Housing Standards Enforcement Policy including Houses in Multiple Occupation.

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1. Introduction

The Council aims to ensure that private rented sector accommodation meets a minimum decent standard to protect the health and safety of tenants. The availability of houses in multiple occupation (HMO) lettings is particularly important in order to sustain affordable housing.

This policy sets out the way Reading Borough Council implements the requirements of the Housing Act 2004 in relation to HMO licensing and health and safety hazards. It also outlines how the Council intends to use the discretionary powers in the Housing Act and related legislation to ensure fair and equitable enforcement.

2. The Wider Picture

This policy is written in the context of the Council's Corporate Objectives including:

- Ensuring access to decent housing to meet local needs.
- To protect and enhance the lives of vulnerable adults and children.
- To keep Reading's environment clean, green and safe.

According to the 2012 House Condition Survey 28.5% of households live in the Private Rented Sector with 10% of the properties being classified as HMOs.

The 2012 House Conditions Survey showed that private sector house conditions have improved since the previous survey in 2006 with a reduction in non-decent homes from 20,500 to 12,200 dwellings with 10% presenting a Category 1 hazard. Housing conditions are poorer in the private rented sector than that in any other type of tenure in the borough. The Council will continue to implement measures to ensure homes are decent and enforcement of the Housing Act 2004 will support this.

3. Partnership working

The Private Sector Housing Team will ensure that partnership links are developed and maintained. Partners assist in ensuring consistent and targeted enforcement. Internally we work with a range of teams including our Housing Advice Service and Adult Sociual Care. External partners include the Royal Berkshire Fire and Rescue Service (RBFRS), Brighter Futures for Children, the University of Reading, Thames Valley University, Thames Valley Police, the Primary Care Trust and members of the National Residential Landlords Association.

4. Housing enforcement legislation

Housing Act 2004

The Housing Act 2004 ('the Act') outlines the way the Council regulates standards in private rented housing. The Act replaced the Housing Act 1985 fitness standard with a system of assessing the hazards affecting occupiers. It also introduced mandatory licensing of certain houses in multiple occupation from April 2006, with an extension of mandatory licensing coming into force from 1st October 2018.

The Housing Act 2004 imposes certain general obligations on the Council, including:

- A duty to arrange for inspections to be carried out to determine whether any hazards exist in dwellings and their severity.
- To take appropriate enforcement action to protect residents from serious hazards.
- To implement an HMO licensing regime and to process applications for HMO licensing.

Part 1 of the Act describes the actions the Council must take in relation to reports of hazards in residential properties. These actions include:

- carrying out assessments using the Housing Health and Safety Rating System ("HHSRS") to determine whether any category 1 or category 2 hazards exist.
- Taking the appropriate enforcement action to protect residents from harm.

Mandatory HMO licensing is detailed in Part 2 of the Act and places an obligation on all local authorities to set up a scheme to licence those HMOs that fall within the scope of mandatory licensing.

The aim of HMO licensing is to ensure the poorest and highest risk properties in the private rental market meet the legal standards and are properly managed.

HMOs currently covered by mandatory licensing are those where there are five or more occupiers forming two or more households. Social housing and HMOs owned by the police, health authorities, universities and some other listed organisations are exempt.

Management of Houses in Multiple Occupation (England) Regulations 2006 ("the HMO Management Regulations")

Many HMOs in Reading will not be licensable under the mandatory scheme. These include certain houses containing self-contained flats and smaller HMOs. These HMOs are regulated by 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.

The HMO Management Regulations require any person managing an HMO to undertake works and to put in place procedures to ensure the HMO remains a safe and healthy environment for residents.

There is a corresponding set of regulations for buildings known as section 257 HMOs, which are the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

Housing and Planning Act 2016

The Housing Act 2004 was amended by the Housing and Planning Act 2016 to create a range of new powers and tools to support the enforcement of housing law. The options created include:

- The power to impose civil penalties up to a maximum of £30,000 for certain offences.
- The extension of Rent Repayment Orders ("RROs") to cover a wider range of offences.
- The issuing of Banning Orders against the worst offenders; and
- The creation of a database of rogue landlords and agents.

Housing Act 1985 (as amended)

Where category 1 hazards exist, the Housing Act 1985 may be used to declare clearance areas or to make demolition orders.

In addition to carrying out the requirements of the Housing Acts, the Council has a duty to investigate complaints of statutory nuisance, defective sanitary appliances and drainage and other related matters.

Local Government (Miscellaneous Provisions) Act 1976

This legislation enables the service of a requisition for information notice that requires the recipient to disclose their interest in a particular property and that of any other person who they believe may have an interest.

Prevention of Damage by Pests Act 1949

This enables the service of notices to deal with infestations of rats or mice. It also allows the service of notices to enforce the removal of articles (such as food) or harborage that may encourage rat or mouse activity.

Public Health Act 1961

Sections 16 to 18 of this legislation give the Council powers to deal with blocked drains in an emergency.

Public Health Act 1936

The Council has several powers and duties under this act:

- Section 45 - provides for the service of a notice to repair and/or cleanse a defective water closet that is in such condition as to be prejudicial to health or a nuisance.
- Section 50 - provides the Council with a power to deal with overflowing/leaking cesspools.
- Section 83 – places duties on the Council to deal with premises that are filthy, unwholesome and/or verminous.

Building Act 1984

The Council has several powers and duties under this act:

- Section 59 - provides powers to deal with defective drainage including gutters and down pipes.
- Section 64 - provides a duty to serve a notice requiring the provision of water closets in a dwelling where insufficient facilities exist; and
- Section 63 covers water closets, drains and soil pipes improperly constructed or repaired and in such a state as to be prejudicial to health or a nuisance.

- Section 76 - affords a quicker response to dealing with premises that are prejudicial to health or a nuisance than is afforded through the use of Section 80 of the Environmental Protection Act 1990.
- Section 79 - covers ruinous or dilapidated buildings and neglected sites.

Environmental Protection Act 1990

Part 3 allows the Council to take enforcement action in relation to premises that are in such condition as to be prejudicial to health.

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

These regulations introduced the Minimum Energy Efficiency Standard, so that from 1st April 2018 it had become illegal for landlords to rent out property unless it met the minimum energy efficiency rating of E. However, there are some exemptions.

Smoke and Carbon Monoxide Alarms (England) Regulations 2015

These regulations impose duties on landlords of residential properties in England to ensure properties have smoke and carbon monoxide alarms fitted. Failure to fit these will result in the Council issuing a Penalty Charge of up to a maximum of £5,000.

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

These regulations place a duty of landlords of resident properties in England to ensure properties are electrically safe and to ensure electrical installations are inspected and tested by a competent person at least once every five years. Failure to comply will result in the Council issuing a Penalty Charge of up to £30,000.

Tenant Fees Act 2019

This makes it an offence for landlords or agents to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent,

to make certain payments in connection with a tenancy. Failure to comply will result in the Council issuing a Financial Penalty of up to £5000 for a first offence and anything up to £30000 for a second or further offences.

The information in the following pages sets out the enforcement policies the Council's Private Sector Housing team will apply.

Fair and Consistent Enforcement

This enforcement policy helps to promote an efficient and effective approach to regulatory inspection and enforcement and aims to improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that a decision to depart from the Code will be properly reasoned, based on material evidence and documented. The current 'Corporate Enforcement Policy' is available at:

https://www.reading.gov.uk/council/policies-finance-and-legal-information/strategies-plans-and-policies/

Investigations

Investigations may be initiated upon:

- receipt of a service request by a customer (including via elected representatives).
- receipt of a referral from a partner agency.
- receipt of a complaint from a Justice of the Peace.
- a licence application;
- other intelligence where an assessment of risk indicates a property is sub-standard.

In the case of a service request from a tenant about conditions, we normally expect the tenant to have informed the landlord of the problem and allowed time for remedial action before contacting the service for assistance.

Formal enforcement options

We believe that enforcement alone is unlikely to have much effect on improving standards. However, where landlords do not co-operate, and there are inadequate safeguards for occupiers, enforcement action will be taken.

Enforcement action may be taken:

- Where there has been non-compliance with a statutory notice.
- Where a contravention of the Act or Regulations has been identified.
- Where a risk assessment identifies a risk to an occupant or potential occupant.

Before taking formal action, where the Council can make contact using reasonable effort, officers will usually discuss why they intend to take a particular course of action with the landlord and tenant. This may not be possible in all cases, such as where an officer identifies an urgent or imminent risk to an occupant or potential occupant.

Where a landlord has not complied with a legal notice, the Council may either prosecute or consider issuing a civil penalty where this option is available. The Council may also choose to carry out the work in the owner's default, reclaiming the full costs associated with this. Formal court proceedings will normally be completed before works in default are performed, unless the Service Manager considers that there is an urgent need for the works to be carried out to protect the health and safety of the tenant.

Empty and Owner-Occupied Homes

The Council will use its powers in line with the Empty Homes Strategy. The strategy can be found at: www.reading.gov.uk/emptyhomes

Other than in exceptional cases, the Council expects owner-occupiers, including long leaseholders, to take their own action to remedy problems of disrepair or nuisance. Owner-occupiers are in a stronger position to invoke their lease or their statutory rights, whereas short-term tenants of private landlords put themselves at the risk of losing their homes as a result of invoking their rights. Grants, loans and other forms of assistance are available to some owner-occupiers for repairs, heating improvements and security works as outlined in the Council's Private Sector Renewal Policy.

The Council also has the power to make a compulsory purchase order to acquire property for housing purposes. This action is only taken where all other means of bringing a property back to use have been explored and the financial implications are fully understood.

The majority of enforcement work is carried out in dwellings owned by private landlords. As the Council enforces the above statutes, the Council has no powers to deal with Council-owned dwellings.

Housing Health and Safety Rating System and Enforcement Regime

The Housing Health and Safety Rating System ("HHSRS") is the method prescribed for determining whether a hazard exists in residential properties.

The HHSRS involves the assessment of 29 potential hazards and scoring of their severity to decide whether improvements are needed.

Under Part 1 of the Act, the Council's enforcement options include:

- Serving an improvement notice requiring remedial action to be carried out within a certain time.
- Making a prohibition order that places restrictions on the use of a residential premises; and
- Serving a hazard awareness notice that, while not requiring remedial action to be carried, formally brings the existence of the hazard to the attention of the responsible person.

If more serious hazards (known as category 1 hazards) are found, the Council has a duty to take the most appropriate form of enforcement action. If less serious hazards (known as category 2 hazards) are found, the Council has a discretionary power to require action.

In cases where there is a category 1 hazard and an imminent risk of serious harm exists, the Council also has the following options available:

- To carry out emergency remedial action to deal with the hazard. The costs of the work are recoverable from the responsible person; and
- To make an emergency prohibition order that places immediate restrictions on the use of a residential premise.

Where a fire hazard is identified in an HMO or the common parts of buildings containing flats, the Council will consult the Royal Berkshire Fire and Rescue Service on works required before taking enforcement action.

An Improvement Notice will normally be the most appropriate remedy for most hazards; repair or renewal is generally cost-effective because of the high value of property in Reading. A Prohibition Order, however, may sometimes be required on part of or all of a dwelling, for example where there is inadequate natural lighting or there is no fire escape from the top floor. In certain circumstances, the Council may serve suspended

notices, which may come into action at a future time or be triggered when a set of specified circumstances arises.

In some circumstances where an imminent risk of serious harm to occupiers exists, it is not appropriate to serve an Improvement Notice or to make a Prohibition Order, as these take at least four weeks to come into force. In such circumstances, the Council will consider undertaking emergency remedial action or, in extreme cases, making an Emergency Prohibition Order to immediately place restrictions on the occupancy of the premises in question.

Section 9 of the Act provides for guidance to be given to local authorities on the exercising of their powers of inspection, assessment and enforcement. The Council will have regard to any statutory guidance issued under this section.

Policy – Category 2 hazards

The Council will only deal with category 2 hazards in exceptional circumstances. The Council has discretionary powers to deal with category 2 hazards. It is not necessary or appropriate for us to deal with them in all circumstances. The Council will however take relevant action to reduce the hazard(s) to an acceptable risk. Each case will be considered on an individual basis, and may take into account:

- the vulnerability of the current occupants.
- the nature of the risk.
- the number of risks found.

Policy - Improvement notices

Where an Improvement Notice is served, the Council will require sufficient works to abate the hazard for five years. The law prescribes that the minimum works must abate

the hazard. The Council will require works of a reasonable duration to prevent recurrence. The Council considers five years to be reasonable.

Policy – Charges for enforcement

The Housing Act 2004 does not set a maximum charge for enforcement. The Act provides a power to the Council to charge for certain enforcement activities, which are outlined below:

- serving an improvement notice.
- making a prohibition order.
- serving a hazard awareness notice.
- taking emergency remedial action.
- making an emergency prohibition order.
- making a demolition order.
- reviewing a suspended improvement notice or prohibition order.

The Council will charge based on the amount of work undertaken by officers in performing their enforcement functions.

Appeals

A landlord may appeal to the First Tier Property Tribunal in certain cases, such as:

- where it is believed a legal notice has been served on them incorrectly.
- where they believed that works were over specified.
- where it is believed that a licence has been refused without adequate justification.

Appeals are made to the First Tier Property Tribunal, which is an independent body.

The function of the Tribunal is to consider the appeal and it may rule in favour of accepting the appeal, dismiss the appeal, or vary the requirements of a notice or order.

Houses in Multiple Occupation

A House In Multiple Occupation 'HMO' is a building occupied by more than two persons forming more than one household. This includes houses containing bedsits, hostels and shared houses. The Housing Act 2004 generally defines households as families, including single persons and cohabiting couples and means that shared houses will almost always be HMOs. Reading has over 3,500 HMOs of which around 1,200 are currently licensed.

The Council believes it is the responsibility of HMO managers to comply with the HMO management regulations. Where there has been a breach of the HMO management regulations, the Council will normally allow an opportunity for remedial action to be completed. In all cases, however, the Council will consider whether prosecution or the issuing of a civil penalty is proportionate, even in cases of first time offences.

HMO Licensing Policies

HMO Licensing

The aim of HMO licensing is to ensure this sector of properties in the private rental market meet the legal standards and are properly managed.

HMOs currently covered by mandatory licensing are those where there are five or more occupiers forming two or more households. Social housing and HMOs owned by the police, health authorities, universities and some other listed organisations are exempt.

Temporary Exemption Notices ("TENs")

The Council may serve a Temporary Exemption Notice ("TEN") where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN will be served where an owner of a licensable HMO states in writing that they are taking steps to make an

HMO non-licensable, that the HMO will not be licensable within three months, and they provide appropriate evidence.

A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot evict an occupier under section 21 of the Housing Act 1988 until a valid HMO Licence or exemption application is received.

The Council does not wish these notices to be used routinely, and therefore a second notice will only be acceptable in exceptional and unforeseen circumstances agreed by the service manager.

Encouraging Applications

The Council will encourage landlords to apply for licences using a variety of methods. The Council will:

- publicise the need to licence HMOs and provide information on licensing and management
- involve landlords and letting agents through information sessions.
- liaise with The University of Reading and Reading College.
- provide discounts to landlords currently accredited through the National Residential Landlord Association and the Reading Rent with Confidence Scheme
- provide a system for applications to be made online.
- set up a voicemail system for enquiries.
- where resources permit, offer a service assisting applicants with completion of forms and measuring rooms, (additional charges will be made to enable the Council to resource this, as set out in the fees and charges scheme.
- send letters warning of prosecution

Fees for licence applications

The Council will charge a differentiated fee structure based on the level of work the Council is required to undertake. Lower rates apply where landlords are part of a landlord accreditation scheme. The fees will be set to cover the Council's costs of licensing HMOs and are likely to be comparable to fees being charged by other authorities. There is no cap on fees, but the Council must be able to justify its charges. The discounts aim to reward the more responsible landlords by offering discounts for accredited membership of certain schemes. Fees will be reviewed periodically, and any increases will be publicised on the Council's website and in writing to landlords.

The Council may grant a licence where it is satisfied:

- the house is reasonably suitable for occupation as an HMO.
- the management arrangements are satisfactory.
- the proposed licence holder and manager are fit and proper persons.
- the proposed licence holder is the most appropriate person to hold the licence.

A member of the Private Sector Housing Team will usually visit before licensing an HMO, to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.

The Council is required to assess whether the proposed licence holder, any proposed manager and any person associated with them or formerly associated with them are fit and proper people to hold a licence or manage an HMO. In reaching its decision the Council must have regard, amongst other things, to evidence showing that the person:

- has no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences.

- has no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability.
- has no unspent convictions relating to housing or landlord and tenant law.
- has no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities.
- has not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S197 of the act within the last five years.
- has not been in control of a property subject to an Interim Management Order ("IMO") or Final Management Order ("FMO") or had work in default carried out by a local authority.

Each application will be judged on its own merits, and proposed licence holders will be given the opportunity to make a self-declaration of fitness. We will consult the rogue landlord database and others. Where consultation or previous history indicates that this self-declaration is insufficient, further investigation may be required. Licences will be valid for five years in most cases and will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

Officers aim to issue draft licences within 12 weeks of a full application. However, during periods where there are high numbers of applications received, processing of licence applications will take longer.

Where there is no prospect of an HMO being licensed, the Act requires that the Council use its interim management powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the Council also having the power to grant tenancies. The Council will put into place a mechanism to ensure the most appropriate management of such properties.

- If the Council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the licence conditions or the licence holder or managers are no longer deemed to be fit and proper persons, the licence can be revoked and the licence holder may be liable for prosecution. The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at a later time. The Council has the power to set up additional local area HMO licensing schemes, to enable those HMOs considered to be poorly managed to be licensed.

Management Arrangements

The Council will expect the licencee to have satisfactory arrangements and funding in place for the management of the HMO. Satisfactory arrangements for management will include:

- a reliable contact for tenants to report defects, including in emergencies, who will arrange for repairs to be carried out within a reasonable period.
- where the manager of the HMO is not the owner, the manager must have the authority to fund urgent repairs, when the owner's approval cannot be obtained.
- arrangements in place for periodic inspections to identify where repair or maintenance is needed

Where a landlord fails to demonstrate adequate management arrangements, or has previous history indicative of poor management, the Council may limit the duration of a licence to less than 5 years.

Any steps to reduce the term of the licence below the standard 5 years will be fully justified by the officer issuing the licence.

HMO standards

The Council will determine the number of people an HMO is licensed for in accordance with compliance with the relevant adopted standards and national guidance detailing

room sizes and kitchen and bathroom facilities. Applications will need to include dimensions of rooms and details of the kitchen and bathroom facilities to enable assessment of the number of occupiers permitted in the licence.

The Council will determine the suitability of occupation of a licensable HMO based on the property's current rather than future suitability. Suitability will be based on the licence application and inspection of the accommodation.

The following mandatory conditions must be applied to all licences:

- to provide copies of gas safety certificates annually where gas appliances are present.
- to keep electrical installations; appliances and furniture safe.
- to keep smoke alarms in working order.
- to provide tenants with a written tenancy agreement.

The licence holder must deal with all Category 1 hazards within the time frame specified by the Council. If they do not, then the Council is expected to use their enforcement powers to improve the property.

Discretionary licence conditions

The Council also has discretion to impose other conditions.
In addition to the mandatory licensing conditions set out above, the Council will apply certain discretionary conditions where relevant to all licences. These will include:

- The licence holder of the property must hold a management folder which contains information on the management procedures in place for the property. The folder should include the following, as applicable:

  a) Contact details.
  b) Fire risk assessment(s).
  c) Test log(s).

d) Annual test reports/safety certificates.

e) Energy Performance Certificate.

f) Details of any HMO management training that has been completed.

g) Complaints procedure. This folder may be in a digital format.

- to provide copies of reports of fire detection, alarm system and emergency lighting to the council on request.
- the name, address and telephone number for licencee or manager is to be displayed in the common parts of the HMO.
- a copy of a valid gas safety certificate to be displayed in the common parts.
- a copy of the front page of the licence to be displayed in the common parts.
- that tenancy agreements must set out how owners or managers intend to deal with antisocial behaviour from tenants or visitors; and
- that any anti-social behaviour arising in the HMO is dealt with under the terms of any tenancy agreement.

The Council may apply other conditions to individual licences with respect to the use, management and occupation of the HMO, where appropriate, and may seek evidence of compliance with conditions at any time. Licences may also be time-limited based on the proposed licence holder's history of management, compliance and fit and proper person status.

A draft licence must be served on all relevant persons, allowing at least fourteen days for representations before granting the actual licence.

Where a licence holder breaches the condition of a licence, in cases where long timescales have been specified (e.g. installation of amenities or wash hand basins), the Council will instigate formal enforcement proceedings. Licence holders are responsible for complying with the conditions of their licence. Adequate timescales for completion of works will be given.

Appeals against licensing decisions can be brought to the First-tier Tribunal – Property Chamber (Residential Property), including refusals to grant a licence, licence conditions that have been imposed and the maximum number of permitted occupiers. Where a landlord fails to licence an HMO or breaches any of the conditions without reasonable excuse, they will commit a criminal offence.

Policy – Bed and Breakfast Hotels

The Council will declare bed and breakfast hotels as HMOs where 25% of the total number of sleeping rooms are regularly occupied for 30 days or more by persons in receipt of Housing Benefit, or who are paying a weekly or monthly rent, as opposed to overnight charges. The Council believes that where this accommodation is used as a main residence, the same standards as for other HMOs should be met. People who use a hotel as a main residence are likely to be either homeless, placed there by a local authority, or their home will be in another country.

Policy – Discretionary licensing schemes

The Council will review the need for additional and selective licensing scheme in accordance with the Council's Corporate Plan. The mandatory scheme aims to tackle the highest risk properties and this will require significant resources. It is therefore intended to keep under review the need for further discretionary schemes and put into place a system for the collation of evidence to support any such scheme.

Housing and Planning Act 2016 – Civil Penalties

The Housing Act 2004 was amended by the Housing and Planning Act 2016 to create a range of new powers and tools to support the enforcement of housing law.

Section 126 and Schedule 9 allow financial penalties to be imposed as an alternative to prosecutions. Schedule 9 amends the Housing Act 2004 and details the specified offences for which financial penalties can be imposed, as follows:

- Failure to comply with an Improvement Notice (section 30).
- Failure to licence or be licensed in respect of HMOs (section 72).
- Failure to comply with licensing under Part 3 of the Act (section 95) - this relates to selective licensing which we do not operate in Reading.
- Failure to comply with an overcrowding notice (section 139).
- Failure to comply with Management Regulations in respect of a House in Multiple Occupation (section 234).

The power to issue a civil penalty is an alternative to prosecution; if a civil penalty is issued, the Council cannot initiate a prosecution for the same offences. The decision on whether to prosecute or issue a civil penalty will be decided on a case-by-case basis, but the general principle will be that prosecution will be reserved for cases where the maximum £30,000 penalty is considered to be insufficient to address the offending behaviour. When issuing a civil penalty, the Council is required to prove its case beyond all reasonable doubt, as is the case in criminal trials.

Where both an Agent and Landlord can be prosecuted for failing to obtain a licence for a licensable HMO or any other offence, then a civil penalty can be imposed on both as an alternative to prosecutions. The amount of the civil penalty may differ depending on the individual circumstances of the case. 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.

Through the use of civil penalties (and rent repayment orders), the Council will seek to prevent criminal landlords from profiting from poor and illegal practices. It will also demonstrate the Council's on-going commitment to ensuring it is these criminal

landlords who pay for the cost of housing enforcement, rather than the many responsible landlords who provide housing in the borough. As the Council is allowed to retain the income received from civil penalties this will be reinvested into carrying out further enforcement work in order to continue improving the private rented sector.

Determining Civil Penalties

Civil penalties issued by the Council will be made up of two parts:

- The punitive fine; and
- The investigative costs.

Punitive fine

The Government has indicated through its statutory guidance that the following factors should be considered when determining a civil penalty:

- The severity of the offence.
- The culpability and track record of the offender.
- The harm caused to the tenant.
- The punishment of the offender.
- Whether it will deter the offender from repeating the offence.
- Whether it will deter others from committing the offence.
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

To promote consistency of enforcement, the Council has determined starting points from which punitive fines will be determined. These are set out in the table below:

Type of Landlord	Offence category	Starting point		
		Major Impact	Medium impact	Low Impact
1 -2 properties	Deliberate	£5,000	£3,500	£2,000
	Negligent	£2,500	£1,750	£1,000
	Low culpability	£500	£400	£200
3-5 properties	Deliberate	£10,000	£5,000	£2,500
	Negligent	£5,000	£2,500	£1,250
	Low culpability	£500	£400	£200
6+ properties	Deliberate	£20,000	£16,000	£10,000
	Negligent	£10,000	£8,000	£5,000
	Low culpability	£500	£400	£200

Determining the punitive fine – culpability

The first factor for determining the penalty to be levied is culpability of the offender. The Council has determined three levels of offending behaviour:-

- **Deliberate** – this is where there has been an intentional breach by a landlord or other relevant person. For example, if a landlord knew they had an obligation to licence a property but the evidence shows they deliberately set out not to licence, or if a person managing an HMO makes clear they have no intention of complying with the management regulations.
- **Negligent** – this is where the offending behaviour is not considered deliberate, but where the offender has failed to comply with a duty about which they should have known or have failed to take reasonable care in ensuring hazards will not arise. Examples may include a professional landlord or property agent failing to licence an HMO or to comply with the HMO management regulations, but the evidence is not sufficient to show a deliberate failure to comply.
- **Low culpability** - The offence committed has some fault on the part of the landlord or property agent but there are other circumstances, for damage caused

by tenant negligence, or where a landlord has clearly been failed by a third party.

Determining the punitive fine – impact

The second factor for determining the penalty to be levied is the potential for the offending behaviour to cause harm. The Council has determined three levels of harm:-

- **Major impact** – these are defects that pose a danger to life or could result in serious life-changing injuries (such as permanent paralysis or the loss of a limb). Examples include serious fire hazards, the possibility of exposure to carbon monoxide, risk of explosion or structural collapse and exposure to asbestos or radiation. If the powers set out for levying a civil penalty are considered inadequate, a prosecution will always be considered. These may also include failings of property management that could result in a major impact on neighbours or the local community.
- **Medium impact** – these are defects that have or may require an occupier to seek medical attention from an A and E department, a GP or a walk-in clinic. Examples include exposure to damp or mouldy conditions, risk of electric shock or a risk of a fall that could result in bone fractures. These may also include failings of property management that could result in a major impact on immediate neighbours.
- **Minor impact** – these are defects that pose little or no direct risk to occupiers. Examples may include defects to décor or cleanliness in an HMO. The Council will normally have allowed an opportunity for informal compliance prior to taking formal enforcement action, which will have been ignored. These may also include failings of property management that could result in a minor impact on occupiers.

Determining the punitive fine – financial means

This factor has been decided upon to help the Council meet its requirement to consider the financial means of the offender. Three levels have been set:-

- **6+ properties** – this level is aimed at landlords or managers who are in control of a large portfolio of rental properties.
- **3 – 5 properties** – this level is aimed at landlords or managers who are in control of a medium size portfolio of rental properties.
- **1 – 2 properties** – this level is aimed at landlords or managers who are in control of a small portfolio of rental properties.

In consideration of the level of the fine the Council has also to take into account any assets and income of the landlord or agent, not just rental income. Consideration will therefore be given to any other financial information that the Council has access to when the punitive fine is determined.

Determining the punitive fine - aggravating and mitigating factors

The above factors are used in conjunction with the following table to determine a starting point for each of the offences. The Council will also consider aggravating and mitigating factors when determining a penalty. The Council will expect to see evidence from offenders before mitigation is applied. When accounting for aggravating factors, the penalty for the offence shall not exceed the starting point of the next category of offence on the table of starting points. For example, an offence committed by a landlord with 1-2 properties that was deemed to be low culpability but major impact will have a starting point of £500. An increase of this fine based on aggravating factors shall not exceed £2,500, which is the next band up.

Aggravating factors may include-

- The offender has committed similar offences within the past 12 months.
- The offending behaviour resulted in actual harm to occupiers or to the local neighbourhood.
- There was a failure to respond to warnings or concerns expressed by others about the offender's behaviour.
- There was a high level of profit from the offending behaviour.
- There was an attempt to conceal or dispose of evidence.
- The offending behaviour was motivated by hostility towards a minority group, or a member or members of it.
- The residents were especially vulnerable.

Mitigating factors may include:

- The offender has made a full admission of guilt at the earliest opportunity and has cooperated fully with the investigation. This will normally result in a one-third reduction of the punitive fine. Cooperation short of a full admission will attract a smaller discount.
- Age or infirmity of the offender (if relevant to the offending behaviour and if not already considered when deciding the category of offence).
- Mental illness or disability of the offender (if relevant to the offending behaviour and if not already considered when deciding the category of offence).
- Where a large fine would cause exceptional hardship.

Determining the punitive fine - totality

The Council will also apply the principle of totality to any penalty, that is, a final consideration will be given as to whether the calculated punitive fine is just and proportionate in all the circumstances of the case.

Investigative costs

The Council believes the offender should bear the cost of investigations, rather than good landlords or local tax payers. To reflect this, any penalty issued shall include the Council's investigative costs. These costs include the time spent by the Council in investigating the offence and preparing the case bundle and civil penalty notices. It is important to note this part of the civil penalty total does not include any costs associated with any appeal. These will be charged separately.

The Council will also apply the principle that the costs to be charged shall not exceed the punitive part of the civil penalty.

Representations

Upon receipt of a notice of the Council's intent to issue a financial penalty, the offender has a period in which they can make representations about the Council's intention.

The law does not specify what these representations should be, but the Council offers the following guidelines:

- The decision to impose a financial penalty was based on an error of fact. For example, a penalty issued for the failure to comply with a licence condition would be incorrect if there is evidence to show there had been compliance. Please note the Council will expect to see evidence of the error of fact. The Council may also carry out additional investigations before making a decision.
- The decision was wrong in law. A recipient can make a representation if they believe the penalty has been issued because the Council has misunderstood the law. We will expect to see an explanation of why the recipient thinks the decision was wrong in law.
- The amount of the financial penalty is unreasonable. We will expect an explanation as to why the penalty is unreasonable based on the above guidance.

- The decision was unreasonable for any other reason. Please note that it will not be sufficient to simply complain that the penalty is unfair without any supporting reasons.

Appeals against civil penalties

A person who has been served with a civil penalty has the right to appeal to the First-Tier Tribunal (Property Chamber) which will involve a hearing of the Council's decision to impose the penalty. The Tribunal has the power to confirm, reduce or to quash the civil penalty imposed by the Council. The Tribunal can also dismiss an appeal if it concludes the appeal is frivolous, is an abuse of process or vexatious, or that it has no reasonable prospect of success.

The Council intends to defend its decision to issue civil penalties which will involve not only officer time but also specialist legal support. As a result the Council will seek to recover its legal costs in the event it is required to defend its decision at the Tribunal.

Supplementary Enforcement options under the Housing Act 2004

Rent Repayment Orders

Rent Repayment Orders were introduced as part of the Housing Act 2004 to recover Housing Benefit/Universal Credit that was paid to landlords convicted of running unlicensed properties. The Housing and Planning Act places a new obligation on local authorities to consider seeking a Rent Repayment Order following conviction for certain offences; and increases the number of offences this relates to. The offences include:

- Using violence for securing entry.
- Eviction or harassment of occupiers.
- Failure to comply with an Improvement Notice.
- Failure to comply with a Prohibition Order.
- Failure to licence or be licensed in respect of a HMO.
- Failure to licence or be licensed in respect of a Selective Licensing Scheme; or

- Breach of a Banning Order.

Where a landlord is convicted the Council intends to make an application to The First Tier Property Tribunal for a Rent Repayment Order. The Council intends to use its powers under the Act to seek Rent Repayment Orders for repayment of up to twelve months' housing benefit/Universal Credit for the period since the landlord was required to licence the HMO. In respect of private tenants, in cases where the council prosecutes the landlord for failure to licence the HMO, the Council will advise tenants on how to obtain a Rent Repayment Order.

Banning Orders and the Rogue Landlord Database

On 6 April 2018, new measures come into force under the Housing and planning Act 2016:

▫ Banning orders for the most serious offenders;

▫ A database of rogue landlords and property agents against whom a banning order has been made, which may also include persons convicted of a banning order offence or who have received two or more financial penalties.

A banning order is an order by the First-tier Tribunal that bans a landlord from:

- ▫ Letting housing in England;
- ▫ Engaging in English letting agency work;
- ▫ Engaging in English property management work

A person who received a banning order must also be placed on the rogue landlord database. There additional discretionary powers to place other persons on the rogue landlord database who has:

- ▫ been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or

- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

Statutory guidance issued by MCLG sets out criteria for determining whether to place a person on the rogue landlord database and prior notification must be given.

Interim and Final Management Orders

Management Orders enable the Council, or a partner, to take over the management of a residential property and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended as a Final Management Order, with the Council having powers to grant tenancies. The Residential Property Tribunal will be responsible for authorising any such order.

The Council will only use these powers in exceptional circumstances. Where there is no prospect of a HMO being licensed, the Act requires the Council to make an Interim Management Order.

Supplementary regulations with financial penalty options

Tenant Fees Act 2019

The Tenant Fees Act 2019 prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted and amends other legislation as follows:

a. in respect of the duty of letting agents to publicise fees etc under Section 87 of the Consumer Rights Act 2015

b. in relation to the duty placed on enforcement authorities to have regard to any guidance issued by the Secretary of State ("the SoS") relating to the enforcement of an order under s83(1) of 84(1) as per Section 85 of the Enterprise & Regulatory Reform Act 2013

c. in respect of the duty to enforce being subject to Section 26 of the TFA 2019 under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014

d. in relation to the meaning of 'Lead Enforcement Authority'; under Section 135 of the (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016

e. in respect of the LEA as an alternative to the SoS where the SoS is not the LEA under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 20143

The Tenant Fees Act provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

a. In respect of Prohibited Payments under SS 1& 2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.

b. Under s 12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000.00 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

Additionally the Tenant Fees Act amends further legislation which separately provide that penalties may be imposed as follows:

i In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the Consumer Rights Act 2015 a financial penalty not exceeding £5,000.00.

ii. In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work) to a financial penalty not exceeding £5,000. Note that it is not sufficient to simply register for redress – the correct category of membership must be obtained depending on the work carried out.

iii. In respect of a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection ("CMP") Scheme as required by Regulation 3 of the Client Money Protection

Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £30,000.00.

iv. In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.00.

v. In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.00.

The Council will determine what is the most appropriate and effective sanction, whether it is appropriate to impose a financial penalty or prosecute in any relevant case having due regard to the Corporate Enforcement Policy and MCLG guidance 'Tenant Fees Act 2019: Statutory Guidance for enforcement authorities.'

Determining the level of the financial penalty

In accordance with the provisions of the TFA 2019 the level of financial penalties is to be determined by the Council. Although the statutory guidance recommends factors which may be taken into account it does not go into any significant level of detail in this regard. Each of those factors will be considered as a part of the Council's decision making process and they are:

a. The history of compliance/non-compliance
b. The severity of the breach
c. Deliberate concealment of the activity and/or evidence
d. Knowingly or recklessly supplying false or misleading evidence
e. The intent of the landlord/agent, individual and/or corporate body
f. The attitude of the landlord/agent
g. The deterrent effect of a prosecution on the landlord/agent and others
h. The extent of financial gain as a result of the breach

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

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

Civil Penalty Notice Fee Matrix

The table below provides guidance on the level of the financial penalty most likely to be appropriate.

In consideration of the level of the penalty the Council has to take into account any assets and income of the landlord or agent, not just rental income.

To provide some clarity for both officers and landlords/agents the asset assessment has been based on the number of properties either being managed or owned by the landlord or agent. The officer time will be charged in addition to the fees detailed in the table and these will be based on the time the officer has spent investigating the offence/s.

In setting the final penalty the Council will take into account aggravating and mitigating circumstances

Guidance on the level of fines for Prohibited Payments under SS 1& 2 of the TFA 2019, s83(3) of the CRA 2015, Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014, Regulation 4(1) & (2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Type of Landlord/Agent	Category of Offence	Starting Point for level one – Major Impact	Starting Point for level two – Serious Impact	Starting Point for level three – Minor Impact
Landlord/Agent with 1-2 properties	Deliberate	£3,500	£3,250	£3,000
	Negligent	£3,000	£2,750	£2,500
	Low Culpability	£2,500	£2,250	£2,000
Landlord/Agent with 3-10 properties	Deliberate	£4,250	£4,000	£3,750
	Negligent	£3,750	£3,500	£3,250
	Low Culpability	£3,250	£3,000	£2,750
Landlord/Agent with 11+ properties	Deliberate	£5,000	£4,750	£4,500
	Negligent	£4,500	£4,250	£4,000
	Low Culpability	£4,000	£3,750	£3,500

Guidance on the level of fines for
s 12 of the TFA 2019 a second or subsequent breach within 5 years, and Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Type of Landlord/Agent	Category of Offence	Starting Point for level one – Major Impact	Starting Point for level two – Serious Impact	Starting Point for level three – Minor Impact
Landlord/Agent with 1-2 properties	Deliberate	£15,000	£12,250	£10,000
	Negligent	£5,000	£3,500	£2,000
	Low Culpability	£2,500	£1,750	£1,000

Landlord/Agent with 3-10 properties	Deliberate	£20,000	£17,500	£15,000
	Negligent	£10,000	£7,500	£5,000
	Low Culpability	£5,000	£3,750	£2,500
Landlord/Agent with 11+ properties	Deliberate	£25,000	£22,500	£20,000
	Negligent	£15,000	£12,500	£10,000
	Low Culpability	£10,000	£7,500	£5,000

Determining the Offence category – Culpability

Deliberate - An intentional breach by a landlord or property agent or flagrant disregard for the law.

Negligent - The failure of the landlord or letting agent to take reasonable care to put in place and enforce proper systems for avoiding the offence.

Low or no culpability - The offence committed has some fault on the part of the landlord or property agent but there are other circumstances

- significant efforts were made to address the risk although they were inadequate on the relevant occasion

- there was no warning/circumstance indicating a risk

- failings were minor and occurred as an isolated incident

Determining the level of the fine – Severity

Level One – Major Impact

- Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business

- High risk of an adverse effect on individual(s) – including where persons are vulnerable.

Level Two – Serious Impact

- Adverse effect on individual(s)

-Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.

- Tenants and/or legitimate landlords or agents substantially undermined by the conduct.

-The Council's work as a regulator is inhibited

-Tenant or prospective tenant misled

Level Three – Minor Impact

- Low risk of an adverse effect on actual or prospective tenants.

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

We will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.

In some cases no actual harm may have resulted and we will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

A person who has been served with a financial penalty has the right to appeal to the First Tier Property Tribunal which will involve a hearing of the Council's decision to impose the penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty imposed by the Council. The Tribunal can also dismiss an appeal if it concludes the appeal is frivolous, is an abuse of process or vexatious, or that it has no reasonable prospect of success.

Obtaining financial information

The statutory guidance advises that local authorities should use their powers under Schedule 5 to the Consumer Rights Act 2015 to, as far as possible, make an assessment of a Landlord's or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The

Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council has obtained, or the Landlord or Agent has supplied, any financial information to the contrary.

The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Council such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

Context

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in a substantial upward adjustment.

In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

- Previous breaches of legislation

Previous convictions, having regard to:

- the nature of the offence to which the conviction relates and its relevance to the current breach; and,
- the time that has elapsed since the conviction:

Other aggravating factors may include:

- Motivated by financial gain.
- Deliberate concealment of illegal nature of activity.
- Established evidence of wider/community impact.
- Obstruction of the investigation.
- Record of poor compliance.
- Refusal of advice or training or to become a member of an accreditation scheme.

Factors reducing seriousness or reflecting personal mitigation:

- No previous or no relevant/recent breaches.
- No previous convictions or no relevant/recent convictions.
- Steps voluntarily taken to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good record of relationship with tenants.
- Self-reporting, co-operation and acceptance of responsibility.
- Good character and/or exemplary conduct.
- Mental disorder or learning disability, where linked to the commission of the breach.
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence.

The Council will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate.

- The impact of the financial penalty on employment of staff, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:
- The stage in the investigation or thereafter when the offender accepted liability
- The circumstances in which they admitted liability.

- The degree of co-operation with the investigation.

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

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

Issue Notice of Intent

The Council will issue a Notice of Intent within 6 months of the enforcement authority having sufficient evidence that the Landlord or Agent has breached the TFA 2019. If the breach is ongoing the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the Statutory requirements according to which breach is being addressed a Notice of Intent will typically contain the date of the Notice, the amount of the proposed penalty, the reason for imposing the penalty and how the recipient can make representations concerning the penalty.

Consideration of representations and review of financial penalty where appropriate

The Council shall review the penalty and, if necessary, adjust the initial amount and represented in the Notice of Intent, to ensure that it fulfils the general principles set out in this policy.

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

Totality of breaching conduct

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality which appears to the Council to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative the Council should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case

including the financial circumstances of the Landlord or Agent as far as they are known, or appear, to the Council.

The Council shall add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Council shall consider how to reach a just and proportionate total financial penalty. Where separate financial penalties are passed, the Council must take care to ensure that there is no double-counting.

Recording the decision

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

Smoke and Carbon Monoxide Alarms (England) Regulations 2015

Background

The regulations require Local Authorities to prepare and publish a Statement of Principles which it proposes to follow in determining the amount of a penalty charge.

This Statement details the principles that Reading Borough Council (the Council) will apply when requiring a landlord (this includes agents) to pay a financial penalty for breach of the regulations.

The Requirements under the Regulations

The Smoke and Carbon Monoxide Alarms (England) Regulations 2015 (the Regulations) require landlords who let properties under a tenancy to provide and undertake the following:

1. A smoke alarm is fitted to each storey of a property where a room is wholly or partly used as living accommodation.
2. A carbon monoxide alarm is fitted in any room of the property which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

3. Checks are made either by the landlord or on behalf of the landlord at the start of each new tenancy to ensure the alarms required are in proper working order.

For the purposes of the legislation, living accommodation is a room that is used for the primary purposes of living, or is a room in which a person spends a significant amount of time, and a bathroom or lavatory is classed within this definition. A tenancy begins on the day, under the terms of the tenancy, when a tenant is able to take possession of the property.

Enforcement

In the circumstances where the Council has reasonable grounds to believe that:

1. The smoke or carbon monoxide alarms required by the regulations have either not been fitted or there are insufficient numbers; or
2. The smoke or carbon monoxide alarms were not in proper working order at the start of the tenancy or licence;

The Council will within 21 days serve on the landlord (this includes agents if they are the immediate landlord) a Remedial Notice detailing the action to be taken to comply with the Regulations.

If the Council is satisfied that the landlord has not complied with the Remedial Notice within the 28 days given to do so, then the landlord may be served with a Penalty Charge by means of a Penalty Charge Notice and the Council will undertake the remedial work with the consent of the occupier.

The Penalty Charge

A penalty charge must be set at a level that is proportionate to the risk posed by non-compliance with the requirements of the Regulations and which will deter non-compliance. It should also eliminate any gain or benefit from non-compliance of the

Regulations and cover the costs incurred by the Council in administering and implementing the legislation.

Reading Borough Council will impose a penalty charge of £2,500 for a first offence and any subsequent offences will be levied at £5,000 which is the maximum amount that can be imposed under these Regulations. These fines are considered proportionate for non-compliance with the Remedial Notice for the following reasons:-

- Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury without the appropriate early warning measures in place such as smoke and carbon monoxide alarms;
- The penalties detailed in this Statement of Principles reflects the seriousness of matter and are at a level to deter non-compliance;
- The provision of smoke and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or carbon monoxide poisoning event far out-weighs the cost of installing alarms.
- The landlord will have been given ample opportunity with the issue of the Remedial Notice to carry out the necessary works and it is only a failure on their part to do so that will result in a Penalty Charge being issued.

On issuing the Penalty Charge the Landlord has 30 days from the date the Penalty Charge is issued to pay the fine imposed.

Appeals in relation to the Penalty Charge Notice

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

On consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This decision is confirmed by issuing a decision notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to a First Tier Property Tribunal and details given.

The Council intends to defend its decision to issue a penalty charge which will not only involve officer time but also specialist legal support. As a result the Council will seek to recover its legal costs in the event it should be required to defend its decision at the Tribunal.

Recovery of Penalty Charge

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

Review of Statement

This Statement of Principles shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and in the public interest.

Electrical Safety Standards in the Private Rent Sector (England) Regulations 2020

The requirements under the regulations

These regulations require landlords who let properties on specified tenancies to undertake the following:

2. To generally ensure the electrical safety standard is met.
3. To ensure the electrical installation within properties is tested by a competent person at intervals at no more than five years.
4. To ensure this testing set out in 2. above is carried out before the commencement of a new specified tenancy.
5. To obtain a test report from the competent person who carried out the testing specified in 2. above.
6. To ensure all necessary remedial work and further investigation indicated as necessary on the test report is carried out within 28 days or sooner if indicated by the test report.
7. To provide a copy of the report to tenants within 28 days of the testing being carried out and within seven days of receiving a request from the Council.

For the purposes of the legislation, a specified tenancy is one relating to residential premises in England which:

a) grants one or more persons the right to occupy all or part of the premises as their only or main residence;
b) provides for payment of rent (whether or not a market rent); and
c) is not a tenancy of a description specified in Schedule 1 to the regulations;

Enforcement

In circumstances where the Council has reasonable grounds to believe there has been a failure by a landlord to comply with the requirements set out above, it will serve a Remedial Notice on the landlord within 21 days, requiring work to be carried out.

If the Council is satisfied that the landlord has not complied with the Remedial Notice within the 28 days given to do so then the Landlord may be served with a financial penalty and the Council may undertake the remedial work with the consent of the occupier.

The regulations grant the Council a power to take urgent remedial action where necessary. The decision to take urgent remedial action or to take remedial action following breach of a Remedial Notice will be determined on a case by case basis. The Council will seek to recover costs of remedial action taken.

The Penalty Charge

A Penalty Charge may be of such amount as the Council determines and shall not exceed £30,000.

To promote consistency of enforcement, the Council has determined starting points from which punitive fines will be determined. These are set out in the table below:

Type of Landlord	Offence category	Starting point		
		Major Impact	Medium impact	Low Impact
1 -2 properties	Deliberate	£5,000	£3,500	£2,000
	Negligent	£2,500	£1,750	£1,000
	Low culpability	£500	£400	£200
3-5 properties	Deliberate	£10,000	£5,000	£2,500
	Negligent	£5,000	£2,500	£1,250
	Low culpability	£500	£400	£200
6+ properties	Deliberate	£20,000	£16,000	£10,000
	Negligent	£10,000	£8,000	£5,000
	Low culpability	£500	£400	£200

The principles set out in above for the determination of a financial penalty under the Housing And Planning Act shall be applied to the determination of a Penalty Charge under these regulations.

Appeals in relation to the Penalty Charge Notice

The landlord has a right to seek a review of the penalty charge notice by writing to the Council within 28 days of the Notice being issued.

On consideration of any representation and evidence, the penalty charge can be confirmed, varied or withdrawn. This decision is confirmed by issuing a final notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to a First Tier Property Tribunal and details given.

The Council intends to defend its decision to issue a penalty charge which will not only involve officer time but also specialist legal support. As a result, the Council will seek to recover its legal costs in the event it should be required to defend its decision at the Tribunal.

Recovery of Penalty Charge

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

Minimum Energy Efficiency Standard

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 meant that from 1 st April 2018 it had become illegal for landlords to rent out property unless it met the minimum energy efficiency rating of E. However, there are some exemptions. The landlord will need to provide evidence of why they have been unable to meet the standard and to register an exemption. In most cases the exemption will last 5 years after which time the landlord must again try to improve the EPC rating of the property to the minimum rating of E.

The MHCLG has set up The National PRS Exemptions Register which is a digital service which allows landlords or agents acting on behalf of landlords to centrally register valid exemptions from the minimum energy efficiency requirements. The exemptions are detailed below

1. Where a recommended measure is not a 'relevant energy efficiency improvement" because the cost of purchasing and installing it cannot be wholly financed at a cost to the landlord of under £2,500.
2. Where the landlord has made all the 'relevant Energy Efficiency improvements' that can be made or where none can be made and the property remains below the minimum standard.
3. Wall Insulation exemption - applies where it is not possible to fit cavity wall insulation or internal or external insulation. In this circumstance the landlord will need to obtain a report from a specialist such as an architect, chartered surveyor or chartered engineer. This expert advice must be uploaded to the register.
4. In some circumstances it may not be possible to get third party consent for example from the local authority, mortgage lender or tenants. In these circumstances the 'no consent' exemption may apply and again the landlord will need to provide evidence through uploading correspondence/documentation to the register demonstrating consent was sought but not gained.

5. Where a landlord has obtained a report from a surveyor registered with the Royal Institute of Chartered Surveyors that states that specific energy efficiency measures will reduce the market value of the property by more than 5%.
6. New landlord exemption – this applies when someone has had to became a landlord suddenly in which case an exemption of 6 months is allowed. At the end of this time either the property needs to have been bought up to a minimum EPC E standard or an exemption registered if applicable.

Where a landlord has let out a sub-standard property in breach of the regulations the local authority can impose a financial penalty up to a maximum of £5,000. It is important to note that this maximum amount of £5,000 applies per property and per breach of the Regulations. This means that if after having previously been fined up to £5,000 for failing to comply with the regulations, a landlord lets the property on a new tenancy without bringing it up to a minimum EPC E standard the Council can again levy financial penalties up to £5,000 in relation to the new tenancy. The policy is to levy a lower fine in the first instance and then the full fine for any subsequent breaches at the point of a new tenancy.

The table below sets out the Council's adopted fines.

Breach of the Regulations	Fine (1st Offence)
A) Landlord has let a sub-standard property for less than 3 months	£1,000
B) Landlord has let a sub-standard property for 3 months or more	£2,000
C) Landlord has included false or misleading information on the PRS Exemption Register	£500
D) Landlord fails to comply with compliance notice (this is a request for information on measures undertaken at a property)	£1,000

A local authority may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. However, 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. The proposal is to levy a lower fine in the first instance and then full fine for any subsequent breaches at the point of a new tenancy. The rationale behind having a lower fine for the first offence than the maximum is to reduce the risk of appeals. Tribunals have held in the application of similar penalties that the fine should be proportionate.

Guidance issued by Ministry of Housing, Communities and Local Government (MHCLG) nots that an EPC is not required for HMOs which have not been subject to a sale in the past ten years, or which have not been let as a single rental in the past ten years.

Through the provision of energy efficiency measures such as heating and insulation, benefits are provided to tenants in terms of affordability and comfort but also reduces the risk of issues such as damp and mould in winter months. Excess cold is one of the key complaints the Council receive which can lead to enforcement action for landlords to provide adequate heating and thermal comfort under the Housing Health and Safety Rating System (HHSRS), which is described elsewhere in this policy.

Complaints

The Council has an established corporate complaints procedure for dealing with matters other than an appeal (see appeals above). All Council offices have copies of a leaflet explaining how to make a complaint. A complaint should be linked to the Council's systems and procedures and may be about delay, lack of response, discourtesy or any item that leaves cause for dissatisfaction with the Council's conduct.

Many of the enforcement actions covered in this policy are subject to an appeals process through the courts and tribunal service.

Policy Revision

Minor changes to policy delivery may be required from time to time. The Assistant Director of Planning, Development and Regulatory Services has delegated authority to make changes, which do not affect the broad thrust of policy direction. This will enable changes to policy delivery to be accommodated and best practice to be included without a formal re-adoption process.