



Telford & Wrekin
Co-operative Council

Protect, care and invest
to create a better borough

Private Sector Housing Enforcement Policy

May 2022

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1. Purpose

This Policy details how the Council will regulate standards in Private Sector Housing in Telford and Wrekin. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure that private sector housing is well maintained.

Whilst not a legal requirement, it is important for local authorities to have an enforcement policy to ensure consistency of approach among council officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or if an appeal is made against enforcement action.

Our aim is to raise standards in private sector housing throughout Telford and Wrekin, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

2. Role of the Private Rented Sector

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. To this end the Council will work with landlords to improve and sustain good quality accommodation and will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property.

3. Enforcement Policy and Principles

This policy follows the “Principles of Good Regulation” set out in the Legislative and Regulatory Reform Act 2006 (2006 Act):

- Regulatory activities should be carried out in a way which are transparent, accountable, proportionate and consistent.
- Regulatory activities should be targeted only at cases in which action is needed.

4. Regulators’ Codes

The 2006 Act requires that we have regard to the current Regulators’ code when developing policies and procedures that guide our regulatory activity. This policy has regard to the Regulators’ Code.

The Private Sector Housing Enforcement Policy (the Policy) confirms that:

- The Council will provide information, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant housing legislation.
- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that any enforcement action is proportionate to the severity of the noncompliance and the risk posed to the public.

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement, including but not limited to the following:

- Regulators Compliance Code
- Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
- Police & Criminal Evidence Act 1984 (PACE) and associated Codes
- The Enforcement Concordat
- Housing Act 2004
- Regulation of Investigatory Powers Act 2000
- Housing and Planning Act 2016

This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Code.

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

- **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
- **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
- **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.

- **Consistent** – Enforcement action will be undertaken and monitored within the Private Sector Housing Team to ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and to share and develop good practice.
- **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

5. Educate, Encourage, Enforce

In line with the Council's Better Homes for All programme, the service will always attempt to educate and encourage with landlords and responsible parties where it is reasonable (in our opinion) for us to do so. By facilitating compliance through a positive and proactive approach, the service aims to achieve higher compliance rates and reduce the need for reactive enforcement actions. Only where attempts to educate and encourage, to secure compliance have failed and/or the seriousness or risk to health and safety means informal action is not appropriate, the Council will take enforcement action.

6. Powers available to the Council to deal with poor standards

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Telford and Wrekin Borough Council has in relation to regulating housing standards, in its capacity as the Local Housing Authority. Additional powers are also contained within:

- The Housing Act 1985
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Public Health Acts 1936 and 1961
- The Housing and Planning Act 2016
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

This is not an exhaustive list, and, the Council will consider the use of all powers available to it, to meet the aims of this policy. A complete list of powers and authorisations can be provided upon request.

7. Investigations

Telford and Wrekin will carry out proactive and reactive investigations for the following reasons:

- in response to a reasonable complaint, or a request for service
- where poor conditions have been brought to our attention
- on receipt of relevant intelligence
- monitoring progress and compliance

The Service will focus its resources on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor conditions.

8. Tenure Groups

The Private Sector Housing Service has investigative and enforcement powers relating to all private housing regardless of tenure. However the approach may vary depending on the tenure of the household.

a. Private Landlords and Tenants

Tenants within rented accommodation do not have the same level of control of their homes, in the same way that owner occupiers benefit from. They are reliant on landlords or their agent to adequately maintain their homes in accordance with legal requirements. The Council will take enforcement action where required, against landlords or agents who are putting the health and safety of their tenants at risk, or in circumstances where conditions are causing serious issues to neighbouring property.

b. Owner Occupiers

Owner occupiers are usually in a position to make informed decisions about maintenance or safety issues in their homes. Formal enforcement action therefore against this tenure group would be limited. Officers would always aim to provide owner occupiers with appropriate advice and recommendations as to how they can mitigate any hazards identified. In cases, however, where there is a severe risk to the health and safety of occupiers, or where there are conditions that have the potential to cause serious issues to neighbouring property, the Council may take formal action against owner occupiers. The vulnerability of the owner occupier will also be

considered, and it is expected that colleagues from other parts of the council will discharge their duties to ensure safeguarding of vulnerable adults and children.

c. Registered Social Landlords (“RSL”)

These are usually housing associations, being a private, non-profit making organisation that provides low cost “social housing”. Their performance is scrutinised by Homes England, the Social Housing Regulator and the Housing Ombudsman. RSL’s have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure. This service will not normally take action against an RSL, unless the problem in question has been properly reported to the RSL, who has then failed to take the appropriate action. However, the Council will always have regard to the nature of any reported hazard and will take formal action against any provider where there is a risk to the health and safety of tenants, visitors, neighbours and / or the wider public.

9. Powers of entry, Warrants and Power to require and use information

The Housing Act 2004 provides authorised officers with powers of entry to conduct inspections, warrants and powers to require information in connection with any investigations it conducts. The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above, and also Housing Benefit and Council Tax information obtained by the authority, to carry out its functions in relation to these parts of the Act.

10. Inspections of Single Family Dwellings

Authorised officers will conduct an inspection of the whole dwelling, both internal and external and make a hazard assessment under the Housing, Health and Safety Rating System (HHSRS) and any other appropriate legislation.

11. Houses in Multiple Occupation (HMOs)

A House in Multiple Occupation (HMO) is defined in the Housing Act 2004. It is a residential property which is rented to three or more persons who form two or more households, and where those households share one or more amenities such as a bathroom, toilet or cooking facilities. A household is defined as a single person, a family, or a cohabiting couple. HMOs are further regulated by management regulations under the Housing Act 2004.

12. Inspections of Houses in Multiple Occupation (HMOs)

Authorised officers will conduct an inspection of the whole dwelling, both internal and external and make a hazard assessment under the Housing, Health and Safety Rating System (HHSRS), identify any breaches under management regulations under the Housing Act 2004 and any other appropriate legislation.

13. HMO Licensing

Under The Housing Act 2004 all HMOs containing five or more occupants, who form two or more households and share one or more amenities require a licence. The operation of licensable HMO without a valid licence is a criminal offence. Licensable HMOs are further regulated by licensing regulations under the Housing Act 2004.

Where the Council determines that a landlord has not complied with the Management Regulations, it will normally seek to resolve the matter informally, by requesting the necessary improvements and providing advice to the landlord. However, where there are serious management breaches, the operation of a licensable HMO without a licence or repeated failure by the landlord to comply with the Regulations, or refusal to improve the management of the HMO, the Council will consider immediate formal enforcement by way of prosecution or imposing a Civil Penalty. Offences under these Regulations, attract a separate civil penalty for each separate management offence.

The Council also has powers to take control over poorly managed and/or dangerous licensable HMOs with no valid licence and no prospect of a licence application being forthcoming.

14. Most appropriate course of action

When considering any form of action, the service will always consider the most appropriate course of action for each case. This will include:

- Whether the Council has a duty to take a specific course of action(s)
- The risk that the conditions pose to the health and safety to individuals and the public at large,
- Confidence in the management of the property,
- The culpability of the responsible party,

- Evidence that suggests that there was premeditation in the commission of an offence,
- Whether there is a history of previous warnings or the commission of similar offences,
- Aggravated circumstances such as aggressive or violent behaviour towards the officer or occupants,
- Tenure of property

The Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case. The Council will remain impartial and take action that is proportionate to the situation. The Service will adopt a coordinated approach with other Council services and relevant agencies in taking any action.

15. Formal Action

Formal action will be in the form of legal notices, either to inform responsible and interested parties of the presence of a hazard and/or requiring compliance within a stipulated period of time or requiring the prohibition of all or parts of a dwelling within a stipulated time. Failure to comply may result in works being carried in default and/or prosecution or the issuing of a civil penalty.

16. Emergency Action

The council also has powers to carry out emergency remedial action where there is an imminent risk of serious harm and/or emergency prohibition powers to prohibit the use of all or parts of a dwelling for habitable use.

17. Review of Enforcement Action

If there is a change in the nature of the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action will be reviewed by the Council. Where appropriate this may result in the variation or revocation of notices. This ensures that the type of enforcement action is still appropriate and proportionate to the risk posed from the identified hazard(s).

18. Power to charge for enforcement action

The Council has the power, under the Housing Act 2004, to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving certain Housing Act notices. The Council may recover a reasonable amount for expenses incurred in connection with time spent gaining entry to a property, visiting and inspecting the property to

determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action. Costs incurred carrying out Works in Default or Remedial Action will be charged separately. If legal fees are incurred at any stage of a particular matter, the Council reserves the right to seek payment of both its administration and legal fees from the relevant Court or Tribunal.

19.Recovery of Debts

Where charges for enforcement action are levied, they will be registered as a local land charge against the owner's property. If the charge has not been paid when the property is sold, the debt has to be repaid, including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges).

20.Enforcement Action

Where a responsible party commits an offence, the Council will consider the reasons for non-compliance and consider the following options (or a combination of) :

a. Take no action

For example, where non-compliance is not the fault of the landlord i.e. the tenant refusing access.

b. Works in Default

Works in Default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate, Officers will report to the Private Sector Housing Manager and/or the Service Delivery Manager, who will consider approval based on the following information:

- The effects of not carrying out the work on the health and safety of the occupants of the property concerned
- The wishes of the tenant where the notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Cost

- Any other factors that are specific to individual properties

The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

c. Issue a Simple Caution

Officers may use Simple Cautions where someone has committed a less serious offence.

Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple cautions are not appropriate where there is a history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances, prosecution or civil penalty is more appropriate.

d. Prosecution

When deciding whether to prosecute Borough of Telford and Wrekin has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will have particular regard to the following public interest criteria:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is prosecution a proportionate response?
- Do sources of information require protecting?

The Council expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- a breach of the legislation resulted in a death
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of legislative requirements;
- there have been repeated breaches that give rise to significant risk, or persistent and significant poor compliance;
- the breach has been carried out without or in serious non-compliance with an appropriate licence or permission;
- a duty holder's standard of compliance is found to be far below what is required by law and to be giving rise to significant risk;
- there has been a failure to comply with a statutory notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- officers have been intentionally obstructed in the lawful course of their duties.

In deciding on the public interest the Council will make an overall assessment based on the circumstances of each case and will consider all relevant circumstances carefully, including local and corporate priorities. The above is not an exhaustive list and the Council will take all relevant issues into account when reaching its determination.

e. Civil Penalties for offences under the Housing Act 2004

The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords, including the power for Councils to issue civil penalties. Penalties of up to £30,000 may be issued as an alternative to prosecution for certain specified offences.

Income received from a civil penalty can be retained by the Council, provided that it is used to further its statutory functions in relation to enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution 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 in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The amount of penalty is to be determined by the Council in each case. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. In determining an appropriate level of penalty, the Council will have regard to the publication 'Civil Penalties under the Housing and Planning Act 2016'.

A civil penalty can only be imposed as an alternative to prosecution. However, unlike prosecution action, where there are offences under Houses in Multiple Occupation Management Regulations, the Council may issue a civil penalty for each separate offence.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. The private sector housing team will consult with the Council's legal team in this respect.

The civil penalty policy is appended to this policy.

f. Proceeds of Crime

Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.

g. Rent Repayment Orders

The Housing Act 2004 enabled Councils to apply for Rent Repayment Orders (RROs) in regard to offences related to HMOs. A landlord who operates an unlicensed HMO can be subject to a RRO when issued by a First-tier Tribunal (Property Chamber). The Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6th April 2017:

- 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
- 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

A RRO requires repayment of rent received by the landlord over a period of up to 12 months. The Council will usually consider applying for such a measure if the landlord has received rent that has been paid by Housing Benefit. A criminal standard of proof is required. The Council must apply to the First-tier Property Tribunal for an RRO. A tenant may apply for a rent repayment order themselves if they are not in receipt of housing benefit.

Borough of Telford and Wrekin will consider making an application for a Rent Repayment Order in all cases where a person has been prosecuted in relation to one of the above offences.

h. Banning Orders

From 6 April 2018 a Local Authority has the power to apply to the First Tier Tribunal for a banning order. A Banning Order is an order that bans a landlord or property agent from:

- Letting housing in England;
- Engaging in English letting agency work;

- Engaging in English property management work; and
- Doing two or more of those things. Breach of a banning order is a criminal offence.

A Banning Order must be for a minimum period of 12 months. There is no statutory maximum period for a Banning Order.

The Council will use banning orders for the most serious offenders who breach their legal obligations and rent out accommodation which is substandard and where previous sanctions, such as a prosecution has not resulted in positive improvements and it is necessary for the Council to proceed with further prosecutions/ formal action.

i. Database of Rogue Landlords

A local housing authority must make an entry on the database where a landlord or property agent has received a banning order. They have the discretion to make entries where a landlord or property agent has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.

Local authority officers will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

Details held on the database will not be available to members of the public.

The Council will have regard to the guidance, which from time to time is updated by Government, when deciding whether or not to include a person on the Rogue Landlord Database. The current version of guidance, can be found here: ([Database of rogue landlords and property agents under the Housing and Planning Act 2016.](#))

21. Monitoring and Review

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

22. Application of the Policy

All authorised officers must have regard to this Policy when making enforcement decisions in relation to Private Sector Housing.

23. Complaints and Appeals

The Service will ensure that clear reasons for any enforcement action are given and information about complaints and appeal procedures are provided.

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Complaints about our service will be handled in line with the Council's Corporate Complaints procedure which is outlined here: <https://www.Telford and Wrekin.gov.uk/Report/Compliments-complaints-and-feedback>

Appendix 1

Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004

Introduction

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.

This policy must be read in conjunction with "Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Authorities" ("the DCLG Guidance") and has been created in accordance with Section 3.3 & 3.5 of that guidance.

What is a civil penalty?

A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004 and a breach of a banning order under the Housing and Planning Act 2016.

A civil penalty can be imposed as an alternative to prosecution for the following offences:-

- a. Failure to comply with an Improvement Notice (S.30 Housing Act 2004)
- b. Offences in relation to licensing of Houses in Multiple Occupation (S.72 Housing Act 2004)
- c. Offences in relation to licensing of houses under Part 3 of the Act (S.95 Housing Act 2004)
- d. Offences of contravention of an overcrowding notice (S.139 Housing Act 2004)
- e. Failure to comply with management regulations in respect of Houses in Multiple Occupation (S.234 Housing Act 2004).
- f. Breach of a Banning Order (Section 21 Housing and Planning Act 2016).

When will a civil penalty be imposed?

The Council will consider whether to issue a civil penalty or to undertake a prosecution on a case by case basis taking into account all of the information and evidence available.

The Council must be satisfied that there is sufficient evidence to prove that the offence(s) have been committed and it must also be in the public interest to issue a civil penalty. The Council must also ensure that they are satisfied that the burden of proof is met, i.e. satisfied beyond all reasonable doubt that the offence has been committed and should the same matter be prosecuted at magistrates court, there is a realistic prospect of conviction.

Setting the level of the civil penalty

Civil penalties can be set up to a maximum of £30,000 and the amount levied in any particular case will reflect the severity of the offence with the following factors considered:-

- a) **Severity of the offence.** The more serious the offence, the higher the penalty will be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and will be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty. Harm does not actually need to have occurred, and the potential harm alone will be sufficient to allow the Council to increase the amount of the civil penalty accordingly.
- d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

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

Determining the amount of financial penalty

The following sets out how the Council will determine the appropriate level of financial penalty in each particular case, and will be in line with statutory guidance.

Culpability and track record of the offender

The Council will consider the culpability of the offender and consider it against four levels, each level having accompanying examples of behaviours that could result in that particular level. The Council will assess the evidence obtained in the investigation and use the examples below to determine the appropriate level of culpability for the offence; this will be repeated for each offence as the level of culpability may vary. A higher penalty will be awarded where their actions were deliberate. Statutory guidance makes it clear landlords are running a business and are expected to be aware of their legal obligations. The below examples are not an exhaustive list, and it remains open to the Council to treat culpability as being higher or lower, based on the individual circumstances of each case.

Level of culpability - **Very High** (Deliberate), intentional breach by the offender or flagrant disregard for the law

Examples of behaviour,

- Exploitation of vulnerable tenants e.g migrant workers, elderly, mentally ill.
- Previous Housing Act convictions including the issuing of CPN's/Prosecution/Banning Order
- Concealment of activity/evidence
- Already on rogue landlord database

Level of culpability – **High** (Reckless), actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by landlord/property agent e.g. failure to comply with HMO management regulations

Examples of behaviour,

- Failure to comply with all or significant requirements of an improvement notice. Failure to comply with all or significant HMO licence conditions
- Ignoring warnings/information raised by the Council, tenants or others
- Allowing risks, breaches or offences to continue giving no thought to the consequences even though the risks could be obvious.
- Allowing breaches to continue over a long period of time.
- Repeat offending behaviours.
- Record of non-compliance e.g notices/enforcement action
- Record of letting substandard accommodation
- Record of poor management/inadequate management provision
- Member of an accreditation scheme or recognised landlord association so should know better
- Experienced landlord or property agent with a portfolio of properties.
- Experienced landlord/property agent who fails to licence a HMO
- Experienced landlord/property agent who manages a HMO with management regulation breaches.

Level of culpability – **Medium** (Negligent Act), failure of the offender to take reasonable care to put in place and to enforce proper systems to avoid breaches and offences

Examples of behaviour,

- HMO licence application not submitted and renewed within set period of time
- Part compliance with improvement notice or HMO licence conditions within a set period of time
- Previous warnings or advice issued
- Can demonstrate that they believed the responsibility was with a third party
- The landlord/letting/management agent had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.
- Property sublet into HMO and landlord/property agent claims they were not aware.

Level of culpability – **Low** (low or no culpability), offence committed with little or no fault on the part of the landlord/letting/management agent

Examples of behaviour,

- Significant efforts were made to address the harm though they were inadequate
- Part damage caused by tenants
- No recent history for non-compliance or track record of interventions i.e within the last 5 years
- Minor breaches and occurred as an isolated incident
- Evidence of health reasons preventing reasonable compliance- mental health, unforeseen health issues.
- Vulnerable individual(s) where the vulnerability is linked to the commission of the offence.

The harm caused to the tenant and the severity of the offence

When determining the level of harm and the severity of the offence, the Council will have regard to both the person who could have, or has suffered the harm; i.e. physical injury, damage to health, psychological distress and the community; i.e. economic loss, harm to public health. Other

factors will also be considered in assessing the level of harm and the severity of the offence; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood.

The nature of the harm and the severity of the offence, will depend on the personal characteristics and circumstances of the victim, e.g. tenant. Where no actual harm has resulted from the offence, the Council will consider the relative danger the persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the severity of harm that could have resulted. Factors that indicate a higher degree of harm include multiple victims, serious or psychological effect on the victim/s and whether the victim/s is particularly vulnerable and the landlord was aware of this. The below lists are not exhaustive, and the Council may treat the level of harm as higher or lower based on the circumstances in a particular case.

Level of harm/severity of offence – **High**, lack of compliance giving rise to the offence poses a serious and substantial risk of likelihood of harm to the occupant/s and or visitors

Examples

- The seriousness or potential seriousness would be considered a Class I or Class II harm outcome in the Housing Health and Safety Rating system
- In the case of an HMO multiple breaches of the management regulations associated with safety especially regulation 4 that cumulatively put the occupiers at risk of serious and substantial harm
- Serious level of overcrowding
- Existence of 1 or more category 1 hazards
- High level of perceived harm/fear by occupiers/local community
- Vulnerable tenants
- No licence, high issues with safety

Level of harm/severity of offence – **Medium**, lack of compliance giving rise to the offence poses a serious risk of a likelihood of harm to the occupant/s and or visitors

Examples

- The seriousness or potential seriousness would be considered a class III harm outcome in the Housing Health and Safety Rating System.
- Some perceived harm by occupiers/ local community
- Some vulnerabilities with tenants
- Multiple cat 2 hazards

- Breaches of management regulations such as failure to maintain fixtures and fittings important to tenant wellbeing and health e.g cookers, toilets and showers.
- No licence, medium issues with safety

Level of harm/severity of offence – **Low**, lack of compliance of the offence causes little or no likelihood of harm to the occupant/s and or visitors

Examples

- Low risk of harm or potential harm
- Tenants not considered vulnerable
- Breaches of management regulations such as failure to display management details, poor decorative repair, untidy garden
- The lack of a HMO licence – only where there are no issues of safety identified.

In order to determine the final penalty the Council will assess the culpability against the harm and severity of the offence and place within the appropriate band as per below. The fine will have an initial ‘starting point’ as detailed in the table below.

		Range	
	Starting Point	Minimum	Maximum

LOW CULPABILITY

Low harm	£750	£500	£1,000
Medium harm	£1,500	£1,000	£2,000
High harm	£3,500	£2,000	£5,000

MEDIUM CULPABILITY

Low harm	£1,500	£1,000	£2,000
Medium harm	£3,500	£2,000	£5,000
High harm	£7,500	£5,000	£10,000

HIGH CULPABILITY

Low harm	£3,500	£2,000	£5,000
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Medium harm	£7,500	£5,000	£10,000
High harm	£15,000	£10,000	£20,000

VERY HIGH CULPABILITY

Low harm	£7,500	£5,000	£10,000
Medium harm	£15,000	£10,000	£20,000
High harm	£25,000	£20,000	£30,000

The table gives the starting points, maximum and minimum financial penalties for each harm category and level of culpability.

Context

Having determined the appropriate penalty range and the starting point, the Council will consider further adjustment to the level of penalty within the category range, by taking into account any aggravating and mitigating features of the case.

The list of mitigating and aggravating factors is not exhaustive and other features may be considered depending on the circumstances of each case.

Mitigating factors that will be considered:

- High level of co-operation with the investigation beyond that which will always be expected
- The offender acts voluntarily to rectify the problem e.g submits a licence application
- The offender had a good track record of maintaining property and complying with legislation and statutory standards prior to the offence
- Willingness to undertake training
- Willingness to join recognised landlord accreditation scheme/recognised landlord association
- Evidence of health reasons preventing reasonable compliance
- No previous convictions
- Noticeable tenant damage/obstruction to allow access
- Early admission of guilt i.e. within one month

Aggravating factors that will be considered:

- Previous convictions having regard to the offence to which applies and time elapsed since the offence
- Obstruction of the investigation e.g. failure to respond to statutory notices requesting information
- Number of items of non-compliance – greater the number, the greater the potential aggravating factor
- Lack of tenancy agreement/rent paid in cash
- Established evidence of wider community impact

Consideration of financial elements of the penalty

One of the guiding principles of the financial penalty regime, is that the penalty should be fair and proportionate but in all instances should act as a deterrent and remove any financial benefit that may have been obtained as a result of committing the offence. The penalty should never be less than what it would have cost the landlord to comply in the first place. It should not be cheaper to offend than to take appropriate precautions.

Existing powers will be utilised by the Council to make an assessment of the landlords assets and income they receive when determining an appropriate penalty. Income in addition to rental income will also be taken into consideration. A section 235 Housing Act 2004 notice may be served to aid with this

It would be expected that an offender will disclose financial information which will enable the Council to determine the ability of an offender to pay. If the Council is not satisfied that sufficient and / or reliable information has been provided in relation to income, the Council will draw a reasonable inference as to the offenders means, which may include the inference that the offender can pay the financial penalty.

The Council will consider whether the proposed level of financial penalty is proportionate to the overall means of the offender. It may increase or decrease the proposed fine, if necessary moving outside of the range in the table above.

Full regard will also be given to the totality principle (explained below), where multiple offences are involved.

The general principles that will be followed when setting the penalty are:

- The Council should 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 offender.
- The level of financial penalty should reflect the extent to which the offender 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 offence; it should not be cheaper to offend than to take the appropriate precautions.
- The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences.

OTHER CONSIDERATIONS

Totality principle

Where a civil penalty is being issued for more than one offence or the offender has already received a civil penalty, the total penalties must be proportionate to the offending behaviour. If the aggregate total of the civil penalty is not proportionate, then the Council must recalculate the civil penalty to reflect the case circumstances.

Maximum penalty for most serious offence

The civil penalty can be calculated based on the most serious offence committed, usually imposing the maximum penalty for that offence, with no further penalty for other offences committed.

Separate penalties

Where a civil penalty is calculated for a number of offences that have arose from different incidents / properties, it may be more appropriate to impose separate penalties for each offence. Once each civil penalty is calculated, combine the totals and assess if they are just and

proportionate. If the aggregate amount is not just and proportionate, consider if each penalty can be proportionately reduced.

Early payment discount

A discount of 25% will be applied to a civil penalty charge if the penalty is paid in full within 28 days of service of the intention notice. This reflects a similar incentive in the criminal courts where a reduction in sentence is offered where an early admission of guilt is made. Payment in full of a civil penalty is an acceptance of liability, which is reflected with this additional deduction. If the Council is required to serve a final notice, no discount will be available beyond this point.

Review and recording of the decision

Before a Notice of Intent is issued, the process and level of civil penalty will be reviewed and checked with the Council's in house Legal Services team and the Private Sector Housing Manager or other Senior Officer.

The purpose of this review is to ensure that the process has been applied correctly and the level of civil penalty is reasonable and proportionate.

A record of each decision and the reasons for the financial penalty will be made by the Council and how the amount of the penalty was obtained and the reasons for imposing it.

Where written representations are made in response to a Notice of Intent, the Private Sector Housing Manager or other Senior Officer not previously involved with the case, will consider the representations and either,

- Withdraw the notice of intent
- Reduce or increase the amount specified
- Uphold the original decision

Appendix 2

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) require private sector landlords to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance (for example a coal fire or a wood burning stove). They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy.

The Council may issue a remedial notice where it has reasonable grounds to believe a landlord has not complied with one or more of the requirements. The landlord must comply with the notice within 28 days. If they do not, the Council is required to carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.

The Council may also impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice. The Regulations require the Council to be open and transparent regarding the civil penalty and publish a Statement of Principles which it will follow when determining the amount of a penalty charge.

Penalty charges for non-compliance are as follows:

First offence	£1,500	Reduced to £750 if paid within 14 days
Second offence	£3,000	No reduction for early payment
Any additional offences	£5,000	No reduction for early payment

In determining the level of the fixed penalty charge, the Council has considered the likely costs it will incur and that the amount charged is sufficient to provide a deterrent to future non-compliance. Increasing the charge for a second offence and then again for further offences reflects the seriousness of the offence and is designed to deter repeat offending.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles for determining the amount of the Penalty Charge

Introduction

The purpose of this Statement of Principles is to set out a framework for determining the amount of a penalty charge to be imposed for breaches of the above Regulations.

This statement sets out the principles that Telford and Wrekin Borough Council (the Council) will apply in exercising their right to require a landlord to pay a fixed penalty charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. If the Council is satisfied that the landlord has breached his duty under Regulation 6(1) to comply with the requirements of a Remedial Notice under Regulation 5.

The Legal Framework

Regulation 8 provides that where a local housing authority (the Council) is satisfied, on the balance of probabilities, that a landlord on whom it served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), it may require the landlord to pay a penalty charge. The amount of the charge to be determined by the Council and may be up to a statutory maximum of £5000.

The scope of this document

Regulation 13 requires Council's to prepare and publish a Statement of Principles to be followed in determining the amount of such a penalty charge. The Council will have regard to the criteria set out below in deciding whether to impose a penalty and what level that penalty should be.

The primary aims of financial penalties will be to:

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health, safety and wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire.
- Promote compliance of landlords in the private rented sector.
- Eliminate any financial gain or benefit from non-compliance with regulation.
- Be proportionate to the nature of the breach of legislation and the risk posed.
- Aim to prevent future non-compliance.

Criteria for the imposition of a penalty charge

In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the breach. Factors which the Council will take into consideration include, but are not limited to:-

- The extent to which the circumstances giving rise to the contravention were within the control of the landlord,
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach,
- The steps that the landlord has taken since being served with the remedial notice,
- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred,
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).

Criteria for determining the amount of a penalty charge

The Regulations set a maximum penalty charge of £5000. A penalty charge will be set at a level which the Council considers is proportional to the breach. It will also include the costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision. The Council will consider:-

- Whether or not the breach under consideration is a first-time breach.
- The nature of the breach of the Regulations
- Continued, or repeat breaches of the Regulations

Telford and Wrekin Borough Council has set the penalty charge as follows:-

First Offence **£1,500** - if paid within 14 days from the service of the Penalty Charge Notice, there will be a discount of 50% to £750.

Second Offence **£3000** - No early payment discount

Subsequent Offences **£5,000** - No early payment discount

The Council will exercise discretion, and may not make, or may reduce, any penalty charge where the landlord is a housing charity providing housing services for vulnerable persons.

The Council will enforce penalty charges, to include obtaining a Court Order for payment, where necessary.

Review of Penalty Charge Notice & Appeals

On receipt of a Penalty Charge Notice (PCN) from the Council, a landlord may, within 28 days from the service of the notice, make a written request asking the Council to review their decision. The Council will review the facts of the case and may confirm or vary their decision, and will serve notice giving the result of their review.

A landlord may appeal the review decision, to the First-tier Property Tribunal. The Tribunal may quash, confirm, or vary the PCN, but cannot increase the penalty charge.

The operation of the PCN is suspended until the Tribunal has determined the appeal.

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Appendix 3

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

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 require that where a privately rented property has a valid, registered Energy Performance Certificate (EPC), the minimum acceptable rating for the energy performance of the property must be 'E' or above. Properties for which a valid EPC has been registered, which indicates an EPC rating of 'F' or 'G' must not be rented out until works have been carried out to improve the energy performance.

Exemptions

There are various exemptions from the requirement to undertake the necessary energy improvements to meet the minimum requirement. These may be due to limitations in cost or to limitations associated with the type of construction of a property. Any exemption must be correctly registered with supporting documentation at the PRS Exemptions Register at: <https://prsregister.beis.gov.uk>. The exemption is valid for a maximum of 5 years.

Penalties

Where officers identify a privately rented property that does not meet the Minimum Energy Efficiency Standards (MEES) and has not registered an exemption, the Council may administer a fixed penalty and require the improvements to be carried out. The maximum amount a landlord can be fined per property is £5,000.

The financial penalty may be served up to 18 months after the breach has occurred.

The maximum penalty limits are:

Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.

Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.

Up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register.

Up to £2,000 and/or publication for failure to comply with a compliance notice.

The amount of civil penalty issued may be subject to representations as to the exceptional, or extenuating circumstances and may be reduced on consideration of the representations made.

Appendix 4

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

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to private landlords in respect of any specified tenancy and require all private landlords to:

- ensure that the electrical safety standards (currently the 18th edition of the Wiring Regulations, published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671: 2018) are met during any period when their property is occupied by a tenant as their main or only home
- ensure every electrical installation in the property is inspected and tested at least every 5 years by a qualified person who will provide a written report;
- ensure the first inspection and testing is carried out before the tenancy and provide the inspection/testing report to tenants; and to the local authority within 7 days of receiving a written request for the report.
- carry out any further or investigative work recommended by the report within 28 days or any lesser period specified in the report and obtain written confirmation that the work has been done to the correct standard.

Electrical Safety Enforcement

Telford and Wrekin Borough Council, as the local housing authority, is responsible for enforcing the Regulations. Where the Council has reasonable grounds to believe that a private landlord is in breach of the regulations, it must, within 21 days of arriving at this belief, serve a remedial notice on the landlord setting out the breaches and action required to remedy them. That action must then be taken within 28 days of the notice being served.

The landlord may make written representations in respect of the notice, in which case the notice will be suspended until the Council has considered those representations and informed the landlord of the outcome.

If a landlord fails to carry out the required works, the Council may, with the tenant's consent, carry them out itself and charge the cost back to the landlord, to be paid within 21 days.

The landlord has a right of appeal against the authority to the First Tier Tribunal and there is dispensation for landlords who are prevented by tenants from gaining entry to the property to carry out works.

The Council may impose a civil penalty, up to a maximum of £30,000 if satisfied beyond reasonable doubt that a landlord has breached the Regulations. These penalties may be appealed to the First Tier Tribunal.