notices apply, the combined maximum per property per breach will be £5,000.

Officers may wish to adjust the penalty from that determined in the matrix if there are particular aggravating or mitigating factors. These may come to light during the investigation and will need to be included in the Penalty Notice.

Also, factors may be provided in representations from a landlord in his request to review after the Penalty Notice has been served. Officers will have regard to these factors and may adjust the penalty to

increase or reduce as they feel appropriate. Landlords will be provided with a minimum of one month and normally 6 weeks to request a review, presenting any information they wish considered as part of that review. The landlord will be served a notice after the review with an explanation of any adjustment made. Any representations received will be considered in a case review by the manager of the investigating officer and subject to legal advice prior to determination of whether to confirm, vary, withdraw the financial penalty or allow more time for payment to be made.

The proceeds of any financial penalty received under these regulations will be applied to the costs of the enforcement functions in relation to the private rented sector.

**If a local authority confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months.**

**Factors affecting the culpability –**

**Low -**

- × Landlords first offence under these regulations
- × No previous history of non-compliance with housing related regulatory requirements
- × Non –compliance due to complex issues partially out of the landlords control

**High -**

- × Landlord has a previous history of non-compliance with housing related regulatory requirements and/or landlord has failed to comply with requests to comply with these regulations
- × Landlord has knowingly or recklessly provided incorrect information in relation to exemptions to these regulations
- × Apparent financial gain by the landlord or avoidance of cost of works

**Factors affecting harm –**

**High –**

- × Very low EPC rating
- × Vulnerable tenants occupying the property for an extended period of time since non-compliance
- × Estimated financial costs to tenant of living in a home that costs more to heat.

**Low –**

- × No vulnerable tenants
- × Higher EPC score, close to the minimum EPC rating (E)

*Tables below show the penalty matrix for each type of offence*

<b>a) Breach is less than 3 months : Maximum fine £2,000</b>			
	Low culpability	High culpability	Notes
Low harm	£500	£1000	% = Proportion of maximum penalty
High harm	£1000	£2000	

b) Breach is more than 3 months : Maximum fine £4,000			
	Low culpability	High culpability	Notes
Low harm	£1000	£2000	% = Proportion of maximum penalty
High harm	£2000	£4000	

c) Providing false or misleading information : Maximum fine £1,000			
	Low culpability	High culpability	Notes
Low harm	£250	£500	% = Proportion of maximum penalty
High harm	£500	£1000	

d) Failing to comply with a Compliance Notice : Maximum fine £2,000			
	Low culpability	High culpability	Notes
Low harm	£500	£1000	% = Proportion of maximum penalty
High harm	£1000	£2000	

Principles the council will take into account when applying a civil penalty:

1. **Harm to the tenant.** The greater the harm or potential harm to the tenant, the higher the penalty should be.
2. **Offender's history of failing to comply with their obligations.** Landlords are expected to be aware of their legal obligations and responsibilities. This could be when a landlords actions are seen as deliberate or they should have known they were in breach of their legal responsibilities.
3. **Punishment of the offender.** The civil penalty route should not be seen as an easy option compared to prosecution. Whilst the penalty should follow the matrix, 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 has demonstrated that there are consequences for not complying with their responsibilities.
4. **Prevent further offences.** The level of the penalty should be set high enough so it is likely to deter the offender from repeating the same offence again, or any other offence.
5. **Deter others from committing similar offences.** Although it is not made known to the public when someone is served a civil penalty, it is possible landlords may find out as in their local area landlords become aware through informal channels. By setting a high enough penalty it should both punish the offender and deter other landlords from doing the same.
6. **Remove financial benefit.** The offender may have obtained a financial benefit as a result of committing the offence so it is crucial to ensure they have not benefited as a result of the offence. It should not be cheaper to offend then to ensure a property is well maintained and properly managed.

**Culpability - Responsibility for a fault or wrong. Being culpable, is a measure of the degree to which a person, can be held morally or legally responsible for action and inaction.**

**Harm - The damage to something which is caused by a particular course of action.**